6–5–96
Vol. 61 No. 109
Pages 28467–28722

federal register

Wednesday
June 5, 1996

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 51

RIN 3150–AD63

Environmental Review for Renewal of Nuclear Power Plant Operating Licenses

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations regarding environmental protection regulations for domestic licensing and related regulatory functions to establish new requirements for the environmental review of applications to renew the operating licenses of nuclear power plants. The amendment defines those environmental impacts for which a generic analysis has been performed that will be adopted in plant-specific reviews for license renewal and those environmental impacts for which plant-specific analyses are to be performed.

The amendment improves regulatory efficiency in environmental reviews for license renewal by drawing on the considerable experience of operating nuclear power reactors to generically assess many of the environmental impacts that are likely to be associated with license renewal. The amendment also eliminates consideration of the need for generating capacity and of utility economics from the environmental reviews because these matters are under the regulatory jurisdiction of the States and are not necessary for the NRC's understanding of the environmental consequences of a license renewal decision.

The increased regulatory efficiency will result in lower costs to both the applicant in preparing a renewal application and to the NRC for reviewing plant-specific applications and better focus of review resources on significant case specific concerns. The results should be a more focused and therefore a more effective NEPA review for each license renewal. The amendment will also provide the NRC with the flexibility to address unreviewed impacts at the site-specific stage of review and allow full consideration of the environmental impacts of license renewal.

The NRC is soliciting public comment on this rule for a period of 30 days. In developing any comment specific attention should be given to the treatment of low-level waste storage and disposal impacts, the cumulative radiological effects from the uranium fuel cycle, and the effects from the disposal of high-level waste and spent fuel.

DATES: Absent a determination by the NRC that the rule should be modified, based on comments received, the final rule shall be effective on August 5, 1996. The comment period expires on July 5, 1996.

ADDRESSES: Send comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or hand deliver comments to the Office of the Secretary, One White Flint North, 11555 Rockville Pike, Rockville, Maryland between 7:30 a.m. and 4:15 p.m. on Federal workdays. Copies of comments received and all documents cited in the supplementary information may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC between the hours of 7:45 a.m. and 4:15 p.m. on Federal workdays.

FOR FURTHER INFORMATION CONTACT: Donald P. Cleary, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 415–6263; e-mail DPC@nrc.gov.

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I. Introduction

The Commission has amended its environmental protection regulations in 10 CFR part 51 to improve the efficiency of the process of environmental review for applicants seeking to renew an operating license for up to an additional 20 years. The amendments are based on the analyses conducted for and reported in NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants'' (May 1996). The Commission's initial decision to undertake a generic assessment of the environmental impacts associated with the renewal of a nuclear power plant operating license was motivated by its beliefs that:

(1) License renewal will involve nuclear power plants for which the

environmental impacts of operation are well understood as a result of data evaluated from operating experience to date;

(2) Activities associated with license renewal are expected to be within this range of operating experience, thus environmental impacts can be reasonably predicted; and

(3) Changes in the environment around nuclear power plants are gradual and predictable with respect to characteristics important to environmental impact analyses.

Although this amendment is consistent with the generic approach and scope of the proposed amendment published on September 17, 1991 (56 FR 47016), several significant modifications have been made in response to the public comments received. The proposed amendment would have codified the findings reached in the draft generic environmental impact statement (GEIS) as well as certain procedural requirements. The draft GEIS established the bounds and significance of potential environmental impacts at 118 light-water nuclear power reactors that, as of 1991, were licensed to operate or were expected to be licensed in the future.

All potential environmental impacts and other matters treated by the NRC in an environmental review of nuclear power plants were identified and combined into 104 discrete issues. For each issue, the NRC staff established generic findings encompassing as many nuclear power plants as possible. These findings would have been codified by the proposed amendment. Of the 104 issues reviewed for the proposed rule, the staff determined that 80 issues could be adequately addressed generically and would not have been reviewed in plant-specific license renewal reviews. For 22 of the issues, it was found that the issue was adequately addressed for some but not all plants. Therefore, a plant-specific review would be required to determine whether the plant is covered by the generic review or whether the issue must be assessed for that plant. The proposed amendment provided guidance on the application of these findings at the site-specific license renewal stage. For the two remaining issues, it was found that the issue was not generically addressed for any plant, and thus a plant-specific review would have been required for all plants.

Other major features of the proposed amendment included a conditional finding of a favorable cost-benefit balance for license renewal and a provision for the use of an environmental assessment that would address only those issues requiring plant-specific review. A finding of no significant impact would have resulted in a favorable cost-benefit balance for that plant. If a finding of no significant impact could not be made for the plant, there would have to have been a determination as to whether the impacts found in the environmental assessment were sufficient to overturn the conditional cost-benefit balance found in the rule.

Although the final amendments to 10 CFR part 51 maintain the same generic approach used in the proposed rule, there are several modifications.The final amendments to 10 CFR part 51 now contain 92 issues. The reduction of the number of issues from 104 in the proposed rule to 92 in the final rule is due to (1) the elimination from the review of the consideration of the need for electric power and associated generating capacity and of the direct economic benefits and costs associated with electric power, (2) removing alternatives as an issue from Table B–1 and addressing review requirements only in the text of the rule, (3) combining the five severe accident issues used in the proposed rule into one issue, (4) eliminating several regional economic issues under socioeconomics that are not directly related to environmental impacts, (5) making minor changes to the grouping of issues under aquatic ecology and groundwater, (6) identifying collective offsite radiological impacts associated with the fuel cycle and all impacts of high level waste and spent fuel disposal as separate issues, and (7) adding environmental justice as an issue for consideration.

Of the 92 issues in the final rule, 68 issues were found to be adequately addressed in the GEIS, and therefore, additional assessment will not be required in a plant-specific review. Twenty-four issues were found to require additional assessment for at least some plants at the time of the license renewal review. In the final rule, the 2 issues in the proposed rule that would have required review for all plants are now included in the set of 24 issues of the final rule.

Public comments on the adequacy of the analysis for each issue were considered by the NRC staff. Any changes to the analyses and findings that were determined to be warranted were made in the final GEIS and incorporated in the rule. Several changes were made to the procedural features of the proposed rule in response to comments by the Council on Environmental Quality, the Environmental Protection Agency, and a number of State agencies. First, the NRC will prepare a supplemental site-specific environmental impact statement (SEIS), rather than an environmental assessment (as initially proposed), for each license renewal application. The SEIS will be issued for public comment as part of the individual plant review process. The NRC will delay any conclusions regarding the acceptability of the overall impacts of the license renewal until completion of the site-specific review. In addition, the SEIS will be prepared in accordance with existing public scoping requirements. The NRC will also review and consider any new and significant information presented during the review of individual license renewal applications. In addition, any person may challenge the validity of the conclusions codified in the rule by filing a petition for rulemaking pursuant to 10 CFR 2.802. Finally, the NRC will review the rule and the GEIS on a schedule that allows revisions, if required, every 10 years. This review will be initiated approximately 7 years after the completion of the previous revision cycle.

In addition to the changes involving public participation, this final rule also contains several changes regarding the scope of analysis and conclusions in the rule and GEIS. The conditional cost-benefit balance has been removed from the GEIS and the rule. In place of the cost-benefit balancing, the NRC will use a new standard that will require a determination of whether or not the adverse environmental impacts of license renewal are so great, compared with the set of alternatives, that preserving the option of license renewal for future decisionmakers would be unreasonable. The final amendment also eliminates NRC's consideration of the need for generating capacity and the preparation of power demand forecasts for license renewal applications. The NRC acknowledges the primacy of State regulators and utility officials in defining energy requirements and determining the energy mix within their jurisdictions. Therefore, the issue of need for power and generating capacity will no longer be considered in NRC's license renewal decisions. The final GEIS has been revised to include an explicit statement of purpose and need for license renewal consistent with this acknowledgment. Lastly, the final rule has eliminated the consideration of utility economics from license renewal reviews under the National Environmental Policy Act (NEPA) except when such benefits and costs are either essential for a determination regarding the inclusion of an alternative

in the range of alternatives considered or relevant to mitigation. These and other features of the final rule are explained in detail below.

The NRC is soliciting public comment on this rule for a period of 30 days. In developing any comment specific attention should be given to the treatment of low-level waste storage and disposal impacts, the cumulative radiological effects from the uranium fuel cycle, and the effects from the disposal of high-level waste and spent fuel. Absent a determination by the NRC that the rule should be modified, based on comments received, the final rule shall be effective on August 5, 1996.

II. Rulemaking History

In 1986, the NRC initiated a program to develop license renewal regulations and associated regulatory guidance in anticipation of applications for the renewal of nuclear power plant operating licenses. A solicitation for comments on the development of a policy statement was published in the Federal Register on November 6, 1986 (51 FR 40334). However, the Commission decided to forgo the development of a policy statement and to proceed directly to rulemaking. An advance notice of proposed rulemaking was published on August 29, 1988 (53 FR 32919). Subsequently, the NRC determined that, in addition to the development of license renewal regulations focused on the protection of health and safety, an amendment to its environmental protection regulations in 10 CFR part 51 was warranted.

On October 13, 1989 (54 FR 41980), the NRC published a notice of its intent to hold a public workshop on license renewal on November 13 and 14, 1989. One of the workshop sessions was devoted to the environmental issues associated with license renewal and the possible merit of amending 10 CFR part 51. The workshop is summarized in NUREG/CP–0108, ''Proceedings of the Public Workshop on Nuclear Power Plant License Renewal'' (April 1990). Responses to the public comments submitted after the workshop are summarized in NUREG–1411, ''Response to Public Comments Resulting from the Public Workshop on Nuclear Power Plant License Renewal'' (July 1990).

On July 23, 1990, the NRC published an advance notice of proposed rulemaking (55 FR 29964) and a notice of intent to prepare a generic environmental impact statement (55 FR 29967). The proposed rule was published on September 17, 1991 (56 FR 47016). The same Federal Register notice described the supporting documents that were available and announced a public workshop to be held on November 4–5, 1991. The supporting documents for the proposed rule included:

(1) NUREG–1437, ''Draft Generic Environmental Impact Statement for License Renewal of Nuclear Plants'' (August 1991);

(2) NUREG–1440, ''Regulatory Analysis of Proposed Amendments to Regulations Concerning the Environmental Review for Renewal of Nuclear Power Plant Operating Licenses: Draft Report for Comment'' (August 1991);

(3) Draft Regulatory Guide DG–4002, Proposed Supplement 1 to Regulatory Guide 4.2, ''Guidance for the Preparation of Supplemental Environmental Reports in Support of an Application To Renew a Nuclear Power Station Operating License'' (August 1991); and

(4) NUREG–1429, ''Environmental Standard Review Plan for the Review of License Renewal Applications for Nuclear Power Plants: Draft Report for Comment'' (August 1991).

After the comment period, the NRC exchanged letters with the Council on Environmental Quality (CEQ) and the Environmental Protection Agency (EPA) to address their concerns about procedural aspects of the proposed rule. The Commission also decided that the staff should discuss with the States the concerns raised in comments by a number of States that certain features of the proposed rule conflicted with State regulatory authority over the need for power and utility economics. To facilitate these discussions, the NRC staff developed an options paper entitled ''Addressing the Concerns of States and Others Regarding the Role of Need for Generating Capacity, Alternative Energy Sources, Utility Costs, and Cost-Benefit Analysis in NRC Environmental Reviews for Relicensing Nuclear Power Plants: An NRC Staff Discussion Paper.'' A Federal Register notice published on January 18, 1994 (59 FR 2542) announced the scheduling of three regional workshops during February 1994 and the availability of the options paper. A fourth public meeting on the State concerns was held in May 1994 in order for the NRC staff to better understand written proposals that had been submitted by two industry organizations after the regional workshops. After considering the comments from the workshops and the written comments, the NRC staff issued a proposed supplement to the proposed rule published on July 25, 1994 (59 FR 37724), that it believed would resolve the States' concerns regarding the Commission's consideration of need for power and utility economics. Comments were requested on this proposal. The discussion below contains an analysis of these comments and other comments submitted in response to the proposed rule.

III. Analysis of Public Comments

The analysis of public comments and the NRC's responses to these comments are documented in NUREG–1529, ''Public Comments on the Proposed 10 CFR part 51 Rule for Renewal of Nuclear Power Plant Operating Licenses and Supporting Documents: Review of Concerns and NRC Staff Response'' (May 1996). The extent of comments received during the various stages of the rulemaking process and the principal concerns raised by the commenters, along with the corresponding NRC responses to these concerns, are discussed below.

A. Commenters

In response to the Federal Register notice on the proposed rule published on September 17, 1991 (56 FR 47016), 68 organizations and 49 private citizens submitted written comments. The 68 organizations included 5 Federal agencies; 26 State, regional, and local agencies; 19 nuclear industry organizations and engineering firms; 3 law firms; and 15 public interest groups. Before the close of the initial comment period, the NRC conducted a 2-day workshop on November 4–5, 1991, in Arlington, Virginia, to discuss the proposed rule. Representatives from Federal agencies, State agencies, utilities, engineering firms, law firms, and public interest groups attended the workshop. Workshop panelists included the NRC staff as well as representatives from the Department of Energy (DOE), Department of Interior (DOI), Environmental Protection Agency (EPA), Council on Environmental Quality (CEQ), several State agencies, the nuclear industry, and public interest groups.

In February 1994, the NRC conducted three public meetings to solicit views on the NRC staff's options for addressing the need for generating capacity, alternative energy sources, economic costs, and cost-benefit analysis in the proposed rule. The intent to hold public meetings and the availability of the options paper was noticed in the Federal Register on January 12, 1994 (59 FR 2542). Written comments were also solicited on the options paper. The public meetings were held in Rockville, Maryland; Rosemont, Illinois; and Chicopee, Massachusetts.

Representatives from several States, the National Association of Regulatory Utility Commissioners (NARUC), the nuclear industry, and public interest groups actively participated. Nineteen separate written comments were also submitted, primarily by the States and the nuclear industry. In their submittals, the Nuclear Energy Institute (NEI), formerly known as the Nuclear Management and Resources Council (NUMARC), and Yankee Atomic Electric Company (YAEC) each proposed an approach to handling the issues of need for generating capacity and alternative energy sources in the rule. For the NRC staff to better understand these proposals, an additional public meeting was held with NEI and YAEC on May 16, 1994, in Rockville, Maryland.

After considering the public comments on the NRC staff's options paper, the NRC issued a proposed supplement to the proposed rule; it was published in the Federal Register on July 25, 1994 (59 FR 37724). The proposed supplement set forth the NRC staff's approach to the treatment of need for generating capacity and alternative energy sources, as well as the staff's revision to the purpose of and need for the proposed action (i.e., license renewal), which was intended to satisfy the States' concerns and to meet NEPA requirements. Twenty separate written comments were received in response to this solicitation from Federal and State agencies, the nuclear industry, a public interest group, and two private citizens.

B. Procedural Concerns

The commenters on the proposed rule raised significant concerns regarding the following procedural aspects of the rule:

(1) State and public participation in the license renewal process and the periodic assessment of the GEIS findings;

(2) The use of economic costs and cost-benefit balancing; and

(3) Consideration of the need for generating capacity and alternative energy sources in the environmental review of license renewal applications.

Each of these concerns and the NRC response is discussed below.

1. Public Participation and the Periodic Assessment of the Rule and the GEIS

Concern. Many commenters criticized the draft GEIS finding that 80 of 104 environmental issues could be generically applied to all plants and, therefore, would not be subject to plant-specific review at the time of license renewal. As a consequence, these commenters believe they are being denied the opportunity to participate in the license renewal process. Moreover, they pointed out that the site-specific nature of many important environmental issues does not justify a generic finding, particularly when the finding would have been made 20 years in advance of the decision to renew an operating license. The commenters believe that only a site-specific EIS to support a license renewal decision would satisfy NEPA requirements.

Federal and State agencies questioned how new scientific information could be folded into the GEIS findings because the GEIS would have been performed so far in advance of the actual renewal of an operating license. There were differing views on exactly how the NRC should address this question. A group of commenters, including CEQ and EPA, noted that the rigidity of the proposed rule hampers the NRC's ability to respond to new information or to different environmental issues not listed in the proposed rule. They believe that incorporation of new information can only be achieved through the process of amending the rules. One commenter recommended that, if the NRC decides to pursue the approach of making generic findings based on the GEIS, the frequency of review and update should be specifically stated in the rule. Recommendations on the frequency of the review ranged from 2 years to 5 years.

Response. In SECY–93–032, February 9, 1993, the NRC staff reported to the Commission their discussions with CEQ and EPA regarding the concerns these agencies raised, which were also raised by other commenters, about limiting public comment and the consideration of significant new information in individual license renewal environmental reviews. The focus of the commenters concerns is the limited nature of the site-specific reviews contemplated under the proposed rule. In response, the NRC has reviewed the generic conclusions in the draft rule, expanded the opportunity for site-specific review, and confirmed that what remains as generic is so. Also, the framework for consideration of significant new information has been revised and expanded.

The major changes adopted as a result of these discussions are as follows:

1. The NRC will prepare a supplemental site-specific EIS, rather than an environmental assessment (as initially proposed), for each license renewal application. This SEIS will be a supplement to the GEIS. Additionally, the NRC will review comments on the draft SEIS and determine whether such comments introduce new and significant information not considered in the GEIS analysis. All comments on the applicability of the analyses of impacts codified in the rule and the analysis contained in the draft supplemental EIS will be addressed by NRC in the final supplemental EIS in accordance with 40 CFR 1503.4, regardless of whether the comment is directed to impacts in Category 1 or 2. Such comments will be addressed in the following manner:

a. NRC's response to a comment regarding the applicability of the analysis of an impact codified in the rule to the plant in question may be a statement and explanation of its view that the analysis is adequate including, if applicable, consideration of the significance of new information. A commenter dissatisfied with such a response may file a petition for rulemaking under 10 CFR 2.802. If the commenter is successful in persuading the Commission that the new information does indicate that the analysis of an impact codified in the rule is incorrect in significant respects (either in general or with respect to the particular plant), a rulemaking proceeding will be initiated.

b. If a commenter provides new information which is relevant to the plant and is also relevant to other plants (i.e., generic information) and that information demonstrates that the analysis of an impact codified in the final rule is incorrect, the NRC staff will seek Commission approval to either suspend the application of the rule on a generic basis with respect to the analysis or delay granting the renewal application (and possibly other renewal applications) until the analysis in the GEIS is updated and the rule amended. If the rule is suspended for the analysis, each supplemental EIS would reflect the corrected analysis until such time as the rule is amended.

c. If a commenter provides new, site-specific information which demonstrates that the analysis of an impact codified in the rule is incorrect with respect to the particular plant, the NRC staff will seek Commission approval to waive the application of the rule with respect to that analysis in that specific renewal proceeding. The supplemental EIS would reflect the corrected analysis as appropriate.

2. The final rule and the GEIS will not include conditional cost-benefit conclusions or conclusions about alternatives. Conclusions relative to the overall environmental impacts including cumulative impacts will be left entirely to each site-specific SEIS.

3. After consideration of the changes from the proposed rule to the final rule and further review of the environmental issues, the NRC has concluded that it is

adequate to formally review the rule and the GEIS on a schedule that allows revisions, if required, every 10 years. The NRC believes that 10 years is a suitable period considering the extent of the review and the limited environmental impacts observed thus far, and given that the changes in the environment around nuclear power plants are gradual and predictable with respect to characteristics important to environmental impact analyses. This review will be initiated approximately 7 years after completion of the last cycle. The NRC will conduct this review to determine what, if anything, in the rule requires revision.

Concern. As part of their comments on the July 1994 Federal Register notice, NEI, several utilities, and the DOE asked that the NRC reconsider its understanding with CEQ and EPA regarding the preparation of a site-specific supplemental EIS for each license renewal action. These commenters supported an approach that would allow the preparation of an environmental assessment for reviewing the environmental impacts of license renewal.

Response. The NRC does not agree with this position. The NRC believes that it is reasonable to expect that an assessment of the full set of environmental impacts associated with an additional 20 years of operation of any plant would not result in a ''finding of no significant impact.'' Therefore, the review for any plant would involve an environmental impact statement.

2. Economic Costs and Cost-Benefit Balancing

Concern. State, Federal, and utility representatives expressed concern about the use of economic costs and cost-benefit balancing in the proposed rule and the draft GEIS. Commenters criticized the NRC's heavy emphasis on economic analysis and the use of economic decision criteria. They argued that the regulatory authority over utility economics falls within the States' jurisdiction and to some extent within the jurisdiction of the Federal Energy Regulatory Commission. Commenters also believe that the cost-benefit balancing used in the proposed rule and the draft GEIS went beyond NEPA requirements and CEQ regulations (40 CFR Parts 1500 to 1508). They noted that CEQ regulations interpret NEPA to require only an assessment of the cumulative effects of a proposed Federal action on the natural and man-made environment.

Response. In response to these concerns, the NRC has eliminated the use of cost-benefit analysis and consideration of utility economics in its NEPA review of a license renewal application except when such benefits and costs are either essential for a determination regarding the inclusion of an alternative in the range of alternatives considered or relevant to mitigation. As discussed in more detail in the following section, the NRC recognizes that the determination of the economic viability of continuing the operation of a nuclear power plant is an issue that should be left to appropriate State regulatory and utility officials.

3. Need for Generating Capacity and Alternative Energy Sources

Concern. In their comments on the proposed rule and the draft GEIS, several States expressed concern that the NRC's analysis of need for generating capacity would preempt or prejudice State energy planning decisions. They argued that the determination of need for generating capacity has always been the States' responsibility. Recommendations on how to address this issue ranged from withdrawing the proposed rule to changing the categorization of the issue so that a site-specific review can be performed, thus allowing for meaningful State and public participation. Almost all the concerned States called on the NRC to modify the rule to state explicitly that NRC's analysis does not preempt a State's jurisdiction over the determination of need for generating capacity.

Regarding the issue of alternative energy sources, several commenters contended that the site-specific nature of the alternatives to license renewal did not justify the generic finding in the GEIS. One significant concern about this finding is the States' perception that a generic finding, in effect, preempts the States' responsibility to decide on the appropriate mix of energy alternatives in their respective jurisdictions.

Three regional public meetings were held during the February 1994 to discuss the concerns of the States. At these meetings, and later in written comments, the State of New York proposed an approach to resolve the problem. The approach was endorsed by several other States. This approach had three major conditions:

(1) A statement in the rule that the NRC's findings on need and alternatives are only intended to satisfy the NEPA requirements and do not preclude the States from making their own determination with respect to these issues;

(2) The designation of the need for generating capacity and alternative energy sources as Category 3 (i.e., requiring site-specific evaluation); and

(3) A requirement that all site-specific EISs and relicensing decisions reference State determinations of need for generating capacity and alternative energy sources, and that they defer to those State determinations to the maximum extent possible.

Response. After consideration, the NRC staff did not accept all elements of the States' approach because the approach would have continued to require the NRC to consider the need for generating capacity and utility economics as part of its environmental analysis. In addition, the approach would have required the NRC to develop guidelines for determining the acceptability of State economic analyses, which some States may have viewed as an intrusion on their planning process.

The NRC staff developed and recommended another approach, which was published on July 25, 1994 (59 FR 37724), after consideration of information gathered at the regional meetings and from the written comments. This approach, which borrows some elements from NEI and YAEC proposals, has five major features:

(1) Neither the rule nor the GEIS would contain a consideration of the need for generating capacity or other issues involving the economic costs and benefits of license renewal and of the associated alternatives;

(2) The purpose and need for the proposed action (i.e., license renewal) would be defined as preserving the continued operation of a nuclear power plant as a safe option that State regulators and utility officials may consider in their future planning actions;

(3) The only alternative to the proposed action would be the ''no-action'' alternative, and the environmental consequences of this alternative are the impacts of a range of energy sources that might be used if a nuclear power plant operating license were not renewed;

(4) The environmental review for license renewal would include a comparison of the environmental impacts of license renewal with impacts of the range of energy sources that may be chosen in the case of ''no action''; and

(5) The NRC's NEPA decision standard for license renewal would require the NRC to determine whether the environmental impacts of license renewal are so great that preserving the option of license renewal for future decisionmakers would be unreasonable.

The statement that the use of economic costs will be eliminated in this approach refers to the ultimate NEPA decision regarding the comparison of alternatives and the proposed action. This approach does not preclude a consideration of economic costs if these costs are essential to a determination regarding the inclusion of an alternative in the range of alternatives considered (i.e., an alternative's exorbitant cost could render it nonviable and unworthy of further consideration) or relevant to mitigation of environmental impacts. Also, the two local tax issues and the two economic structure issues under socioeconomics in the table would be removed from consideration when applying the decision standard.

Concern. Comments received from several States on the NRC staff's July 1994 recommended approach ranged from rejection to endorsement. Some States supported the three conditions proposed by the State of New York. Several States were still concerned about whether a meaningful analysis of need for generating capacity and alternative energy sources could be undertaken 20 years ahead of time. One State asked that the proposed rule be withdrawn. Another State wanted the proposed rule to be reissued for public comment. CEQ supported the approach proposed by the State of New York. CEQ believed that the NRC's recommended approach was in conflict with the NEPA process because the proposed statement of purpose and need for the proposed action was too narrow and did not provide for an appropriate range of alternatives to the underlying need for the proposed action. CEQ wanted the NRC to address other energy sources as separate alternatives, rather than as consequences of the no-action alternative. Moreover, CEQ stated that the proposed decision standard places a ''weighty and improper burden of proof'' on consideration of the alternative. The EPA endorsed CEQ's comments. In general, the nuclear industry was supportive of the recommended approach. However, NEI and the utilities strongly expressed the opinion that, with the redefined statement of purpose and need, alternative energy sources would no longer be alternatives to the proposed action and, therefore, need not be considered.

Response. After consideration of the comments received on the Commission's July 1994 proposal, the Commission has modified and clarified its approach in order to address the concerns of CEQ relative to consideration of appropriate alternatives and the narrow definition of purpose and need. These modifications and clarifications addressed the States' concerns relative to treatment of need for generating capacity and alternatives. Specifically, the Commission has clarified the purpose and need for license renewal in the GEIS as follows:

> The purpose and need for the proposed action (renewal of an operating license) is to provide an option that allows for power generation capability beyond the term of a current nuclear power plant operating license to meet future system generating needs, as such needs may be determined by State, utility, and, where authorized, Federal (other than NRC) decisionmakers.

Using this definition of the purpose of and need for the proposed action, which stresses options for the generation of power, the environmental review will include a characterization of alternative energy sources as being the alternatives to license renewal and not merely the consequences of the no-action alternative and, thus, it addresses CEQ's concern that the scope of the alternatives analysis is unacceptably restricted.

With respect to the States' concerns regarding need for generating capacity analysis, the NRC will neither perform analyses of the need for power nor draw any conclusions about the need for generating capacity in a license renewal review. This definition of purpose and need reflects the Commission's recognition that, absent findings in the safety review required by the Atomic Energy Act of 1954, as amended, or in the NEPA environmental analysis that would lead the NRC to reject a license renewal application, the NRC has no role in the energy planning decisions of State regulators and utility officials. From the perspective of the licensee and the State regulatory authority, the purpose of renewing an operating license is to maintain the availability of the nuclear plant to meet system energy requirements beyond the term of the plant's current license. The underlying need that will be met by the continued availability of the nuclear plant is defined by various operational and investment objectives of the licensee. Each of these objectives may be dictated by State regulatory requirements or strongly influenced by State energy policy and programs. In cases of interstate generation or other special circumstances, Federal agencies such as the Federal Energy Regulatory Commission (FERC) or the Tennessee Valley Authority (TVA) may be involved in making these decisions. The objectives of the various entities involved may include lower energy cost, increased efficiency of energy production and use, reliability in the generation and distribution of electric power, improved fuel diversity within the State, and environmental objectives such as improved air quality and minimized land use.

The consideration of alternatives has been shifted to the site-specific review. The rule contains no information or conclusions regarding the environmental impacts of alternative energy sources, it only indicates that the environmental impact of alternatives will be considered during the individual plant review. However, the GEIS contains a discussion of the environmental impacts of alternative energy sources based on currently available information. The information in the GEIS is available for use by the NRC and the licensee in performing the site-specific analysis of alternatives and will be updated as appropriate. For individual plant reviews, information codified in the rule, information developed in the GEIS, and any significant new information introduced during the plant-specific review, including any information received from the State, will be considered in reaching conclusions in the supplemental EIS. The NRC's site-specific comparison of the impacts of license renewal with impacts of alternative energy sources will involve consideration of information provided by State agencies and other members of the public. This approach should satisfy the States' concerns relative to a meaningful analysis of alternative energy sources.

The Commission disagrees with CEQ's assertion that the new decision standard is inappropriate. Under this decision standard, the NRC must determine if the adverse environmental impacts of license renewal are so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable. The Commission expects that license renewal would be denied only if the expected environmental effects of license renewal significantly exceed all or almost all alternatives. The Commission believes that this is a reasonable approach to addressing the issue of environmental impacts of license renewal, given NRC's limited role in the area of energy systems planning. The operation of a nuclear power plant beyond its initial license term involves separate regulatory actions, one taken by the utility and the NRC, and the other taken by the utility and the State regulatory authorities. The decision standard would be used by NRC to determine whether, from an environmental perspective, it is

reasonable to renew the operating license and allow State and utility decisionmakers the option of considering a currently operating nuclear power plant as an alternative for meeting future energy needs. The test of reasonableness focuses on an analysis of whether the environmental impacts anticipated for continued operation during the term of the renewed license reasonably compare with the impacts that are expected from the set of alternatives considered for meeting generating requirements. The NRC would reject a license renewal application if the analysis demonstrated that the adverse environmental impacts of the individual license renewal were so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable.

After the NRC makes its decision based on the safety and environmental considerations, the final decision on whether or not to continue operating the nuclear plant will be made by the utility, State, and Federal (non-NRC) decisionmakers. This final decision will be based on economics, energy reliability goals, and other objectives over which the other entities may have jurisdiction. The NRC has no authority or regulatory control over the ultimate selection of future energy alternatives. Likewise, the NRC has no regulatory power to ensure that environmentally superior energy alternatives are used in the future. Given the absence of the NRC's authority in the general area of energy planning, the NRC's rejection of a license renewal application based on the existence of a single superior alternative does not guarantee that such an alternative will be used. In fact, it is conceivable that the rejection of a license renewal application by the NRC in favor of an individual alternative may lead to the implementation of another alternative that has even greater environmental impacts than the proposed action, license renewal.

Given the uncertainties involved and the lack of control that the NRC has in the choice of energy alternatives in the future, the Commission believes that it is reasonable to exercise its NEPA authority to reject license renewal applications only when it has determined that the impacts of license renewal sufficiently exceed the impacts of all or almost all of the alternatives that preserving the option of license renewal for future decision makers would be unreasonable. Because the objectives of the utility and State decisionmakers will ultimately be the determining factors in whether a nuclear power plant will continue to operate, NRC's proposed decision standard is appropriate. The decision standard will not affect the scope or rigor of NRC's analyses, including the consideration of the environmental impacts relevant to the license renewal decision and associated alternatives. The NRC staff believes that, under the circumstances, the decision standard does not place ''a weighty and improper burden of proof'' on other alternatives as CEQ claims.

With respect to the industry's desire to eliminate consideration of alternative energy sources, the Commission does not agree. The Commission does not support the views of NEI and others that alternative energy sources need not be considered in the environmental review for license renewal. The Commission is not prepared to state that no nuclear power plant will fall well outside the range of other reasonably available alternatives far in advance of an actual relicensing decision. Following NEI's suggestion would not lead to a meaningful set of alternatives with which to compare a proposed action. The Commission has always held the view that alternative sources of energy should be compared with license renewal and continued operation of a nuclear power plant.

Lastly, the Commission does not believe it is necessary to reissue this rule for public comment as a State commenter requested. The Commission has taken many measures to involve the public concerning the resolution of public comments on the proposed rule. The Commission has conducted a number of public meetings and published for public comment its recommended procedural revisions to the proposed rule. The Commission believes that modifications made to the proposed rule reflect the logical outgrowth of the proposed rule based on the public comments received by the Commission.

C. Technical Concerns

1. Category and Impact Magnitude Definitions

Concerns. Many commenters expressed concern that the category definitions and the impact-significance definitions were ambiguous and appeared somewhat interconnected. The EPA expressed concern that mitigation of adverse impacts was not addressed adequately.

Commenters expressed a number of concerns about the use of the applicability categories and the magnitude-level categories. With respect to the applicability categories, concerns ranged from a general concern that Category 1 precludes or hinders public involvement in an issue at the time of the plant-specific review to specific concerns about the technical adequacy of the analysis supporting a Category 1 finding for an issue. Several commenters believed that the definitions create confusion, especially as to whether the finding of small impact and Category 1 are interdependent. The GEIS appears to use Category 1 and ''small'' interchangeably. Concern was also expressed that the requirement to consider mitigative actions was inadequately addressed in the draft GEIS and proposed rule.

Response. To reduce potential confusion over the definitions, the use of the categories, and the treatment of mitigation within the context of the categorization scheme, the NRC has revised the definitions to eliminate any ambiguity as to how they are used. Further, the GEIS has been modified to clearly state the reasons behind the category and magnitude findings.

In order to facilitate understanding of the modifications to the GEIS, the previous approach is discussed as follows. In the proposed rule and the draft GEIS, findings about the environmental impact associated with each issue were divided into three categories of applicability to individual plant reviews. These categories were:

- Category 1: A generic conclusion on the impact has been reached for all affected nuclear power plants.
- Category 2: A generic conclusion on the impact has been reached for affected nuclear power plants that fall within defined bounds.
- Category 3: A generic conclusion on the impact was not reached for any affected nuclear power plants.

The significance of the magnitude of the impact for each issue was expressed as one of the three following levels.

- *Small* impacts are so minor that they warrant neither detailed investigation nor consideration of mitigative actions when such impacts are negative.
- *Moderate* impacts are likely to be clearly evident and usually warrant consideration of mitigation alternatives when such impacts are negative.
- *Large* impacts involve either a severe penalty or a major benefit, and mitigation alternatives are always considered when such impacts are negative.

With respect to the categories of applicability, under the proposed rule applicants would have:

(1) Not provided additional analyses of Category 1 issues;

(2) Not provided additional analyses if their plant falls within the bounds

defined in the rule for a Category 2 issue;

(3) Provided additional plant-specific analyses if their plant does not fall within the bounds defined in the rule for a Category 2 issue; and

(4) Provided plant-specific analyses of Category 3 issues.

In order to address the comments on these magnitude and category definitions, the GEIS has been modified to clearly state the reasons behind the category and magnitude findings.

The revised definitions are listed below.

• Category 1: For the issue, the analysis reported in the Generic Environmental Impact Statement has shown:

(1) The environmental impacts associated with the issue have been determined to apply either to all plants or, for some issues, to plants having a specific type of cooling system or other specified plant or site characteristic;

(2) A single significance level (i.e., small, moderate, or large) has been assigned to the impacts (except for collective off site radiological impacts from the fuel cycle and from high level waste and spent fuel disposal); and

(3) Mitigation of adverse impacts associated with the issue has been considered in the analysis and it has been determined that additional plant-specific mitigation measures are likely not to be sufficiently beneficial to warrant implementation.

The generic analysis of the issue may be adopted in each plant-specific review. Issues for which the impact was found to be favorable were also defined to be Category 1 issues.

• Category 2: For the issue, the analysis reported in the GEIS has shown that one or more of the criteria of Category 1 cannot be met and, therefore, additional plant-specific review is required.

If, for an environmental issue, the three Category 1 criteria apply to all plants, that issue is Category 1 and the generic analysis should be used in a license renewal review for all plant applications. If the three Category 1 criteria apply to a subset of plants that are readily defined by a common plant characteristic, notably the type of cooling system, the population of plants is partitioned into the set of plants with the characteristic and the set without the characteristic. For the set of plants with the characteristic, the issue is Category 1 and the generic analysis should be used in the license renewal review for those plants. For the set of plants without the characteristic, the issue is Category 2 and a site-specific analysis for that issue will be performed as part of the license renewal review. The review of a Category 2 issue may focus on the particular aspect of the issue that causes the Category 1 criteria not to be met. For example, severe accident mitigation under the issue ''severe accidents'' is the focus for a plant-specific review because the other aspects of the issue, specifically the offsite consequences, have been adequately addressed in the GEIS. With the revised definitions, the two issues previously designated as Category 3 are now designated Category 2. For an issue to be a Category 1, current mitigation practices and the nature of the impact were considered and a determination was made that it is unlikely that additional measures will be sufficiently beneficial. In the GEIS, in discussing the impacts for each issue, consideration was given to what is known about current mitigation practices.

The definitions of the significance level of an environmental impact have been revised to make the consideration of the potential for mitigating an impact separate from the analysis leading to a conclusion about the significance level of the impact. Further, the significance level of an impact is now more clearly tied to sustaining specific attributes of the affected resource that are important to its viability, health or usefulness. General definitions of small, moderate and large significance levels are given below. These definitions are adapted to accommodate the resource attributes of importance for each of the environmental issues in the GEIS. The definition of ''small'' clarifies the meaning of the term as it applies to radiological impacts. The definition of ''small'' in the proposed rule did not logically apply to such impacts.

The general definitions of significance level are:

• Small: For the issue, environmental effects are not detectable or are so minor that they will neither destabilize nor noticeably alter any important attribute of the resource. For the purposes of assessing radiological impacts, the Commission has concluded that those impacts that do not exceed permissible levels in the Commission's regulations are considered small.

• Moderate: For the issue, environmental effects are sufficient to alter noticeably but not to destabilize important attributes of the resource.

• Large: For the issue, environmental effects are clearly noticeable and are sufficient to destabilize important attributes of the resource.

The discussion of each environmental issue in the GEIS includes an explanation of how the significance category was determined. For issues in which probability of occurrence is a key consideration (i.e., accident consequences), the probability of occurrence has been factored into the determination of significance. The determination of the significance category was made independently of the consideration of the potential benefit of additional mitigation.

The major concerns (organized by topical areas) about the environmental issues examined in the draft GEIS and the NRC staff's response to those concerns are summarized next.

2. Surface Water Quality

Concern. Several commenters expressed concerns related to the National Pollutant Discharge Elimination System (NPDES) permitting process for surface water discharge. They believe that the NRC may have overlooked its legal obligation to comply with Section 401 of the Clean Water Act (CWA). Their recommendations included withholding approval for license renewal until a facility has complied with Section 401 and treating license renewal as an opportunity for a new NEPA review. On the other hand, other commenters recommended decoupling the NRC relicensing process from the NPDES permitting process.

Response. In issuing individual license renewals, the Commission will comply, as has been its practice, with the provisions of Section 401 of the Federal Water Pollution Control Act (see 10 CFR 51.45(d) and 51.71(c)). In addition, pursuant to Section 511(c) of the Federal Water Pollution Control Act of 1972, the Commission cannot question or reexamine the effluent limitations or other requirements in permits issued by the relevant permitting authorities. Nevertheless, compliance with the environmental quality standards and requirements of these permits does not negate the requirement for the Commission to consider all environmental effects of the proposed action. Accordingly, the Commission has not only taken existing permits into account in its analysis of the water quality impacts of license renewal but has also considered information on actual operating impacts collected from individual plants, State and Federal regulatory agencies, and published literature. As a result of this analysis, the Commission has concluded that the environmental impacts on surface water quality are small for those effluents subject to existing permit or certification requirements. A total decoupling of the license renewal process and the NPDES permitting process is not appropriate because, for

issues with incomplete Clean Water Act determinations, the NRC cannot complete its weighing and balancing of impacts without independently addressing the issues.

Concern. Several commenters raised concerns that various issues within the Surface Water Quality topic should be Category 2 or 3 issues. These included water use conflicts as experienced in Arizona and the Midwest, thermal stratification and salinity gradients associated with once-through cooling systems, and the toxicity of biofouling compounds.

Response. Regarding the water use conflicts, the NRC has considered the impacts of water use during the renewal period and has concluded that these impacts are small for plants with a once-through cooling system and that this is a Category 1 issue for those plants. However, this issue is designated Category 2 for plants with cooling towers and cooling ponds because, for those plants, the impacts might be moderate (they could also be small). In either case, pursuant to 10 CFR 51.45(d), an applicant for license renewal must identify and indicate in its environmental report the status of State and local approvals regarding water use issues. For those reactor sites where thermal stratification or salinity gradient was found to be the most pronounced, the issues were reviewed during preparation of the GEIS and found to be acceptable by the States within the NPDES process. No change in the categorization in the GEIS would be required. Similarly, the NPDES permit for a facility establishes allowable discharges, including biocides. The NRC has no indication that residual environmental impacts would occur as a result of license renewal activities at any nuclear plant site other than perhaps water use conflicts arising at plants with cooling ponds or cooling towers using make-up water from a small river with low flow. For those plants, this issue is Category 2.

3. Aquatic Ecology

Concern. A number of comments regarding the ecological impact of cooling water withdrawal from aquatic bodies were received. Specific concerns included fish kills associated with the entrainment and impingement of fish within once-through and cooling pond cooling systems, the use of chlorine and molluscicides to control mussel and clam growth, and the long-term effects of heavy metal discharges from plants with copper-nickel condenser tubes. Another commenter noted that license extension affords the opportunity to review the intake and discharge configuration of plant cooling water systems, since the best available technology that is economically available may be different given the additional 20 years of plant operating life.

Response. The Commission has considered the impacts of license renewal on aquatic ecology and, in doing so, has reviewed existing NPDES permits and other information. Based on this analysis, the Commission has concluded that these impacts are small with the exception that plants with once-through cooling and cooling ponds may have larger effects associated with entrainment of fish and shellfish in early life stages, impingement, and heat shock. Agencies responsible for existing permits are not constrained from reexamining the permit issues if they have reason to believe that the basis for their issuance is no longer valid. The Commission does not have authority under NEPA to impose an effluent limitation other than those established in permits issued pursuant to the Clean Water Act. The problem of the long-term effects of heavy metal discharges from plants with copper-nickel condenser tubes has been found at only one plant. The affected condenser tubes have been replaced with tubing of a more corrosion-resistant material.

Concern. A commenter pointed out that the issue of riparian zones should be addressed in the GEIS because the vegetation region along a water course can be affected by water withdrawal and is important in maintaining the habitat.

Response. The NRC agrees with the importance of addressing the impacts of license renewal on the riparian habitat. The final GEIS provides a discussion of the riparian habitat as an important resource and the potential effects of consumptive water use on riparian zones.

4. Groundwater Use and Quality

Concern. Several commenters indicated that groundwater issues should be reviewed on a site-specific basis because of groundwater use conflicts (in particular, the effect on aquifer recharge of using surface water for cooling water), opportunities for saltwater intrusion, and concerns over tritium found in wells at one site. On the other hand, a commenter requested that the issue of groundwater use for cooling tower makeup water be changed from Category 2 to Category 1 because the issue is based solely on data from Ranney wells at the Grand Gulf Nuclear Station, where tests have shown that the elevation of the water plain around Grand Gulf is not dropping.

Response. Based on consideration of comments, the issue of groundwater use conflicts resulting from surface water withdrawals for cooling tower makeup water or cooling ponds is now Category 2 for plants withdrawing surface water from small water bodies during low flow conditions. The GEIS has identified a potential reduction in aquifer recharge as a result of competing water use. These conflicts are already a concern at two closed-cycle nuclear power plants. The NRC does not agree that saltwater intrusion should be considered a Category 2 issue. When saltwater intrusion has been a problem, the major cause has been the large consumption of groundwater by agricultural and municipal users. Groundwater consumption by nuclear power plants is small by comparison and does not contribute significantly to the saltwater intrusion problem. With regard to traces of tritium found in the groundwater at one nuclear power plant, the tritium was attributed to a modification in the plant's inlet and discharge canal that did not take into consideration a unique situation in topology and groundwater flow. The releases were minor and the situation has been corrected.

Regarding the issue of the use of groundwater for cooling water makeup, the NRC has designated this issue as Category 2 even though only the Grand Gulf Nuclear Station is currently using Ranney wells to withdraw groundwater. This water intake does not conflict with other groundwater uses in the area. It is not possible to predict whether or not water use conflicts will occur at the Grand Gulf facility in the future. It is also not possible to determine the significance of the environmental impacts associated with Ranney well use at other nuclear plants that may choose to adopt this method in the future.

5. Terrestrial Ecology

Concern. Several commenters recommended that the issue of bird mortality resulting from collisions with transmission lines, towers, or cooling towers be characterized as a Category 2 issue. Such a characterization would provide for a review of mitigation at those plants with cooling towers that do not have illumination and for power plant transmission lines that transect major flyways or that cross wetlands used by large concentrations of birds.

Response. The NRC does not agree with this recommendation. The GEIS cites several studies that conclude that bird mortalities resulting from collision with transmission lines, towers, or cooling towers are not significantly

reducing bird populations. Mitigation measures in place, such as safety lights, were found adequate and additional measures were not warranted. Therefore, the issue remains a Category 1 issue because refurbishment will not involve construction of any additional transmission lines or natural draft cooling towers.

Concern. One commenter expressed concern that the GEIS analysis of land use did not adequately encompass the impact of onsite spent fuel storage on land use and that the Category 1 finding is questionable. A specific concern was the potential need for the construction of additional spent fuel storage facilities associated with the license renewal term, along with their associated impacts on the terrestrial environment.

Response. The NRC does not agree that there is a need to change the Category 1 determination for onsite land use. Waste management operations could require the construction of additional storage facilities and thus adversely affect land use and terrestrial ecology. However, experience has shown that the land requirements would be relatively small (less than 9 acres), impacts to land use and terrestrial ecology would also be relatively small, and the land that may be used is already possessed by the applicant; thus, its basic use would not be altered. Onsite land use is Category 1. Terrestrial ecology with disturbance of sensitive habitat is treated as a separate issue and is Category 2.

6. Human Health

Concern. In the human health section of the GEIS, the radiological impacts of plant refurbishment and continued operations during the license renewal term to workers and the general public were examined. Several commenters indicated that it was inappropriate to compare the radiation exposures associated with license renewal to natural background levels. These commenters believed that the appropriate argument should be that the risks associated with the additional exposures are so small that no additional mitigative measures are required.

Response. The NRC agrees that the assessment of radiation exposure should not be simply a comparison with background radiation. In response to comments on the draft generic environmental impact statement and the proposed rule, the standard defining a small radiological impact has changed from a comparison with background radiation to sustained compliance with the dose and release limits applicable to the various stages of the fuel cycle. This change is appropriate and strengthens the criterion used to define a small environmental impact for the reasons that follow. The Atomic Energy Act requires the Nuclear Regulatory Commission to promulgate, inspect and enforce standards that provide an adequate level of protection of the public health and safety and the environment. The implementation of these regulatory programs provides a margin of safety. A review of the regulatory requirements and the performance of facilities provides the bases to project continuation of performance within regulatory standards. For the purposes of assessing radiological impacts, the Commission has concluded that impacts are of small significance if doses to individuals and releases do not exceed the permissible levels in the Commission's regulations.

With respect to whether additional mitigative measures are required, it should be noted that in 10 CFR parts 20 and 50 there are provisions that radiological impacts associated with plant operation be reduced to levels as low as reasonably achievable (ALARA).

Concern. Several commenters indicated that the GEIS needs a broader treatment of uncertainty as it relates to human health issues.

Response. The NRC agrees that there is considerable uncertainty associated with health effects, especially at low occupational and public dose levels, and particularly with respect to electromagnetic fields. Health effect estimates from radiation exposures are based on the best scientific evidence available and are considered to be conservative estimates. Several sections of the GEIS have been expanded to more thoroughly explain how predicted impacts could be affected by changes in scientific information or standards.

Concern. One commenter indicated that, in the GEIS and the proposed rule, risk coefficients should have been used for chemicals and radiation to obtain upper bound risk estimates of cancer incidence.

Response. The NRC does not agree with this comment. In making comparisons of alternatives, comparisons of the central or best estimates of impacts are consistent with NEPA requirements because they provide the fairest determination. The GEIS is written using current, Commission-approved risk estimators.

Concern. Two commenters expressed concern regarding the GEIS conclusion that the impact of radiation exposure to the public is small, citing a study done by the Massachusetts Department of Public Health (MDPH). This study concluded that adults who live within 10 miles of the Pilgrim Nuclear Power Plant have a risk of contracting leukemia four times greater than other individuals.

Response. The NRC staff reviewed the MDHP study and compared it with various other studies. The results of the study have been contradicted by a National Cancer Institute (NCI) study entitled ''Cancer in Populations Living Near Nuclear Facilities'' (July 1990). The NCI study, which included the Pilgrim plant in its analysis, found no reason to suggest that nuclear facilities may be linked causally with excess deaths from leukemia or from other cancers. The findings of the NCI study are consistent with the findings of several similar epidemiological studies in foreign countries and with the latest conclusions of expert bodies such as the National Research Council's Committee on the Biological Effects of Ionizing Radiation. The NRC continues to base its assessment of the health effects of ionizing radiation on the overall body of scientific knowledge and on the recommendations of expert groups.

7. Socioeconomics

Concern. A commenter concerned with historic preservation pointed out that this issue must be addressed through compliance with the National Historic Preservation Act (NHPA) and cannot be resolved generically.

Response. The NRC agrees with this comment. Historical and archaeological impacts have been changed from a Category 1 to a Category 2 issue (that is, it must be evaluated site-specifically). Consultation with State historical preservation offices and other Government agencies, as required by NHPA, must be undertaken to determine whether protected historical or archaeological resources are in areas that might be disturbed during refurbishment activities and operation during the renewal period.

Concern. Several commenters indicated that transportation issues associated with refurbishment activities should be changed from Category 3 to Category 2 because the impacts will be insignificant in the majority of cases. One recommendation was to use a level of service (LOS) determination for specific plants as the bounding criterion. The analysis would require that LOS be determined for that part of the refurbishment period during which traffic not related to the plant is expected to be the heaviest. Another recommendation was to establish bounding criteria based on past major routine outages.

Response. The NRC agrees that use of the LOS approach may prove to be

acceptable. Transportation still must be reviewed on a plant-specific basis, that is, it is a Category 2 issue (based on the revised definition).

Concern. There were recommendations to make the housing impacts during refurbishment a Category 1 issue instead of Category 2. One commenter noted that the construction period data used in the analysis appears to overestimate the impact on housing.

Response. The NRC does not agree that this should be a Category 1 issue. Although negligible housing impacts are anticipated for most license renewals, significant housing impacts have occurred during a periodic plant outage at one of the case plants studied for the analysis. This issue is now a Category 2 issue because moderate and large impacts on housing are possible depending on local conditions (e.g., areas with extremely slow population growth or areas with growth control measures that limit housing development).

8. The Uranium Fuel Cycle and Solid Waste Management

Concern. Wide-ranging concerns were expressed in the comments on the proposed rule and the draft GEIS about the treatment of storage and disposal of low-level waste (LLW), mixed waste, spent fuel, nonradiological waste, and the transportation of fuel and waste to and from nuclear power plants as a consequence of license renewal. Concern was expressed about the uncertain availability of disposal facilities for LLW, mixed waste, and spent fuel; the prospect of generation and onsite storage of an additional 20 years output of waste; and the resulting pressure that would be put on the States to provide LLW disposal facilities. Various commenters expressed concern about the adequacy of the treatment of the cost of waste management and the implications for the economic viability of license renewal. Numerous comments were provided on updating and clarifying data on waste management presented in the draft GEIS. Finally, various questions were raised about the applicability of Table S–3 (10 CFR 51.51 Uranium fuel cycle environmental data—Table S–3, Table of Uranium Fuel Cycle Environmental Data) to the management of waste generated as a result of license renewal.

With regard to spent fuel, several commenters expressed concern that dry cask storage is not a proven technology and that onsite storage of spent fuel from an additional 20 years of plant operation will present environmental and safety problems. Therefore, onsite storage of spent fuel should be considered on a site-specific basis within a plant license renewal review.

Response. The Commission acknowledges that there is uncertainty in the schedule of availability of disposal facilities for LLW, mixed waste, and spent fuel. However, the Commission believes that there is sufficient understanding of and experience with the storage of LLW, mixed waste, and spent fuel to conclude that the waste generated at any plant as a result of license renewal can be stored safely and without significant environmental impacts before permanent disposal. In addition, the Commission concluded that the classification of storage and ultimate disposal as a Category 1 issue is appropriate because States are proceeding, albeit slowly, with the development of new disposal facilities; LLW and mixed waste have been and can be safely stored at reactor sites until new disposal capacity becomes available. Analyses to support this conclusion are presented in Chapter 6 of the final GEIS (NUREG–1437). The following summary of the responses to comments emphasizes the main features of these analyses.

In the draft GEIS, the environmental data in Table S–3 were discussed with respect to applicability during the license renewal period and supplemented with an analysis of the radiological release and dose commitment data for radon-222 and technetium-99. The proposed rule would have had this discussion apply to each plant at the time of its review for license renewal.

Further, in the draft GEIS, Chapter 6, ''Solid Waste Management,'' covered the generation of LLW, mixed waste, spent fuel, and nonradiological waste as a result of license renewal; the transportation of the radiological waste; and the environmental impacts of waste management, including storage and disposal. The findings that were to have been codified in the rule were that, for nonradiological waste, mixed waste, spent fuel, and transportation, the environmental impacts are of small significance and that the analysis in the GEIS applies to each plant (Category 1). For LLW, the finding that would have been codified in the rule was that, if an applicant does not have access to a low-level radioactive waste disposal facility through a low-level waste compact or an unaffiliated State, the applicant must present plans for interim waste storage with an assessment of potential ecological habitat destruction caused by construction activities (Category 2).

In response to the questions about the applicability of Table S–3 to the management of waste associated with license renewal and to the various comments challenging the treatment of the several forms of waste in the draft GEIS and in the proposed rule, the discussion of Table S–3 has been moved from Section 4.8 of the draft GEIS to Chapter 6 of the final GEIS in order to provide a more integrated assessment of the environmental impacts associated with waste management as a consequence of license renewal. Also in response to various comments, the discussion of Table S–3 and of each of the types of waste has been expanded.

Supplemental data are presented in Chapter 6 of the final GEIS in order to extend the coverage of the environmental impacts of the uranium fuel cycle presented in the current Table S–3 and of transportation of radioactive waste presented in the current Table S–4 to radon-222, technetium-99, higher fuel enrichment, and higher fuel burnup. In part, the current Table S–3 and the data supplementing it cover environmental impacts of:

(1) Onsite storage of spent fuel assemblies in pools for 10 years, packaging and transportation to a Federal repository, and permanent disposal; and

(2) Short-term storage onsite of LLW, packaging and transportation to a land-burial facility, and permanent disposal.

The following conclusions have been drawn with regard to the environmental impacts associated with the uranium fuel cycle.

The radiological and nonradiological environmental impacts of the uranium fuel cycle have been reviewed. The review included a discussion of the values presented in Table S–3, an assessment of the release and impact of ^{222}Rn and of ^{99}Tc, and a review of the regulatory standards and experience of fuel cycle facilities. For the purpose of assessing the radiological impacts of license renewal the Commission uses the standard that the impacts are of small significance if doses and releases do not exceed permissible levels in the Commission's regulations. Given the available information regarding the compliance of fuel cycle facilities with applicable regulatory requirements, the Commission has concluded that, other than for the disposal of spent fuel and high-level waste, these impacts on individuals from radioactive gaseous and liquid releases will remain at or below the Commission's regulatory limits. Accordingly, the Commission concludes that offsite radiological impacts of the fuel cycle (individual effects from other than the disposal of

spent fuel and high-level waste) are small. ALARA efforts will continue to apply to fuel cycle activities. This is a Category 1 issue.

The radiological impacts of the uranium fuel cycle on human populations over time (collective effects) have been considered within the framework of Table S–3. The 100 year environmental dose commitment to the U.S. population from the fuel cycle, high level waste and spent fuel disposal excepted, is calculated to be about 14,800 man-rem, or 12 cancer fatalities, for each additional 20 year power reactor operating term. Much of this, especially the contribution of radon releases from mines and tailing piles, consists of tiny doses summed over large populations. This same dose calculation can theoretically be extended to include many tiny doses over additional thousands of years as well as doses outside the U.S. The result of such a calculation would be thousands of cancer fatalities from the fuel cycle, but this result assumes that even tiny doses have some statistical adverse health effect which will not ever be mitigated (for example no cancer cure in the next thousand years), and that these dose projections over thousands of years are meaningful. However these assumptions are questionable. In particular, science cannot rule out the possibility that there will be no cancer fatalities from these tiny doses. For perspective, the doses are very small fractions of regulatory limits, and even smaller fractions of natural background exposure to the same populations. No standards exist that can be used to reach a conclusion as to the significance of the magnitude of the collective radiological effects. Nevertheless, some judgement as to the regulatory NEPA implication of this issue should be made and it makes no sense to repeat the same judgement in every case. The Commission concludes that these impacts are acceptable in that these impacts would not be sufficiently large to require the NEPA conclusion, for any plant, that the option of extended operation under 10 CFR part 54 should be eliminated. Accordingly, while the Commission has not assigned a single level of significance for the collective effects of the fuel cycle, this issue is considered Category 1. For other Category 1 issues, the impacts will be considered at the individual renewal stage as a means of judging the total impact of an individual license renewal decision. However, the Commission has already judged the impact of collective effects of the fuel cycle as part of this rule.

There are no current regulatory limits for off-site releases of radionuclides for the current candidate repository site. However if we assume that limits are developed along the lines of the 1995 National Academy of Sciences (NAS) report, and that in accordance with the Commission's Waste Confidence Decision, a repository can and likely will be developed at some site which will comply with such limits, peak doses to virtually all individuals will be 100 millirem per year or less. However, while the Commission has reasonable confidence that these assumptions will prove correct there is considerable uncertainty since the limits are yet to be developed, no repository application has been completed or reviewed, and uncertainty is inherent in the models used to evaluate possible pathways to the human environment. The National Academy report indicated that 100 millirem per year should be considered as a starting point for limits for individual doses, but notes that some measure of consensus exists among national and international bodies that the limits should be a fraction of the 100 millirem per year. The lifetime individual risk from 100 millirem per year dose limit is about 3×10^{-3}. Doses to populations from disposal cannot now (or possibly ever) be estimated without very great uncertainty. Estimating cumulative doses to populations over thousands of years is more problematic. The likelihood and consequences of events that could seriously compromise the integrity of a deep geologic repository were evaluated by the Department of Energy in the ''Final Environmental Impact Statement: Management of Commercially Generated Radioactive Waste,'' October 1980. The evaluation estimated the 70-year whole-body dose commitment to the maximum individual and to the regional population resulting from several modes of breaching a reference repository in the year of closure, after 1,000 years, after 100,000 years, and after 100,000,000 years. The release scenarios covered a wide range of consequences from the limited consequences of humans accidentally drilling into a waste package in the repository to the catastrophic release of the repository inventory by a direct meteor strike. Subsequently, the NRC and other Federal agencies have expended considerable effort to develop models for the design and for the licensing of a high level waste repository, especially for the candidate repository at Yucca Mountain. More meaningful estimates of doses to population may be possible in the future as more is understood about the performance of the proposed Yucca Mountain repository. Such estimates would involve very great uncertainty, especially with respect to cumulative population doses over thousands of years. The standard proposed by the NAS is a limit on maximum individual dose. The relationship of potential new regulatory requirements, based on the NAS report, and cumulative population impacts has not been determined, although the report articulates the view that protection of individuals will adequately protect the population for a repository at Yucca Mountain. However, EPA's generic repository standards in 40 CFR part 191 generally provide an indication of the order of magnitude of cumulative risk to population that could result from the licensing of a Yucca Mountain repository, assuming the ultimate standards will be within the range of standards now under consideration. The standard in 40 CFR part 191 protects the population by imposing ''containment requirements'' that limit the cumulative amount of radioactive material released over 10,000 years. The cumulative release limits are based on EPA's population impact goal of 1,000 premature cancer deaths world-wide for a 100,000 metric tonne (MTHM) repository.

Nevertheless, despite all the uncertainty surrounding the effects of the disposal of spent fuel and high-level waste, some judgement as to the regulatory NEPA implications of these matters should be made and it makes no sense to repeat the same judgement in every case. Even taking the uncertainties into account, the Commission concludes that these impacts are acceptable in that these impacts would not be sufficiently large to require the NEPA conclusion, for any plant, that the option of extended operation under 10 CFR part 54 should be eliminated. Accordingly, while the Commission has not assigned a single level of significance for the impacts of spent fuel and high-level waste disposal, this issue is considered Category 1. Excepting the collective effects previously discussed, for other Category 1 issues, the impacts will be considered at the individual renewal stage as a means of judging the total impact of an individual license renewal decision. However, the Commission has already judged the impacts of high level waste disposal as part of this rule.

With respect to the nonradiological impact of the uranium fuel cycle, data concerning land requirements, water requirements, the use of fossil fuel, gaseous effluent, liquid effluent, and tailings solutions and solids, all listed in Table S–3, have been reviewed to

determine the significance of the environmental impacts of a power reactor operating an additional 20 years. The nonradiological impacts attributable to the relicensing of an individual power reactor are found to be of small significance. License renewal of an individual plant is so indirectly connected to the operation of fuel cycle facilities that it is meaningless to address the mitigation of impacts identified above. This is a Category 1 issue.

Table S–3 does not take into account long-term onsite storage of LLW, mixed waste, and storage of spent fuel assemblies onsite for longer than 10 years, nor does it take into account impacts from mixed waste disposal. The environmental impacts of these aspects of onsite storage are also addressed in Chapter 6 of the final GEIS and the findings are included in the final rule in Table B–1 of appendix B to 10 CFR part 51.

Chapter 6 of the GEIS discusses the impacts of offsite disposal of LLW and mixed waste and concludes that impacts will be small. The conclusion that impacts will be small is based on the regulations and regulatory programs in place (e.g., 10 CFR part 61 for LLW and 40 CFR parts 261, 264, and 268 for hazardous waste), experience with existing sites, and the expectation that NRC, EPA, and the States will ensure that disposal will occur in compliance with the applicable regulations.

The Low-Level Radioactive Waste Policy Act of 1980 (LLRWPA) made the States responsible for the disposal of commercially generated LLW. At present, 9 compacts have been formed, representing 42 States. The Texas Compact (Texas, Maine, and Vermont) is pending before the U.S. Congress.

New LLW disposal facilities in the host States of California, North Carolina, and Texas are forecast to be operational between 1997 and 1998. Facilities in the host States of Connecticut, Illinois, Massachusetts, Nebraska, New Jersey, Pennsylvania, and New York are scheduled for operation between 1999 and 2002. Envirocare, in Utah, takes limited types of waste from certain generators.

There are uncertainties in the licensing process and in the length of time needed to resolve technical issues, but in NRC's view there are no unsolvable technical issues that will inevitably preclude successful development of new sites or other off-site disposal capacity for LLW by the time they will be needed. For example, in California, the proposed Ward Valley LLW disposal facility was unexpectedly delayed by the need to resolve technical issues raised by several scientists independent of the project after the license was issued. These issues were recently reviewed and largely resolved by an independent review group. In North Carolina, Texas, and Nebraska, the license application review period has been longer than is required by the LLRWPA, but progress continues to be made.

The State's LLW responsibilities include providing disposal capacity for mixed LLW. Mixed waste disposal facility developers face the same types of challenges as LLW site developers plus difficulties with dual regulation and small volumes. However, in NRC's view there are no technical reasons why offsite disposal capacity for all types of mixed waste should not become available when needed. NRC and EPA have developed guidance on the siting of mixed waste disposal facilities as well as a conceptual design for a mixed waste disposal facility. A disposal facility for certain types of mixed waste is operated by Envirocare in Utah. States have begun discussions with DOE about accepting commercial mixed waste for treatment and disposal at DOE facilities. Although these discussions have yet to result in DOE accepting commercial mixed waste at DOE facilities, it appears that progress is being made toward DOE's eventual acceptance of some portion of commercial mixed waste at its facilities.

While the NRC understands that there have been delays and that uncertainties exist such as those just discussed, the Commission concludes that there is reasonable assurance that sufficient LLW and mixed LLW disposal capacity will be made available when needed so that facilities can be decommissioned consistent with NRC decommissioning requirements. This conclusion, coupled with the expected small impacts from both storage and disposal justify classification of LLW and mixed waste disposal as Category 1 issues.

The GEIS addresses the matter of extended onsite storage of both LLW and mixed waste from refurbishment and operations for a renewal period of up to 20 years. Summary data are provided and radiological and nonradiological environmental impacts are addressed. The analysis considers:

(1) The volumes of LLW and mixed waste that may be generated from license renewal;

(2) Specific requirements under the existing regulatory framework;

(3) The effectiveness of the regulations in maintaining low average doses to members of the public and to workers; and

(4) Nonradiological impacts, including land use, fugitive dust, air quality, erosion, sedimentation, and disturbance of ecosystems.

In addition, under 10 CFR 50.59, licensees are allowed to make changes to their facilities as discussed in the final safety analysis report without NRC permission if the evaluation indicates that a change in the technical specifications is not required or that an unreviewed safety question does not exist. Licensees would have to ensure that any new LLW activities would not represent an unreviewed safety question for routine operations or for conditions that might arise from potential accidents. Both onsite and offsite impacts would have to be considered. If a LLW or mixed waste activity fails either of the two tests in 10 CFR 50.59, a license amendment is required. Subject to the two possible review requirements just noted, the Commission finds that continued onsite storage of both LLW and mixed waste resulting from license renewal will have small environmental impacts and will require no further review within the license renewal proceeding.

The GEIS addresses extended onsite storage of spent fuel during a renewal period of up to 20 years. The Commission has studied the safety and environmental effects of the temporary storage of spent fuel after cessation of reactor operation and has published a generic determination of no significant environmental impact (10 CFR 51.23). The environmental data on storing spent fuel onsite in a fuel pool for 10 years before shipping for offsite disposal have been assessed and reported in NUREG–0116, ''The Environmental Survey of the Reprocessing and Waste Management Portions of the LWR Fuel Cycle'' (October 1976), and published in the Commission's regulations (10 CFR 51.51). Environmental assessments (EA) for expanding the fuel pool storage capacity have been conducted for numerous plants. In each case, a finding of no significant environmental impact was reached.

Radioactive exposures, waste generation, and releases were evaluated and found to be small. The only nonradiological effluent from waste storage is additional heat from the plant that was found to have a negligible effect on the environment. Accidents were evaluated and were found to have insignificant effects on the environment. Dry cask storage at an independent spent fuel storage installation (ISFSI) is another technology used to store under a general license. The environmental impacts of allowing onsite dry cask storage under a general license were

assessed in an EA and found to be insignificant. Further, the Commission has conducted EAs for seven specific licensed ISFSIs and has reached a finding of no significant environmental impact for each site. Each EA addressed the impacts of construction, use, and decommissioning. Potential impacts that were assessed include radiological impacts, land use, terrestrial resources, water use, aquatic resources, noise, air quality, socioeconomics, radiological impacts during construction and routine operation, and radiological impacts of off-normal events and accidents. Trends in onsite spent fuel storage capacity and the volume of spent fuel that will be generated during an additional 20 years of operation are considered in the GEIS. Spent fuel storage capacity requirements can be adequately met by ISFSIs without significant environmental impacts. The environmental impacts of onsite storage of spent fuel at all plants have been adequately assessed in the GEIS for the purposes of an environmental review and agency decision on renewal of an operating license; thus, no further review within the license renewal proceeding is required. This provision is relative to the license renewal decision and does not alter existing Commission licensing requirements specific to on-site storage of spent fuel.

The environmental impacts from the transportation of fuel and waste attributable to license renewal are found to be small when they are within the range of impacts of parameters identified in Table S–4. The estimated radiological effects are within regulatory standards. The nonradiological impacts are those from periodic shipments of fuel and waste by individual trucks or rail cars and thus would result in infrequent and localized minor contributions to traffic density. Programs designed to further reduce risk, which are already in place, provide for adequate mitigation. Recent, ongoing efforts by the Department of Energy to study the impacts of waste transportation in the context of the multi-purpose canister (see, 60 FR 45147, August 30, 1995) suggest that there may be unresolved issues regarding the magnitude of cumulative impacts from the use of a single rail line or truck route in the vicinity of the repository to carry all spent fuel from all plants. Accordingly, NRC declines to reach a Category 1 conclusion on this issue at this time. Table S–4 should continue to be the basis for case-by-case evaluation of transportation impacts of fuel and waste until such time as a detailed analysis of the environmental impacts of transportation to the proposed repository at Yucca Mountain becomes available.

9. Accidents

Concern. Several commenters expressed concerns regarding the appropriateness of the severe accident determination in the GEIS and with the treatment of severe accident mitigation design alternatives (SAMDAs) for license renewal. A group of commenters identified areas of concern that they believe justify severe accidents being classified as a Category 3 issue. The areas included seismic risks to nuclear power plants and site-specific evacuation risks. Several commenters questioned whether the analyses of the environmental impacts of accidents were adequate to make a Category 1 determination for the issue of severe accidents. The contention is that a bounding analysis would be established only if plant-specific analyses were performed for every plant, which was not the case. Instead, the GEIS analysis made use of a single generic source term for each of the two plant types.

Response. The Commission believes that its analysis of the impacts of severe accidents is appropriate. The GEIS provides an analysis of the consequences of severe accidents for each site in the country. The analysis adopts standard assumptions about each site for parameters such as evacuation speeds and distances traveled, and uses site-specific estimates for parameters such as population distribution and meteorological conditions. These latter two factors were used to evaluate the exposure indices for these analyses. The methods used result in predictions of risk that are adequate to illustrate the general magnitude and types of risks that may occur from reactor accidents. Regarding site-evacuation risk, the radiological risk to persons as they evacuate is taken into account within the individual plant risk assessments that form the basis for the GEIS. In addition, 10 CFR Part 50 requires that licensees maintain up-to-date emergency plans. This requirement will apply in the license renewal term as well as in the current licensing term.

As was done in the GEIS analysis, the use of generic source terms (one set for PWRs and another for BWRs) is consistent with the past practice that has been used and accepted by the NRC for individual plant Final Environmental Impact Statements (FEISs). The purpose of the source term discussion in the GEIS is to describe whether or not new information on source terms developed after the completion of the most recent FEISs indicates that the source terms used in the past under-predict environmental consequences. The NRC has concluded that analysis of the new source term information developed over the past 10 years indicates that the expected frequency and amounts of radioactive release under severe accident conditions are less than that predicted using the generic source terms. A summary of the evolution of this research is provided in NUREG–1150, ''Severe Accident Risks: An Assessment for Five U.S. Nuclear Power Plants'' (December 1990), and its supporting documentation. Thus, the analyses performed for the GEIS represent adequate, plant-specific estimates of the impacts from severe accidents that would generally over-predict, rather than under-predict, environmental consequences. Therefore, the GEIS analysis of the impacts of severe accidents for license renewal is retained and is considered applicable to all plants.

Based on an evaluation of the comments, the Commission has reconsidered its previous conclusion in the draft GEIS concerning site-specific consideration of severe accident mitigation. The Commission has determined that a site-specific consideration of alternatives to mitigate severe accidents will be required at the time of license renewal unless a previous consideration of such alternatives regarding plant operation has been included in a final environmental impact statement or a related supplement. Because the third criterion required to make a Category 1 designation for an issue requires a generic consideration of mitigation, the issue of severe accidents must be reclassified as a Category 2 issue that requires a consideration of severe accident mitigation alternatives, provided this consideration has not already been completed. The Commission's reconsideration of the issue of severe accident mitigation for license renewal is based on the Commission's NEPA regulations that require a consideration of mitigation alternatives in its environmental impact statements (EISs) and supplements to EISs, as well as a previous court decision that required a review of severe mitigation alternatives (referred to as SAMDAs) at the operating license stage. See, *Limerick Ecology Action* v. *NRC,* 869 F.2d 719 (3d Cir. 1989).

Although the Commission has considered containment improvements for all plants pursuant to its Containment Performance Improvement (CPI) program, which identified potential containment improvements for site-specific consideration by licensees,

and the Commission has additional ongoing regulatory programs whereby licensees search for individual plant vulnerabilities to severe accidents and consider cost-beneficial improvements, these programs have not yet been completed. Therefore, a conclusion that severe accident mitigation has been generically considered for license renewal is premature.

The Commission believes it unlikely that any site-specific consideration of severe accident mitigation alternatives for license renewal will identify major plant design changes or modifications that will prove to be cost-beneficial for reducing severe accident frequency or consequences. This Commission expectation regarding severe accident mitigation improvements is based on the analyses performed to date that are discussed below.

The Commission's CPI program examined each of the five U.S. containment types to determine potential failure modes, potential plant improvements, and the cost-effectivenesses of such improvements. As a result of this program, only a few containment improvements were found to be potentially beneficial and were either identified for further NRC research or for individual licensee evaluation.

In response to the *Limerick* decision, an NRC staff consideration of SAMDAs was specifically included in the Final Environmental Impact Statement for the Limerick 1 and 2 and Comanche Peak 1 and 2 operating license reviews, and in the Watts Bar Supplemental Final Environmental Statement for an operating license. The alternatives evaluated in these analyses included the items previously evaluated as part of the CPI Program, as well as improvements identified through other risk studies and analyses. No physical plant modifications were found to be cost-beneficial in any of these severe accident mitigation considerations. Only plant procedural changes were identified as being cost-beneficial. Furthermore, the Limerick analysis was for a high-population site. Because risk is generally proportional to the population around a plant, this analysis suggests that other sites are unlikely to identify significant plant modifications that are cost-beneficial.

Additionally, each licensee is performing an individual plant examination (IPE) to look for plant vulnerabilities to internally initiated events and a separate IPE for externally initiated events (IPEEE). The licensees were requested to report their results to the Commission. Seventy-eight IPE submittals were received and seventy-five IPEEE submittals will be received, covering all operating plants in the United States. These examinations consider potential improvements to reduce the frequency or consequences of severe accidents on a plant-specific basis and essentially constitute a broad search for severe accident mitigation alternatives. The NRC staff is conducting a process review of each plant-specific IPE submittal and IPEEE submittal. To date, all IPE submittals have received a preliminary review by the NRC with 46 out of 78 completed; for the IPEEE submittals, 24 of the 75 are under review. These IPEs have resulted in a number of plant procedural or programmatic improvements and some plant modifications that will further reduce the risk of severe accidents.

In conclusion, the GEIS analysis of severe accident consequences and risk is adequate, and additional plant-specific analysis of these impacts is not required. However, because the ongoing regulatory program related to severe accident mitigation (i.e., IPE and IPEEE) has not been completed for all plants and consideration of severe accident mitigation alternatives has not been included in an EIS or supplemental EIS related to plant operations for all plants, a site-specific consideration of severe accident mitigation alternatives is required at license renewal for those plants for which this consideration has not been performed. The Commission expects that if these reviews identify any changes as being cost beneficial, such changes generally would be procedural and programmatic fixes, with any hardware changes being only minor in nature and few in number. NRC staff considerations of severe accident mitigation alternatives have already been completed and included in an EIS or supplemental EIS for Limerick, Comanche Peak, and Watts Bar. Therefore, severe accident mitigation alternatives need not be reconsidered for these plants for license renewal.

Based on the fact that a generic consideration of mitigation is not performed in the GEIS, a Category 1 designation for severe accidents cannot be made. Therefore, the Commission has reclassified severe accidents as a Category 2 issue, requiring only that alternatives to mitigate severe accidents be considered for those plants that have not included such a consideration in a previous EIS or supplemental EIS. The Commission notes that upon completion of its IPE/IPEEE program, it may review the issue of severe accident mitigation for license renewal and consider, by separate rulemaking, reclassifying severe accidents as a Category 1 issue.

The Commission does not intend to prescribe by rule the scope of an acceptable consideration of severe accident mitigation alternatives for license renewal nor does it intend to mandate consideration of alternatives identical to those evaluated previously. In general, the Commission expects that significant efficiency can be gained by using site-specific IPE and IPEEE results in the consideration of severe accident mitigation alternatives. The IPEs and IPEEEs are essentially site-specific PRAs that identify probabilities of core damage (Level 1 PRA) and include assessments of containment performance under severe accident conditions that identify probabilities of fission product releases (Level 2). As discussed in Generic Letter 88–20, ''Individual Plant Examination for Severe Accident Vulnerabilities'' (November 23, 1988), one of the important goals of the IPE and IPEEE was to reduce the overall probabilities of core damage and fission product releases as necessary by modifying hardware and procedures to help prevent or mitigate severe accidents.

Although Level 3 PRAs have been used in SAMDA analyses to generate site-specific offsite dose estimates so that the cost-benefit of mitigation alternatives could be determined, the Commission does not believe that site-specific Level 3 PRAs are required to determine whether an alternative under consideration will provide sufficient benefit to justify its cost. Licensees can use other quantitative approaches for assigning site-specific risk significance to IPE results and judging whether a mitigation alternative provides a sufficient reduction in core damage frequency (CDF) or release frequency to warrant implementation. For example, a licensee could use information provided in the GEIS analysis (exposure indices, wind frequencies, and demographics) to translate the dominant contributors to CDF and the large release frequencies from the IPE/IPEEE results into dose estimates so that a cost-benefit determination can be performed. In some instances, a consideration of the magnitude of reduction in the site-specific CDF and release frequencies alone (i.e., no conversion to a dose estimate) may be sufficient to conclude that no significant reduction in off-site risk will be provided and, therefore, implementation of a mitigation alternative is not warranted. The Commission will review each severe accident mitigation consideration provided by a license renewal applicant on its merits and determine whether it

constitutes a reasonable consideration of severe accident mitigation alternatives.

10. Decommissioning

Concern. Several commenters requested further clarification of the NRC's position regarding decommissioning requirements, especially whether the total impacts address returning the site to green field conditions.

Response. The decommissioning chapter of the GEIS analyzes the impact that an additional 20 years of plant operation would have on ultimate plant decommissioning; it neither serves as the generic analysis of the environmental impacts associated with decommissioning nor establishes decommissioning requirements. An analysis of the expected impacts from plant decommissioning was previously provided in NUREG–0586, ''Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities'' (August 1988). The analysis in the GEIS for license renewal examines the physical requirements and attendant effects of decommissioning after a 20-year license renewal compared with decommissioning at the end of 40 years of operation and finds little difference in effects.

With respect to returning a site to green field condition, the Commission defines decommissioning as the safe removal of a nuclear facility from service, the reduction of residual contamination to a level that permits release of the property for unrestricted use, and termination of the license. Therefore, the question of restoring the land to a green field condition, which would require additional demolition and site restoration beyond addressing residual contamination and radiological effects, is outside the current scope of the decommissioning requirements. Moreover, consistent with the Commission's conclusion that license renewal is not expected to affect future decommissioning, any requirement relative to returning a site to a green field and the attendant effects of such a requirement would also not be affected by an additional 20 years of operation. Therefore, the issue of returning a site to pre-construction conditions is beyond the scope of license renewal review.

Concern. Several commenters expressed concern that, because a residual radioactivity rule is still not in place, the LLW estimates should be reexamined.

Response. The NRC does have criteria in place for the release of reactor facilities to unrestricted access following decommissioning. These include the guidance in Regulatory Guide 1.86, ''Termination of Operating Licenses for Nuclear Reactors'' (which provides guidance for surface contamination), dose rate limits from gamma-emitting radionuclides included in plant technical specifications, and requirements for keeping residual contamination as low as reasonably achievable (ALARA) as included in 10 CFR part 20. These criteria were used in developing NUREG–0586, the final GEIS on decommissioning of nuclear facilities, which was published in August of 1988. One conclusion from the analysis conducted for NUREG–0586 was that waste volumes from decommissioning of reactors are not highly sensitive to the radiological criteria. A proposed rule dated August 22, 1994, would codify radiological criteria for unrestricted release of reactors and other nuclear facilities and for termination of a facility license following decommissioning. NUREG–1496, the draft GEIS for the proposed rule on radiological criteria, included analyses of a range of radiological release criteria and confirmed the earlier conclusions that waste volumes from decommissioning of reactors are not sensitive to the residual radiological criteria within the range likely to be selected. This range included residual dose levels comparable to the radiological criteria currently being used for reactor decommissioning. Based on the insensitivity of the waste volume from reactor decommissioning to the radiological criteria, the Commission continues to believe, as concluded in the decommissioning section of the GEIS, that the contribution to environmental impacts of decommissioning from license renewal are small. The Commission further concludes that these impacts are not expected to change significantly as a result of the ongoing rulemaking. Therefore, the determinations in the GEIS remain appropriate.

11. Need for Generating Capacity

Concern. In addition to the major procedural concern discussed earlier about the treatment of need for generating capacity, several commenters raised concerns about the power demand projections used in the GEIS. Some commenters noted that any determination of need quickly becomes dated and, therefore, the demand for and the source of electrical power at the time of license renewal cannot be accurately predicted at this time. Moreover, they believe that the NRC's analysis is not definitive enough to remain unchallenged for 40 years. Another commenter criticized the analysis because it focused only on energy requirements without making appropriate distinctions between energy and peak capacity requirements, plant availability, and capacity factors.

Response. The NRC has determined that a detailed consideration of the need for generating capacity is inappropriate in the context of consideration of the environmental impacts of license renewal. Thus, the NRC will limit its NEPA review of license renewal applications to the consideration of the environmental impacts of license renewal compared with those of other available generating sources. Hence, the concerns regarding demand projections used in the draft GEIS are no longer an issue and they have been removed from the GEIS.

12. Alternatives to License Renewal

Concern. In addition to the procedural concern discussed earlier about the treatment of alternative energy sources as a Category 1 issue, several commenters expressed concerns about the comparison and analysis of alternative energy sources, as well as the economic analysis approach used in the draft GEIS. Consistent with their arguments against the Category 1 designation of alternatives, the commenters questioned the approach adopted in the GEIS of comparing only single alternative energy sources to license renewal. They believe that the NRC's failure to consider a mix of alternatives ignores the potential for other alternative sources of power that are available to different regions of the nation, such as demand-side management, cogeneration, purchased power from Canada, biomass, natural gas, solar energy, and wind power. They also indicated that this approach neglects a utility's ability to serve its customers with a portfolio of supply that is based on load characteristics, cost, geography, and other considerations, and fails to consider the collective impact of the alternatives. Furthermore, the possible technological advances in renewable energy sources over the next 40 years are not addressed.

One commenter argued that designating the issue of alternative energy sources as Category 1 allows a license renewal applicant not to consider the additional requirement of economic threshold analysis. Relative to the economic analysis of the alternatives to license renewal, another commenter questioned the proposed requirement for the license renewal applicant to demonstrate that the ''replacement of equivalent generating capacity by a coal-fired plant has no demonstrated cost advantage over the individual nuclear power plant license renewal.''

According to the commenter, this requirement would force the applicant to perform an economic analysis of an alternative to license renewal. The commenter further argued that NEPA does not require an economic consideration.

Response. In response to these concerns, the final rule no longer requires a cost comparison of alternative energy sources relative to license renewal. Furthermore, the alternative energy sources discussed in the final GEIS include energy conservation and energy imports as well as the other sources discussed by the commenters. An analysis of the environmental impacts of alternative energy sources is included in the GEIS but is not codified in 10 CFR part 51.

The NRC believes that its consideration of alternatives in the GEIS is representative of the technologies available and the associated environmental impacts. With regard to consideration of a mix of alternative sources, the Commission recognizes that combinations of various alternatives may be used to replace power generation from license renewal.

13. License Renewal Scenario

Concern. Several commenters raised concerns related to the license renewal scenario evaluation methodology as implemented in the GEIS. The fundamental issues were the degree of conservatism built into the scenario and the appropriateness of an upper bound type approach in characterizing the refurbishment activities (and associated costs) in light of NEPA requirements to determine reasonable estimates of the environmental impacts of Federal actions.

Regarding the concerns that the refurbishment schedules and scenarios developed for the GEIS were too conservative, several commenters indicated that many of the activities slated for completion during the extended refurbishment before license renewal would actually be completed by many facilities during the course of the current licensing term. The effect of having only one major outage instead of leveling work over three or four outages could lead to an over-estimate of the refurbishment activities and costs that any particular plant would expect to see.

Response. In response to this concern, the NRC has revised the GEIS to include two license renewal program scenarios. The first scenario refers to a ''typical'' license renewal program and is intended to be representative of the type of programs that many plants seeking license renewal might implement. The second scenario retains the original objective of establishing an upper bound of the impacts likely to be generated at any particular plant. The typical scenario is useful for estimating impacts at plants that have been well maintained and have already undertaken most major refurbishment activities necessary for operation beyond the current licensing term. The conservative scenario estimates continue to be useful for estimating the maximum impacts likely to result from license renewal.

The revised approach of providing two separate license renewal scenarios also alleviates the concern about the use of a bounding scenario for license renewal activities. The NRC acknowledges that some applicants for license renewal may not be required to perform certain major refurbishment or replacement activities and, therefore, may have fewer or shorter outages. However, the two scenarios described in the GEIS are neither unrealistic nor overconservative in representing the range of activities that could be expected for license renewal and the possible schedule for performing these activities.

14. Environmental Justice

On February 11, 1994, the President issued Executive Order (E.O.) 12898, ''Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994). This order requires each Federal agency to make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low income populations. The Commission will endeavor to carry out the measures set forth in the executive order by integrating environmental justice into NRC's compliance with the National Environmental Policy of 1969 (NEPA), as amended. E.O. 12898 was issued after publication of the proposed rule and the receipt of comments on the proposed rule. As a result, no comments were received regarding environmental justice reviews for license renewal. Therefore, a brief discussion of this issue relative to license renewal is warranted.

As called for in Section 1–102 of E.O. 12898, the EPA established a Federal interagency working group to, among other things, ''* * * provide guidance to Federal agencies or criteria for identifying disproportionately high and adverse human health or environmental effects on minority populations and low-income populations * * *.'' The CEQ was assigned to provide this guidance to enable agencies to better comply with E.O. 12898. Until the CEQ guidance is received, the Commission intends to consider environmental justice in its evaluations of individual license renewal applications. Greater emphasis will be placed on discussing impacts on minority and low-income populations when preparing NEPA documents such as EISs, supplemental EISs, and, where appropriate, EAs. Commission requirements regarding environmental justice reviews will be reevaluated and may be revised after receipt of the CEQ guidance.

IV. Discussion of Regulatory Requirements

A. General Requirements

In this final rule, the regulatory requirements for performing a NEPA review for a license renewal application are similar to the NEPA review requirements for other major plant licensing actions. Consistent with the current NEPA practice for major plant licensing actions, this amendment to 10 CFR Part 51 requires the applicant to submit an environmental report that analyzes the environmental impacts associated with the proposed action, considers alternatives to the proposed action, and evaluates any alternatives for reducing adverse environmental effects. Additionally, the amendment requires the NRC staff to prepare a supplemental environmental impact statement for the proposed action, issue the statement in draft for public comment, and issue a final statement after considering public comments on the draft.

The amendment deviates from NRC's current NEPA review practice in some areas. First, the amendment codifies certain environmental impacts associated with license renewal that were analyzed in NUREG–1437, ''Generic Environmental Impact Statement for License Renewal at Nuclear Plants'' (xxxx 1996). Accordingly, absent new and significant information, the analyses for certain impacts codified by this rulemaking need only be incorporated by reference in an applicant's environmental report for license renewal and in the Commission's (including NRC staff, adjudicatory officers, and the Commission itself) draft and final SEIS and other environmental documents developed for the proceeding. Secondly, the amendment reflects the Commission's decision to limit its NEPA review for license renewal to a consideration of the environmental

effects of the proposed action and alternatives to the proposed action. Finally, the amendment contains the decision standard that the Commission will use in determining the acceptability of the environmental impacts of individual license renewals.

The Commission and the applicant will consider severe accident mitigation alternatives to reduce or mitigate environmental impacts for any plant for which severe accident mitigation alternatives have not been previously considered in an environmental impact statement or related supplement or in an environmental assessment. The Commission has concluded that, for license renewal, the issues of need for power and utility economics should be reserved for State and utility officials to decide. Accordingly, the NRC will not conduct an analysis of these issues in the context of license renewal or perform traditional cost-benefit balancing in license renewal NEPA reviews. Finally, in a departure from the approach presented in the proposed rule, this final rule does not codify any conclusions regarding the subject of alternatives. Consideration of and decisions regarding alternatives will occur at the site-specific stage. The discussion below addresses the specific regulatory requirements of this amendment and any conforming changes to 10 CFR part 51 to implement the Commission's decision to eliminate cost-benefit balancing from license renewal NEPA reviews.

B. The Environmental Report

1. Environmental Impacts of License Renewal

Through this final rule, the NRC has amended 10 CFR 51.53 to require an applicant for license renewal to submit an environmental report with its application. This environmental report must contain an analysis of the environmental impacts of renewing a license, the environmental impacts of alternatives, and mitigation alternatives. In preparing the analysis of environmental impacts contained in the environmental report, the applicant should refer to the data provided in appendix B to 10 CFR part 51, which has been added to NRC's regulations as part of this rulemaking. The applicant is not required to provide an analysis in the environmental report of those issues identified as Category 1 issues in Table B–1 in Appendix B. For those issues identified as Category 2 in Table B–1, the applicant must provide a specified additional analysis beyond that contained in Table B–1. In this final rule, 10 CFR 51.53(c)(3)(ii) specifies the subject areas of the analysis that must be addressed for the Category 2 issues.

Pursuant to 10 CFR 51.45(c), 10 CFR 51.53(c)(2) requires the applicant to consider possible actions to mitigate the adverse impacts associated with the proposed action. This consideration is limited to designated Category 2 matters. Pursuant to 10 CFR 51.45(d), the environmental report must include a discussion of the status of compliance with applicable Federal, State, and local environmental standards. Also, 10 CFR 51.53(c)(2) specifically excludes from consideration in the environmental report the issues of need for power, the economic costs and benefits of the proposed action, economic costs and benefits of alternatives to the proposed action, or other issues not related to environmental effects of the proposed action and associated alternatives. In addition, the requirements in 10 CFR 51.45 are consistent with the exclusion of economic issues in 10 CFR 51.53(c)(2).

2. Consideration of Alternatives

Pursuant to 10 CFR 51.45(c), 10 CFR 51.53(c)(2) requires the applicant to consider the environmental impacts of alternatives to license renewal in the environmental report. The treatment of alternatives in the environmental report should be limited to the environmental impacts of such alternatives.

The amended regulations do not require a discussion of the economic costs and benefits of these alternatives in the environmental report for the operating license renewal stage except as necessary to determine whether an alternative should be included in the range of alternatives considered or whether certain mitigative actions are appropriate. The analysis should demonstrate consideration of a reasonable set of alternatives to license renewal. In preparing the alternatives analysis, the applicant may consider information regarding alternatives in NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants'' (xxxx 1996).

The Commission has developed a new decision standard to be applied in environmental impact statements for license renewal as discussed in Section IV.C.2. The amended regulations for license renewal do not require applicants to apply this decision standard to the information generated in their environmental report (although the applicant is not prohibited from doing so if it desires). However, the NRC staff will use the information contained in the environmental report in preparing the environmental impact statement upon which the Commission will base its final decision.

3. Consideration of Mitigation Alternatives

Consistent with the NRC's current NEPA practice, an applicant must include a consideration of alternatives to mitigate adverse environmental impacts in its environmental report. However, for license renewal, the Commission has generically considered mitigation for environmental issues associated with renewal and has concluded that no additional site-specific consideration of mitigation is necessary for many issues. The Commission's consideration of mitigation for each issue included identification of current activities that adequately mitigate impacts and evaluation of other mitigation techniques that might or might not be warranted, depending on such factors as the size of the impact and the cost of the technique. The Commission has considered mitigation for all impacts designated as Category 1 in Table B–1. Therefore, a license renewal applicant need not address mitigation for issues so designated.

C. Supplemental Environmental Impact Statement

This amendment also requires that the Commission prepare a supplemental environmental impact statement (SEIS), consistent with 10 CFR 51.20(b)(2). This statement will serve as the Commission's independent analysis of the environmental impacts of license renewal as well as a comparison of these impacts to the environmental impacts of alternatives. This document will also present the preliminary recommendation by the NRC staff regarding the proposed action. Consistent with the revisions to 10 CFR 51.45 and 51.53 discussed above in regard to the applicant's environmental report, this rulemaking revises portions of 10 CFR 51.71 and 51.95 to reflect the Commission's approach to addressing the environmental impacts of license renewal.

The issues of need for power, the economic costs and benefits of the proposed action, and economic costs and benefits of alternatives to the proposed action are specifically excluded from consideration in the supplemental environmental impact statement for license renewal by 10 CFR 51.95(c), except as these costs and benefits are either essential for a determination regarding the inclusion of an alternative in the range of alternatives considered or relevant to mitigation. The supplemental

environmental impact statement does not need to discuss issues other than environmental effects of the proposed action and associated alternatives. This rule amends the requirements in 10 CFR 51.71 (d) and (e) so that they are consistent with the exclusion of economic issues in 10 CFR 51.95(c). Additionally, 10 CFR 51.95 has been amended to allow information from previous NRC site-specific environmental reviews, as well as NRC final generic environmental impact statements, to be referenced in supplemental environmental impact statements.

1. Public Scoping and Public Comments on the SEIS

Consistent with NRC's current NEPA practice, the Commission will hold a public meeting in order to inform the local public of the proposed action and receive comments. In addition, the SEIS will be issued in draft for public comment in accordance with 10 CFR 51.91 and 51.93. In both the public scoping process and the public comment process, the Commission will accept comments on all previously analyzed issues and information codified in Table B–1 of appendix B to 10 CFR part 51 and will determine whether these comments provide any information that is new and significant compared with that previously considered in the GEIS. If the comments are determined to provide new and significant information bearing on the previous analysis in the GEIS, these comments will be considered and appropriately factored into the Commission's analysis in the SEIS. Public comments on the site-specific additional information provided by the applicant regarding Category 2 issues will be considered in the SEIS.

2. Commission's Analysis and Preliminary Recommendation

The Commission's draft SEIS will include its analysis of the environmental impacts of the proposed license renewal action and the environmental impacts of the alternatives to the proposed action. With the exception of offsite radiological impacts for collective effects and the disposal of spent fuel and high level waste, the Commission will integrate the codified environmental impacts of license renewal as provided in Table B–1 of appendix B to 10 CFR part 51 (supplemented by the underlying analyses in the GEIS), the appropriate site-specific analyses of Category 2 issues, and any new issues identified during the scoping and public comment process. The results of this integration process will be utilized to arrive at a conclusion regarding the sum of the environmental impacts associated with license renewal. These impacts will then be compared, quantitatively or qualitatively as appropriate, with the environmental impacts of the considered alternatives. The analysis of alternatives in the SEIS will be limited to the environmental impacts of these alternatives and will be prepared in accordance with 10 CFR 51.71 and subpart A of appendix A to 10 CFR part 51. The analysis of impacts of alternatives provided in the GEIS may be referenced in the SEIS as appropriate. The alternatives discussed in the GEIS include a reasonable range of different methods for power generation. The analysis in the draft SEIS will consider mitigation actions for designated Category 2 matters and will consider the status of compliance with Federal, State, and local environmental requirements as required by 10 CFR 51.71(d). Consistent with 10 CFR 51.71(e), the draft supplemental environmental impact statement must contain a preliminary recommendation regarding license renewal based on consideration of the information on the environmental impacts of license renewal and of alternatives contained in the SEIS. In order to reach its recommendation, the NRC staff must determine whether the adverse environmental impacts of license renewal are so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable. This decision standard is contained in 10 CFR 51.95(c)(4).

3. Final Supplemental Environmental Impact Statement

The Commission will issue a final supplemental environmental impact statement for a license renewal application in accordance with 10 CFR 51.91 and 51.93 after considering the public comments related to new issues identified from the scoping and public comment process, Category 2 issues, and any new and significant information regarding previously analyzed and codified Category 1 issues. Pursuant to 10 CFR 51.102 and 51.103, the Commission will provide a record of its decision regarding the environmental impacts of the proposed action. In making a final decision, the Commission must determine whether the adverse environmental impacts of license renewal (when compared with the environmental impacts of other energy generating alternatives) are so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable.

D. NEPA Review for Activities Outside NRC License Renewal Approval Scope

The Commission wishes to clarify that any activity that requires NRC approval and is not specifically required for NRC's action regarding management of the effects of aging on certain passive long-lived structures and components in the period of extended operation must be subject to a separate NEPA review. The actions subject to NRC approval for license renewal are limited to continued operation consistent with the plant design and operating conditions for the current operating license and to the performance of specific activities and programs necessary to manage the effects of aging on the passive, long-lived structures and components identified in accordance with 10 CFR part 54. Accordingly, the GEIS does not serve as the NEPA review for other activities or programs outside the scope of NRC's part 54 license renewal review. The separate NEPA review must be prepared regardless of whether the action is necessary as a consequence of receiving a renewed license, even if the activity were specifically addressed in the GEIS. For example, the environmental impacts of spent fuel pool expansion are addressed in the GEIS in the context of the environmental consequences of approving a renewed operating license, rather than in the context of a specific application to expand spent fuel pool capacity, which would require a separate NEPA review.

These separate NEPA reviews may reference and otherwise use applicable environmental information contained in the GEIS. For example, an EA prepared for a separate spent fuel pool expansion request may use the information in the GEIS to support a finding of no significant impact.

V. Availability of Documents

The principal documents supporting this supplementary information are as follows:

(1) NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants'' (May 1996).

(2) NUREG–1529, ''Public Comments on the Proposed 10 CFR part 51 Rule for Renewal of Nuclear Power Plant Operating Licenses and Supporting Documents; Review of Concerns and NRC Staff Response'' (May 1996).

(3) NUREG–1440, ''Regulatory Analysis of Amendments to Regulations Concerning the Environmental Review

for Renewal of Nuclear Power Plant Operating Licenses'' (May 1996).

Copies of all documents cited in the supplementary information are available for inspection and for copying for a fee in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. In addition, copies of NRC final documents cited here may be purchased from the Superintendent of Documents, U.S. Government Printing Office, PO Box 37082, Washington, DC 20013–7082. Copies are also available for purchase from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

VI. Submittal of Comments in an Electronic Format

Commenters are encouraged to submit, in addition to the original paper copy, a copy of their letter in an electronic format on IBM PC DOS-compatible 3.5- or 5.25-inch, double-sided, double-density (DS/DD) diskettes. Data files should be provided in Wordperfect 5.1 or later version of Wordperfect. ASCII code is also acceptable or, if formatted text is required, data files should be provided in IBM Revisable-Form Text Document Content Architecture (RFT/DCA) format.

VII. Finding of No Significant Environmental Impact: Availability

The NRC has determined that this final rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this regulation. This action is procedural in nature and pertains only to the type of environmental information to be reviewed.

VIII. Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget, approval number 3150–0021.

The public reporting burden for this collection of information is estimated to average 4,200 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information and Records Management Branch (T–6F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail at BJS1@nrc.gov; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202 (3150–0021), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

IX. Regulatory Analysis

The Commission has prepared a regulatory analysis for this final rule. The analysis examines the costs and benefits of the alternatives considered by the Commission. The two alternatives considered were:

(A) Retaining the existing 10 CFR part 51 review process for license renewal, which requires that all reviews be on a plant-specific basis; and

(B) Amending 10 CFR part 51 to allow a portion of the environmental review to be conducted on a generic basis.

The conclusions of the regulatory analysis show substantial cost savings of alternative (B) over alternative (A). The analysis, NUREG–1440, is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Copies of the analysis are available as described in Section V.

X. Regulatory Flexibility Act Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this final rule will not have a significant impact on a substantial number of small entities. The final rule states the application procedures and environmental information to be submitted by nuclear power plant licensees to facilitate NRC's obligations under NEPA. Nuclear power plant licensees do not fall within the definition of small businesses as defined in Section 3 of the Small Business Act, 15 U.S.C. 632, or the Commission's Size Standards, April 11, 1995 (60 FR 18344).

XI. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

XII. Backfit Analysis

The NRC has determined that these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1); therefore, a backfit analysis need not be prepared.

List of Subjects in 10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, 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; the National Environmental Policy Act of 1969, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 51.

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

1. The authority citation for part 51 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, Sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2201, 2297f); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853–854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95–604, Title II, 92 Stat. 3033–3041. Sections 51.20, 51.30, 51.60, 51.61, 51.80, and 51.97 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241, and sec. 148, Pub. L. 100–203, 101 Stat. 1330–223 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036–3038 (42 U.S.C. 2021) and under Nuclear Waste Policy Act of 1982, sec. 121, 96 Stat. 2228 (42 U.S.C. 10141). Sections 51.43, 51.67, and 51.109 also issued under Nuclear Waste Policy Act of 1982, sec. 114(f), 96 Stat. 2216, as amended (42 U.S.C. 10134(f)).

2. Section 51.45 is amended by revising paragraph (c) to read as follows:

§ 51.45 Environmental report.

* * * * *

(c) *Analysis.* The environmental report shall include an analysis that considers and balances the environmental effects of the proposed action, the environmental impacts of alternatives to the proposed action, and alternatives available for reducing or avoiding adverse environmental effects. Except for environmental reports prepared at the license renewal stage pursuant to § 51.53(c), the analysis in the environmental report should also

include consideration of the economic, technical, and other benefits and costs of the proposed action and of alternatives. Environmental reports prepared at the license renewal stage pursuant to § 51.53(c) need not discuss the economic or technical benefits and costs of either the proposed action or alternatives except insofar as such benefits and costs are either essential for a determination regarding the inclusion of an alternative in the range of alternatives considered or relevant to mitigation. In addition, environmental reports prepared pursuant to § 51.53(c) need not discuss other issues not related to the environmental effects of the proposed action and alternatives. The analyses for environmental reports shall, to the fullest extent practicable, quantify the various factors considered. To the extent that there are important qualitative considerations or factors that cannot be quantified, those considerations or factors shall be discussed in qualitative terms. The environmental report should contain sufficient data to aid the Commission in its development of an independent analysis.

* * * * *

3. Section 51.53 is revised to read as follows:

§ 51.53 Postconstruction environmental reports.

(a) *General.* Any environmental report prepared under the provisions of this section may incorporate by reference any information contained in a prior environmental report or supplement thereto that relates to the production or utilization facility or any information contained in a final environmental document previously prepared by the NRC staff that relates to the production or utilization facility. Documents that may be referenced include, but are not limited to, the final environmental impact statement; supplements to the final environmental impact statement, including supplements prepared at the license renewal stage; NRC staff-prepared final generic environmental impact statements; and environmental assessments and records of decisions prepared in connection with the construction permit, the operating license, and any license amendment for that facility.

(b) *Operating license stage.* Each applicant for a license to operate a production or utilization facility covered by § 51.20 shall submit with its application the number of copies specified in § 51.55 of a separate document entitled ''Supplement to Applicant's Environmental Report—Operating License Stage,'' which will update ''Applicant's Environmental Report—Construction Permit Stage.'' Unless otherwise required by the Commission, the applicant for an operating license for a nuclear power reactor shall submit this report only in connection with the first licensing action authorizing full-power operation. In this report, the applicant shall discuss the same matters described in §§ 51.45, 51.51, and 51.52, but only to the extent that they differ from those discussed or reflect new information in addition to that discussed in the final environmental impact statement prepared by the Commission in connection with the construction permit. No discussion of need for power, or of alternative energy sources, or of alternative sites for the facility, or of any aspect of the storage of spent fuel for the facility within the scope of the generic determination in § 51.23(a) and in accordance with § 51.23(b) is required in this report.

(c) *Operating license renewal stage.* (1) Each applicant for renewal of a license to operate a nuclear power plant under part 54 of this chapter shall submit with its application the number of copies specified in § 51.55 of a separate document entitled ''Applicant's Environmental Report—Operating License Renewal Stage.''

(2) The report must contain a description of the proposed action, including the applicant's plans to modify the facility or its administrative control procedures as described in accordance with § 54.21 of this chapter. This report must describe in detail the modifications directly affecting the environment or affecting plant effluents that affect the environment. In addition, the applicant shall discuss in this report the environmental impacts of alternatives and any other matters described in § 51.45. The report is not required to include discussion of need for power or the economic costs and economic benefits of the proposed action or of alternatives to the proposed action except insofar as such costs and benefits are either essential for a determination regarding the inclusion of an alternative in the range of alternatives considered or relevant to mitigation. The environmental report need not discuss other issues not related to the environmental effects of the proposed action and the alternatives. In addition, the environmental report need not discuss any aspect of the storage of spent fuel for the facility within the scope of the generic determination in § 51.23(a) and in accordance with § 51.23(b).

(3) For those applicants seeking an initial renewal license and holding either an operating license or construction permit as of June 30, 1995, the environmental report shall include the information required in paragraph (c)(2) of this section subject to the following conditions and considerations:

(i) The environmental report for the operating license renewal stage is not required to contain analyses of the environmental impacts of the license renewal issues identified as Category 1 issues in appendix B to subpart A of this part.

(ii) The environmental report must contain analyses of the environmental impacts of the proposed action, including the impacts of refurbishment activities, if any, associated with license renewal and the impacts of operation during the renewal term, for those issues identified as Category 2 issues in appendix B to subpart A of this part. The required analyses are as follows:

(A) If the applicant's plant utilizes cooling towers or cooling ponds and withdraws make-up water from a river whose annual flow rate is less than 3.15×10^{12} ft^3/year (9×10^{10} m^3/year), an assessment of the impact of the proposed action on the flow of the river and related impacts on instream and riparian ecological communities must be provided. The applicant shall also provide an assessment of the impacts of the withdrawal of water from the river on alluvial aquifers during low flow.

(B) If the applicant's plant utilizes once-through cooling or cooling pond heat dissipation systems, the applicant shall provide a copy of current Clean Water Act 316(b) determinations and, if necessary, a 316(a) variance in accordance with 40 CFR part 125, or equivalent State permits and supporting documentation. If the applicant can not provide these documents, it shall assess the impact of the proposed action on fish and shellfish resources resulting from heat shock and impingement and entrainment.

(C) If the applicant's plant uses Ranney wells or pumps more than 100 gallons of ground water per minute, an assessment of the impact of the proposed action on ground-water use must be provided.

(D) If the applicant's plant is located at an inland site and utilizes cooling ponds, an assessment of the impact of the proposed action on groundwater quality must be provided.

(E) All license renewal applicants shall assess the impact of refurbishment and other license-renewal-related construction activities on important plant and animal habitats. Additionally, the applicant shall assess the impact of the proposed action on threatened or

endangered species in accordance with the Endangered Species Act.

(F) If the applicant's plant is located in or near a nonattainment or maintenance area, an assessment of vehicle exhaust emissions anticipated at the time of peak refurbishment workforce must be provided in accordance with the Clean Air Act as amended.

(G) If the applicant's plant uses a cooling pond, lake, or canal or discharges into a river having an annual average flow rate of less than 3.15×10^{12} ft^3/year (9×10^{10} m^3/year), an assessment of the impact of the proposed action on public health from thermophilic organisms in the affected water must be provided.

(H) If the applicant's transmission lines that were constructed for the specific purpose of connecting the plant to the transmission system do not meet the recommendations of the National Electric Safety Code for preventing electric shock from induced currents, an assessment of the impact of the proposed action on the potential shock hazard from the transmission lines must be provided.

(I) An assessment of the impact of the proposed action on housing availability, land-use, and public schools (impacts from refurbishment activities only) within the vicinity of the plant must be provided. Additionally, the applicant shall provide an assessment of the impact of population increases attributable to the proposed project on the public water supply.

(J) All applicants shall assess the impact of the proposed project on local transportation during periods of license renewal refurbishment activities.

(K) All applicants shall assess whether any historic or archaeological properties will be affected by the proposed project.

(L) If the staff has not previously considered severe accident mitigation alternatives for the applicant's plant in an environmental impact statement or related supplement or in an environmental assessment, a consideration of alternatives to mitigate severe accidents must be provided.

(M) The environmental effects of transportation of fuel and waste shall be reviewed in accordance with § 51.52.

(iii) The report must contain a consideration of alternatives for reducing adverse impacts, as required by § 51.45(c), for all Category 2 license renewal issues in Appendix B to Subpart A of this part. No such consideration is required for Category 1 issues in Appendix B to Subpart A of this part.

(iv) The environmental report must contain any new and significant information regarding the environmental impacts of license renewal of which the applicant is aware.

(d) *Postoperating license stage.* Each applicant for a license amendment authorizing the decommissioning of a production or utilization facility covered by § 51.20 and each applicant for a license or license amendment to store spent fuel at a nuclear power plant after expiration of the operating license for the nuclear power plant shall submit with its application the number of copies specified in § 51.55 of a separate document entitled ''Supplement to Applicant's Environmental Report—Post Operating License Stage.'' This supplement will update ''Supplement to Applicant's Environmental Report—Operating License Stage'' and ''Applicant's Environmental Report—Operating License Renewal Stage,'' as appropriate, to reflect any new information or significant environmental change associated with the applicant's proposed decommissioning activities or with the applicant's proposed activities with respect to the planned storage of spent fuel. Unless otherwise required by the Commission, in accordance with the generic determination in § 51.23(a) and the provisions in § 51.23(b), the applicant shall address only the environmental impact of spent fuel storage for the term of the license.

4. In § 51.55, paragraph (a) is revised to read as follows:

§ 51.55 Environmental report—number of copies; distribution.

(a) Each applicant for a license to construct and operate a production or utilization facility covered by paragraphs (b)(1), (b)(2), (b)(3), or (b)(4) of § 51.20, each applicant for renewal of an operating license for a nuclear power plant, each applicant for a license amendment authorizing the decommissioning of a production or utilization facility covered by § 51.20, and each applicant for a license or license amendment to store spent fuel at a nuclear power plant after expiration of the operating license for the nuclear power plant shall submit to the Director of the Office of Nuclear Reactor Regulation or the Director of the Office of Nuclear Material Safety and Safeguards, as appropriate, 41 copies of an environmental report or any supplement to an environmental report. The applicant shall retain an additional 109 copies of the environmental report or any supplement to the environmental report for distribution to parties and Boards in the NRC proceedings; Federal, State, and local officials; and any affected Indian tribes, in accordance with written instructions issued by the Director of the Office of Nuclear Reactor Regulation or the Director of the Office Nuclear Material Safety and Safeguards, as appropriate.

* * * * *

5. In § 51.71, paragraphs (d) and (e) are revised to read as follows:

§ 51.71 Draft environmental impact statement—contents.

* * * * *

(d) *Analysis.* The draft environmental impact statement will include a preliminary analysis that considers and weighs the environmental effects of the proposed action; the environmental impacts of alternatives to the proposed action; and alternatives available for reducing or avoiding adverse environmental effects. Except for supplemental environmental impact statements for the operating license renewal stage prepared pursuant to § 51.95(c), draft environmental impact statements should also include consideration of the economic, technical, and other benefits and costs of the proposed action and alternatives and indicate what other interests and considerations of Federal policy, including factors not related to environmental quality if applicable, are relevant to the consideration of environmental effects of the proposed action identified pursuant to paragraph (a) of this section. Supplemental environmental impact statements prepared at the license renewal stage pursuant to § 51.95(c) need not discuss the economic or technical benefits and costs of either the proposed action or alternatives except insofar as such benefits and costs are either essential for a determination regarding the inclusion of an alternative in the range of alternatives considered or relevant to mitigation. In addition, the supplemental environmental impact statement prepared at the license renewal stage need not discuss other issues not related to the environmental effects of the proposed action and associated alternatives. The draft supplemental environmental impact statement for license renewal prepared pursuant to § 51.95(c) will rely on conclusions as amplified by the supporting information in the GEIS for issues designated as Category 1 in appendix B to subpart A of this part. The draft supplemental environmental impact statement must contain an analysis of those issues identified as Category 2 in appendix B to subpart A of this part that are open for the proposed action. The analysis for all

draft environmental impact statements will, to the fullest extent practicable, quantify the various factors considered. To the extent that there are important qualitative considerations or factors that cannot be quantified, these considerations or factors will be discussed in qualitative terms. Due consideration will be given to compliance with environmental quality standards and requirements that have been imposed by Federal, State, regional, and local agencies having responsibility for environmental protection, including applicable zoning and land-use regulations and water pollution limitations or requirements promulgated or imposed pursuant to the Federal Water Pollution Control Act. The environmental impact of the proposed action will be considered in the analysis with respect to matters covered by such standards and requirements irrespective of whether a certification or license from the appropriate authority has been obtained.[3] While satisfaction of Commission standards and criteria pertaining to radiological effects will be necessary to meet the licensing requirements of the Atomic Energy Act, the analysis will, for the purposes of NEPA, consider the radiological effects of the proposed action and alternatives.

(e) *Preliminary recommendation*. The draft environmental impact statement normally will include a preliminary recommendation by the NRC staff respecting the proposed action. This preliminary recommendation will be based on the information and analysis described in paragraphs (a) through (d) of this section and §§ 51.75, 51.76, 51.80, 51.85, and 51.95, as appropriate, and will be reached after considering the environmental effects of the proposed action and reasonable alternatives,[4] and, except for supplemental environmental impact statements for the operating license renewal stage prepared pursuant to § 51.95(c), after weighing the costs and benefits of the proposed action. In lieu of a recommendation, the NRC staff may indicate in the draft statement that two or more alternatives remain under consideration.

§ 51.75 [Amended]

6. In Section 51.75, redesignate footnote 4 as footnote 5.

7. Section 51.95 is revised to read as follows:

§ 51.95 Postconstruction environmental impact statements.

(a) *General.* Any supplement to a final environmental impact statement or any environmental assessment prepared under the provisions of this section may incorporate by reference any information contained in a final environmental document previously prepared by the NRC staff that relates to the same production or utilization facility. Documents that may be referenced include, but are not limited to, the final environmental impact statement; supplements to the final environmental impact statement, including supplements prepared at the operating license stage; NRC staff-prepared final generic environmental impact statements; environmental assessments and records of decisions prepared in connection with the construction permit, the operating license, and any license amendment for that facility. A supplement to a final environmental impact statement will include a request for comments as provided in § 51.73.

(b) *Initial operating license stage*. In connection with the issuance of an operating license for a production or utilization facility, the NRC staff will prepare a supplement to the final environmental impact statement on the construction permit for that facility, which will update the prior environmental review. The supplement will only cover matters that differ from the final environmental impact statement or that reflect significant new information concerning matters discussed in the final environmental impact statement. Unless otherwise determined by the Commission, a supplement on the operation of a nuclear power plant will not include a discussion of need for power, or of alternative energy sources, or of alternative sites, or of any aspect of the storage of spent fuel for the nuclear power plant within the scope of the generic determination in § 51.23(a) and in accordance with § 51.23(b), and will only be prepared in connection with the first licensing action authorizing full-power operation.

(c) *Operating license renewal stage*. In connection with the renewal of an operating license for a nuclear power plant under part 54 of this chapter, the Commission shall prepare a supplement to the Commission's NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants'' (xxxx 1996).

(1) The supplemental environmental impact statement for the operating license renewal stage shall address those issues as required by § 51.71. In addition, the NRC staff must comply with 40 CFR 1506.6(b)(3) in conducting the additional scoping process as required by § 51.71(a).

(2) The supplemental environmental impact statement for license renewal is not required to include discussion of need for power or the economic costs and economic benefits of the proposed action or of alternatives to the proposed action except insofar as such benefits and costs are either essential for a determination regarding the inclusion of an alternative in the range of alternatives considered or relevant to mitigation. In addition, the supplemental environmental impact statement prepared at the license renewal stage need not discuss other issues not related to the environmental effects of the proposed action and the alternatives, or any aspect of the storage of spent fuel for the facility within the scope of the generic determination in § 51.23(a) and in accordance with § 51.23(b). The analysis of alternatives in the supplemental environmental impact statement should be limited to the environmental impacts of such alternatives and should otherwise be prepared in accordance with § 51.71 and appendix A to subpart A of this part.

(3) The supplemental environmental impact statement shall be issued as a final impact statement in accordance with §§ 51.91 and 51.93 after considering any significant new information relevant to the proposed

[3] Compliance with the environmental quality standards and requirements of the Federal Water Pollution Control Act (imposed by EPA or designated permitting states) is not a substitute for and does not negate the requirement for NRC to weigh all environmental effects of the proposed action, including the degradation, if any, of water quality, and to consider alternatives to the proposed action that are available for reducing adverse effects. Where an environmental assessment of aquatic impact from plant discharges is available from the permitting authority, the NRC will consider the assessment in its determination of the magnitude of environmental impacts for striking an overall cost-benefit balance at the construction permit and operating license stages, and in its determination of whether the adverse environmental impacts of license renewal are so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable at the license renewal stage. When no such assessment of aquatic impacts is available from the permitting authority, NRC will establish on its own or in conjunction with the permitting authority and other agencies having relevant expertise the magnitude of potential impacts for striking an overall cost-benefit balance for the facility at the construction permit and operating license stages, and in its determination of whether the adverse environmental impacts of license renewal are so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable at the license renewal stage.

[4] The consideration of reasonable alternatives to a proposed action involving nuclear power reactors (e.g., alternative energy sources) is intended to assist the NRC in meeting its NEPA obligations and does not preclude any State authority from making separate determinations with respect to these alternatives and in no way preempts, displaces, or affects the authority of States or other Federal agencies to address these issues.

action contained in the supplement or incorporated by reference.

(4) The supplemental environmental impact statement must contain the NRC staff's recommendation regarding the environmental acceptability of the license renewal action. In order to make its recommendation and final conclusion on the proposed action, the NRC staff, adjudicatory officers, and Commission shall integrate the conclusions, as amplified by the supporting information in the generic environmental impact statement for issues designated Category 1 (with the exception of offsite radiological impacts for collective effects and the disposal of spent fuel and high level waste) or resolved Category 2, information developed for those open Category 2 issues applicable to the plant in accordance with § 51.53(c)(3)(ii), and any significant new information. Given this information, the NRC staff, adjudicatory officers, and Commission shall determine whether or not the adverse environmental impacts of license renewal are so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable.

(d) *Postoperating license stage.* In connection with an amendment to an operating license authorizing the decommissioning of a production or utilization facility covered by § 51.20 or with the issuance, amendment, or renewal of a license to store spent fuel at a nuclear power plant after expiration of the operating license for the nuclear power plant, the NRC staff will prepare a supplemental environmental impact statement for the postoperating license stage or an environmental assessment, as appropriate, which will update the prior environmental review. Unless otherwise required by the Commission, in accordance with the generic determination in § 51.23(a) and the provisions of § 51.23(b), a supplemental environmental impact statement for the postoperating license stage or an environmental assessment, as appropriate, will address the environmental impacts of spent fuel storage only for the term of the license, license amendment, or license renewal applied for.

8. In § 51.103, paragraph (a)(3) is revised and paragraph (a)(5) is added to read as follows:

§ 51.103 Record of decision—General.

(a) * * *

(3) Discuss preferences among alternatives based on relevant factors, including economic and technical considerations where appropriate, the NRC's statutory mission, and any essential considerations of national policy, which were balanced by the Commission in making the decision and state how these considerations entered into the decision.

* * * * *

(5) In making a final decision on a license renewal action pursuant to part 54 of this chapter, the Commission shall determine whether or not the adverse environmental impacts of license renewal are so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable.

* * * * *

9. Paragraph 4 of appendix A to subpart A of 10 CFR part 51 is revised as follows:

Appendix A to Subpart A—Format for Presentation of Material in Environmental Impact Statements

* * * * *

4. *Purpose of and need for action.* The statement will briefly describe and specify the need for the proposed action. The alternative of no action will be discussed. In the case of nuclear power plant construction or siting, consideration will be given to the potential impact of conservation measures in determining the demand for power and consequent need for additional generating capacity.

* * * * *

10. A new appendix B is added to subpart A of 10 CFR part 51 to read as follows:

Appendix B to Subpart A—Environmental Effect of Renewing the Operating License of a Nuclear Power Plant

The Commission has assessed the environmental impacts associated with granting a renewed operating license for a nuclear power plant to a licensee who holds either an operating license or construction permit as of June 30, 1995. Table B–1 summarizes the Commission's findings on the scope and magnitude of environmental impacts of renewing the operating license for a nuclear power plant as required by section 102(2) of the National Environmental Policy Act of 1969, as amended. Table B–1, subject to an evaluation of those issues identified in Category 2 as requiring further analysis and possible significant new information, represents the analysis of the environmental impacts associated with renewal of any operating license and is to be used in accordance with § 51.95(c). On a 10-year cycle, the Commission intends to review the material in this appendix and update it if necessary. A scoping notice must be published in the Federal Register indicating the results of the NRC's review and inviting public comments and proposals for other areas that should be updated.

TABLE B–1.—SUMMARY OF FINDINGS ON NEPA ISSUES FOR LICENSE RENEWAL OF NUCLEAR POWER PLANTS [1]

Issue	Category [2]	Findings [3]
Surface Water Quality, Hydrology, and Use (for all plants)		
Impacts of refurbishment on surface water quality.	1	SMALL. Impacts are expected to be negligible during refurbishment because best management practices are expected to be employed to control soil erosion and spills.
Impacts of refurbishment on surface water use.	1	SMALL. Water use during refurbishment will not increase appreciably or will be reduced during plant outage.
Altered current patterns at intake and discharge structures.	1	SMALL. Altered current patterns have not been found to be a problem at operating nuclear power plants and are not expected to be a problem during the license renewal term.
Altered salinity gradients	1	SMALL. Salinity gradients have not been found to be a problem at operating nuclear power plants and are not expected to be a problem during the license renewal term.
Altered thermal stratification of lakes.	1	SMALL. Generally, lake stratification has not been found to be a problem at operating nuclear power plants and is not expected to be a problem during the license renewal term.
Temperature effects on sediment transport capacity.	1	SMALL. These effects have not been found to be a problem at operating nuclear power plants and are not expected to be a problem during the license renewal term.
Scouring caused by discharged cooling water.	1	SMALL. Scouring has not been found to be a problem at most operating nuclear power plants and has caused only localized effects at a few plants. It is not expected to be a problem during the license renewal term.
Eutrophication	1	SMALL. Eutrophication has not been found to be a problem at operating nuclear power plants and is not expected to be a problem during the license renewal term.

TABLE B–1.—SUMMARY OF FINDINGS ON NEPA ISSUES FOR LICENSE RENEWAL OF NUCLEAR POWER PLANTS [1]—Continued

Issue	Category [2]	Findings [3]
Discharge of chlorine or other biocides.	1	SMALL. Effects are not a concern among regulatory and resource agencies, and are not expected to be a problem during the license renewal term.
Discharge of sanitary wastes and minor chemical spills.	1	SMALL. Effects are readily controlled through NPDES permit and periodic modifications, if needed, and are not expected to be a problem during the license renewal term.
Discharge of other metals in waste water.	1	SMALL. These discharges have not been found to be a problem at operating nuclear power plants with cooling-tower-based heat dissipation systems and have been satisfactorily mitigated at other plants. They are not expected to be a problem during the license renewal term.
Water use conflicts (plants with once-through cooling systems).	1	SMALL. These conflicts have not been found to be a problem at operating nuclear power plants with once-through heat dissipation systems.
Water use conflicts (plants with cooling ponds or cooling towers using make-up water from a small river with low flow).	2	SMALL OR MODERATE. The issue has been a concern at nuclear power plants with cooling ponds and at plants with cooling towers. Impacts on instream and riparian communities near these plants could be of moderate significance in some situations. See § 51.53(c)(3)(ii)(A).
Aquatic Ecology (for all plants)		
Refurbishment	1	SMALL. During plant shutdown and refurbishment there will be negligible effects on aquatic biota because of a reduction of entrainment and impingement of organisms or a reduced release of chemicals.
Accumulation of contaminants in sediments or biota.	1	SMALL. Accumulation of contaminants has been a concern at a few nuclear power plants but has been satisfactorily mitigated by replacing copper alloy condenser tubes with those of another metal. It is not expected to be a problem during the license renewal term.
Entrainment of phytoplankton and zooplankton.	1	SMALL. Entrainment of phytoplankton and zooplankton has not been found to be a problem at operating nuclear power plants and is not expected to be a problem during the license renewal term.
Cold shock	1	SMALL. Cold shock has been satisfactorily mitigated at operating nuclear plants with once-through cooling systems, has not endangered fish populations or been found to be a problem at operating nuclear power plants with cooling towers or cooling ponds, and is not expected to be a problem during the license renewal term.
Thermal plume barrier to migrating fish.	1	SMALL. Thermal plumes have not been found to be a problem at operating nuclear power plants and are not expected to be a problem during the license renewal term.
Distribution of aquatic organisms	1	SMALL. Thermal discharge may have localized effects but is not expected to affect the larger geographical distribution of aquatic organisms.
Premature emergence of aquatic insects.	1	SMALL. Premature emergence has been found to be a localized effect at some operating nuclear power plants but has not been a problem and is not expected to be a problem during the license renewal term.
Gas supersaturation (gas bubble disease).	1	SMALL. Gas supersaturation was a concern at a small number of operating nuclear power plants with once-through cooling systems but has been satisfactorily mitigated. It has not been found to be a problem at operating nuclear power plants with cooling towers or cooling ponds and is not expected to be a problem during the license renewal term.
Low dissolved oxygen in the discharge.	1	SMALL. Low dissolved oxygen has been a concern at one nuclear power plant with a once-through cooling system but has been effectively mitigated. It has not been found to be a problem at operating nuclear power plants with cooling towers or cooling ponds and is not expected to be a problem during the license renewal term.
Losses from predation, parasitism, and disease among organisms exposed to sublethal stresses.	1	SMALL. These types of losses have not been found to be a problem at operating nuclear power plants and are not expected to be a problem during the license renewal term.
Stimulation of nuisance organisms (e.g., shipworms).	1	SMALL. Stimulation of nuisance organisms has been satisfactorily mitigated at the single nuclear power plant with a once-through cooling system where previously it was a problem. It has not been found to be a problem at operating nuclear power plants with cooling towers or cooling ponds and is not expected to be a problem during the license renewal term.
Aquatic Ecology (for plants with once-through and cooling pond heat dissipation systems)		
Entrainment of fish and shellfish in early life stages.	2	SMALL, MODERATE, OR LARGE. The impacts of entrainment are small at many plants but may be moderate or even large at a few plants with once-through and cooling-pond cooling systems. Further, ongoing efforts in the vicinity of these plants to restore fish populations may increase the numbers of fish susceptible to intake effects during the license renewal period, such that entrainment studies conducted in support of the original license may no longer be valid. See § 51.53(c)(3)(ii)(B).
Impingement of fish and shellfish	2	SMALL, MODERATE, OR LARGE. The impacts of impingement are small at many plants but may be moderate or even large at a few plants with once-through and cooling-pond cooling systems. See § 51.53(c)(3)(ii)(B).
Heat shock	2	SMALL, MODERATE, OR LARGE. Because of continuing concerns about heat shock and the possible need to modify thermal discharges in response to changing environmental conditions, the impacts may be of moderate or large significance at some plants. See § 51.53(c)(3)(ii)(B).

TABLE B–1.—SUMMARY OF FINDINGS ON NEPA ISSUES FOR LICENSE RENEWAL OF NUCLEAR POWER PLANTS [1]—Continued

Issue	Category [2]	Findings [3]
Aquatic Ecology (for plants with cooling-tower-based heat dissipation systems)		
Entrainment of fish and shellfish in early life stages.	1	SMALL. Entrainment of fish has not been found to be a problem at operating nuclear power plants with this type of cooling system and is not expected to be a problem during the license renewal term.
Impingement of fish and shellfish	1	SMALL. The impingement has not been found to be a problem at operating nuclear power plants with this type of cooling system and is not expected to be a problem during the license renewal term.
Heat shock	1	SMALL. Heat shock has not been found to be a problem at operating nuclear power plants with this type of cooling system and is not expected to be a problem during the license renewal term.
Ground-water Use and Quality		
Impacts of refurbishment on ground-water use and quality.	1	SMALL. Extensive dewatering during the original construction on some sites will not be repeated during refurbishment on any sites. Any plant wastes produced during refurbishment will be handled in the same manner as in current operating practices and are not expected to be a problem during the license renewal term.
Ground-water use conflicts (potable and service water; plants that use <100 gpm).	1	SMALL. Plants using less than 100 gpm are not expected to cause any ground-water use conflicts.
Ground-water use conflicts (potable and service water, and dewatering; plants that use >100 gpm).	2	SMALL, MODERATE, OR LARGE. Plants that use more than 100 gpm may cause ground-water use conflicts with nearby ground-water users. See § 51.53(c)(3)(ii)(C).
Ground-water use conflicts (plants using cooling towers withdrawing make-up water from a small river).	2	SMALL, MODERATE, OR LARGE. Water use conflicts may result from surface water withdrawals from small water bodies during low flow conditions which may affect aquifer recharge, especially if other ground-water or upstream surface water users come on line before the time of license renewal. See § 51.53(c)(3)(ii)(A).
Terrestrial Resources		
Refurbishment impacts	2	SMALL, MODERATE, OR LARGE. Refurbishment impacts are insignificant if no loss of important plant and animal habitat occurs. However, it cannot be known whether important plant and animal communities may be affected until the specific proposal is presented with the license renewal application. See § 51.53(c)(3)(ii)(E).
Cooling tower impacts on crops and ornamental vegetation.	1	SMALL. Impacts from salt drift, icing, fogging, or increased humidity associated with cooling tower operation have not been found to be a problem at operating nuclear power plants and are not expected to be a problem during the license renewal term.
Cooling tower impacts on native plants.	1	SMALL. Impacts from salt drift, icing, fogging, or increased humidity associated with cooling tower operation have not been found to be a problem at operating nuclear power plants and are not expected to be a problem during the license renewal term.
Bird collisions with cooling towers.	1	SMALL. These collisions have not been found to be a problem at operating nuclear power plants and are not expected to be a problem during the license renewal term.
Cooling pond impacts on terrestrial resources.	1	SMALL. Impacts of cooling ponds on terrestrial ecological resources are considered to be of small significance at all sites.
Power line right-of-way management (cutting and herbicide application).	1	SMALL. The impacts of right-of-way maintenance on wildlife are expected to be of small significance at all sites.
Bird collision with power lines	1	SMALL. Impacts are expected to be of small significance at all sites.
Impacts of electromagnetic fields on flora and fauna (plants, agricultural crops, honeybees, wildlife, livestock).	1	SMALL. No significant impacts of electromagnetic fields on terrestrial flora and fauna have been identified. Such effects are not expected to be a problem during the license renewal term.
Floodplains and wetland on power line right of way.	1	SMALL. Periodic vegetation control is necessary in forested wetlands underneath power lines and can be achieved with minimal damage to the wetland. No significant impact is expected at any nuclear power plant during the license renewal term.
Threatened or Endangered Species (for all plants)		
Threatened or endangered species.	2	SMALL, MODERATE, OR LARGE. Generally, plant refurbishment and continued operation are not expected to adversely affect threatened or endangered species. However, consultation with appropriate agencies would be needed at the time of license renewal to determine whether threatened or endangered species are present and whether they would be adversely affected. See § 51.53(c)(3)(ii)(E).

TABLE B–1.—SUMMARY OF FINDINGS ON NEPA ISSUES FOR LICENSE RENEWAL OF NUCLEAR POWER PLANTS [1]—Continued

Issue	Category [2]	Findings [3]
Air Quality		
Air quality during refurbishment (nonattainment and maintenance areas).	2	SMALL, MODERATE, OR LARGE. Air quality impacts from plant refurbishment associated with license renewal are expected to be small. However, vehicle exhaust emissions could be cause for concern at locations in or near nonattainment or maintenance areas. The significance of the potential impact cannot be determined without considering the compliance status of each site and the numbers of workers expected to be employed during the outage. See § 51.53(c)(3)(ii)(F).
Air quality effects of transmission lines.	1	SMALL. Production of ozone and oxides of nitrogen is insignificant and does not contribute measurably to ambient levels of these gases.
Land Use		
Onsite land use	1	SMALL. Projected onsite land use changes required during refurbishment and the renewal period would be a small fraction of any nuclear power plant site and would involve land that is controlled by the applicant.
Power line right of way	1	SMALL. Ongoing use of power line right of ways would continue with no change in restrictions. The effects of these restrictions are of small significance.
Human Health		
Radiation exposures to the public during refurbishment.	1	SMALL. During refurbishment, the gaseous effluents would result in doses that are similar to those from current operation. Applicable regulatory dose limits to the public are not expected to be exceeded.
Occupational radiation exposures during refurbishment.	1	SMALL. Occupational doses from refurbishment are expected to be within the range of annual average collective doses experienced for pressurized-water reactors and boiling-water reactors. Occupational mortality risk from all causes including radiation is in the mid-range for industrial settings.
Microbiological organisms (occupational health).	1	SMALL. Occupational health impacts are expected to be controlled by continued application of accepted industrial hygiene practices to minimize worker exposures.
Microbiological organisms (public health) (plants using lakes or canals, or cooling towers or cooling ponds that discharge to a small river).	2	SMALL, MODERATE, OR LARGE. These organisms are not expected to be a problem at most operating plants except possibly at plants using cooling ponds, lakes, or canals that discharge to small rivers. Without site-specific data, it is not possible to predict the effects generically. See § 51.53(c)(3)(ii)(G).
Noise	1	SMALL. Noise has not been found to be a problem at operating plants and is not expected to be a problem at any plant during the license renewal term.
Electromagnetic fields, acute effects (electric shock).	2	SMALL, MODERATE, OR LARGE. Electrical shock resulting from direct access to energized conductors or from induced charges in metallic structures have not been found to be a problem at most operating plants and generally are not expected to be a problem during the license renewal term. However, site-specific review is required to determine the significance of the electric shock potential at the site. See § 51.53(c)(3)(ii)(H).
Electromagnetic fields, chronic effects [5].	NA [4]	UNCERTAIN. Biological and physical studies of 60–Hz electromagnetic fields have not found consistent evidence linking harmful effects with field exposures. However, because the state of the science is currently inadequate, no generic conclusion on human health impacts is possible.[5]
Radiation exposures to public (license renewal term).	1	SMALL. Radiation doses to the public will continue at current levels associated with normal operations.
Occupational radiation exposures (license renewal term).	1	SMALL. Projected maximum occupational doses during the license renewal term are within the range of doses experienced during normal operations and normal maintenance outages, and would be well below regulatory limits.
Socioeconomics		
Housing impacts	2	SMALL, MODERATE, OR LARGE. Housing impacts are expected to be of small significance at plants located in a medium or high population area and not in an area where growth control measures that limit housing development are in effect. Moderate or large housing impacts of the workforce associated with refurbishment may be associated with plants located in sparsely populated areas or in areas with growth control measures that limit housing development. See § 51.53(c)(3)(ii)(I).
Public services: public safety, social services, and tourism and recreation.	1	SMALL. Impacts to public safety, social services, and tourism and recreation are expected to be of small significance at all sites.
Public services: public utilities	2	SMALL OR MODERATE. An increased problem with water shortages at some sites may lead to impacts of moderate significance on public water supply availability. See § 51.53(c)(3)(ii)(I).
Public services, education (refurbishment).	2	SMALL, MODERATE, OR LARGE. Most sites would experience impacts of small significance but larger impacts are possible depending on site- and project-specific factors. See § 51.53(c)(3)(ii)(I).

TABLE B–1.—SUMMARY OF FINDINGS ON NEPA ISSUES FOR LICENSE RENEWAL OF NUCLEAR POWER PLANTS [1]—Continued

Issue	Category [2]	Findings [3]
Public services, education (license renewal term).	1	SMALL. Only impacts of small significance are expected.
Offsite land use (refurbishment)	2	SMALL OR MODERATE. Impacts may be of moderate significance at plants in low population areas. See § 51.53(c)(3)(ii)(I).
Offsite land use (license renewal term).	2	SMALL, MODERATE, OR LARGE. Significant changes in land use may be associated with population and tax revenue changes resulting from license renewal. See § 51.53(c)(3)(ii)(I).
Public services, Transportation	2	SMALL, MODERATE, OR LARGE. Transportation impacts are generally expected to be of small significance. However, the increase in traffic associated with the additional workers and the local road and traffic control conditions may lead to impacts of moderate or large significance at some sites. See § 51.53(c)(3)(ii)(J).
Historic and archaeological resources.	2	SMALL, MODERATE, OR LARGE. Generally, plant refurbishment and continued operation are expected to have no more than small adverse impacts on historic and archaeological resources. However, the National Historic Preservation Act requires the Federal agency to consult with the State Historic Preservation Officer to determine whether there are properties present that require protection. See § 51.53(c)(3)(ii)(K).
Aesthetic impacts (refurbishment).	1	SMALL. No significant impacts are expected during refurbishment.
Aesthetic impacts (license renewal term).	1	SMALL. No significant impacts are expected during the license renewal term.
Aesthetic impacts of transmission lines (license renewal term).	1	SMALL. No significant impacts are expected during the license renewal term.
Postulated Accidents		
Design basis accidents	1	SMALL. The NRC staff has concluded that the environmental impacts of design basis accidents are of small significance for all plants.
Severe accidents	2	SMALL. The probability weighted consequences of atmospheric releases, fallout onto open bodies of water, releases to ground water, and societal and economic impacts from severe accidents are small for all plants. However, alternatives to mitigate severe accidents must be considered for all plants that have not considered such alternatives. See § 51.53(c)(3)(ii)(L).
Uranium Fuel Cycle and Waste Management		
Offsite radiological impacts (individual effects from other than the disposal of spent fuel and high level waste).	1	SMALL. Off-site impacts of the uranium fuel cycle have been considered by the Commission in Table S–3 of this part. Based on information in the GEIS, impacts on individuals from radioactive gaseous and liquid releases including radon-222 and technetium-99 are small.
Offsite radiological impacts (collective effects).	1	The 100 year environmental dose commitment to the U.S. population from the fuel cycle, high level waste and spent fuel disposal is calculated to be about 14,800 person rem, or 12 cancer fatalities, for each additional 20 year power reactor operating term. Much of this, especially the contribution of radon releases from mines and tailing piles, consists of tiny doses summed over large populations. This same dose calculation can theoretically be extended to include many tiny doses over additional thousands of years as well as doses outside the U.S. The result of such a calculation would be thousands of cancer fatalities from the fuel cycle, but this result assumes that even tiny doses have some statistical adverse health effect which will not ever be mitigated (for example, no cancer cure in the next thousand years), and that these does projection over thousands of years are meaningful. However these assumptions are questionable. In particular, science cannot rule out the possibility that there will be no cancer fatalities from these tiny doses. For perspective, the doses are very small fractions of regulatory limits, and even smaller fractions of natural background exposure to the same populations. Nevertheless, despite all the uncertainty, some judgement as to the regulatory NEPA implications of these matters should be made and it makes no sense to repeat the same judgement in every case. Even taking the uncertainties into account, the Commission concludes that these impacts are acceptable in that these impacts would not be sufficiently large to require the NEPA conclusion, for any plant, that the option of extended operation under 10 CFR Part 54 should be eliminated. Accordingly, while the Commission has not assigned a single level of significance for the collective effects of the fuel cycle, this issue is considered Category 1.

TABLE B–1.—SUMMARY OF FINDINGS ON NEPA ISSUES FOR LICENSE RENEWAL OF NUCLEAR POWER PLANTS [1]—Continued

Issue	Category [2]	Findings [3]
Offsite radiological impacts (spent fuel and high level waste disposal).	1	For the high level waste and spent fuel disposal component of the fuel cycle, there are no current regulatory limits for offsite releases of radionuclides for the current candidate repository site. However, if we assume that limits are developed along the lines of the 1995 National Academy of Sciences (NAS) report, ''Technical Bases for Yucca Mountain Standards,'' and that in accordance with the Commission's Waste Confidence Decision, 10 CFR 51.23, a repository can and likely will be developed at some site which will comply with such limits, peak doses to virtually all individuals will be 100 millirem per year or less. However, while the Commission has reasonable confidence that these assumptions will prove correct, there is considerable uncertainty since the limits are yet to be developed, no repository application has been completed or reviewed, and uncertainty is inherent in the models used to evaluate possible pathways to the human environment. The NAS report indicated that 100 millirem per year should be considered as a starting point for limits for individual doses, but notes that some measure of consensus exists among national and international bodies that the limits should be a fraction of the 100 millirem per year. The lifetime individual risk from 100 millirem annual dose limit is about 310^{-3}. Estimating cumulative doses to populations over thousands of years is more problematic. The likelihood and consequences of events that could seriously compromise the integrity of a deep geologic repository were evaluated by the Department of Energy in the ''Final Environmental Impact Statement: Management of Commercially Generated Radioactive Waste,'' October 1980. The evaluation estimated the 70-year whole-body dose commitment to the maximum individual and to the regional population resulting from several modes of breaching a reference repository in the year of closure, after 1,000 years, after 100,000 years, and after 100,000,000 years. Subsequently, the NRC and other federal agencies have expended considerable effort to develop models for the design and for the licensing of a high level waste repository, especially for the candidate repository at Yucca Mountain. More meaningful estimates of doses to population may be possible in the future as more is understood about the performance of the proposed Yucca Mountain repository. Such estimates would involve very great uncertainty, especially with respect to cumulative population doses over thousands of years. The standard proposed by the NAS is a limit on maximum individual dose. The relationship of potential new regulatory requirements, based on the NAS report, and cumulative population impacts has not been determined, although the report articulates the view that protection of individuals will adequately protect the population for a repository at Yucca Mountain. However, EPA's generic repository standards in 40 CFR part 191 generally provide an indication of the order of magnitude of cumulative risk to population that could result from the licensing of a Yucca Mountain repository, assuming the ultimate standards will be within the range of standards now under consideration. The standards in 40 CFR part 191 protect the population by imposing ''containment requirements'' that limit the cumulative amount of radioactive material released over 10,000 years. The cumulative release limits are based on EPA's population impact goal of 1,000 premature cancer deaths world-wide for a 100,000 metric tonne (MTHM) repository. Nevertheless, despite all the uncertainty, some judgement as to the regulatory NEPA implications of these matters should be made and it makes no sense to repeat the same judgement in every case. Even taking the uncertainties into account, the Commission concludes that these impacts are acceptable in that these impacts would not be sufficiently large to require the NEPA conclusion, for any plant, that the option of extended operation under 10 CFR part 54 should be eliminated. Accordingly, while the Commission has not assigned a single level of significance for the impacts of spent fuel and high level waste disposal, this issue is considered Category 1.
Nonradiological impacts of the uranium fuel cycle.	1	SMALL. The nonradiological impacts of the uranium fuel cycle resulting from the renewal of an operating license for any plant are found to be small.
Low-level waste storage and disposal.	1	SMALL. The comprehensive regulatory controls that are in place and the low public doses being achieved at reactors ensure that the radiological impacts to the environment will remain small during the term of a renewed license. The maximum additional on-site land that may be required for low-level waste storage during the term of a renewed license and associated impacts will be small. Nonradiological impacts on air and water will be negligible. The radiological and nonradiological environmental impacts of long-term disposal of low-level waste from any individual plant at licensed sites are small. In addition, the Commission concludes that there is reasonable assurance that sufficient low-level waste disposal capacity will be made available when needed for facilities to be decommissioned consistent with NRC decommissioning requirements.
Mixed waste storage and disposal.	1	SMALL. The comprehensive regulatory controls and the facilities and procedures that are in place ensure proper handling and storage, as well as negligible doses and exposure to toxic materials for the public and the environment at all plants. License renewal will not increase the small, continuing risk to human health and the environment posed by mixed waste at all plants. The radiological and nonradiological environmental impacts of long-term disposal of mixed waste from any individual plant at licensed sites are small. In addition, the Commission concludes that there is reasonable assurance that sufficient mixed waste disposal capacity will be made available when needed for facilities to be decommissioned consistent with NRC decommissioning requirements.

TABLE B–1.—SUMMARY OF FINDINGS ON NEPA ISSUES FOR LICENSE RENEWAL OF NUCLEAR POWER PLANTS [1]—Continued

Issue	Category [2]	Findings [3]
On-site spent fuel	1	SMALL. The expected increase in the volume of spent fuel from an additional 20 years of operation can be safely accommodated on site with small environmental effects through dry or pool storage at all plants if a permanent repository or monitored retrievable storage is not available.
Nonradiological waste	1	SMALL. No changes to generating systems are anticipated for license renewal. Facilities and procedures are in place to ensure continued proper handling and disposal at all plants.
Transportation	2	Table S–4 of this part contains an assessment of impact parameters to be used in evaluating transportation effects in each case. See § 51.53(c)(3)(ii)(M).
Decommissioning		
Radiation doses	1	SMALL. Doses to the public will be well below applicable regulatory standards regardless of which decommissioning method is used. Occupational doses would increase no more than 1 man-rem caused by buildup of long-lived radionuclides during the license renewal term.
Waste management	1	SMALL. Decommissioning at the end of a 20-year license renewal period would generate no more solid wastes than at the end of the current license term. No increase in the quantities of Class C or greater than Class C wastes would be expected.
Air quality	1	SMALL. Air quality impacts of decommissioning are expected to be negligible either at the end of the current operating term or at the end of the license renewal term.
Water quality	1	SMALL. The potential for significant water quality impacts from erosion or spills is no greater whether decommissioning occurs after a 20-year license renewal period or after the original 40-year operation period, and measures are readily available to avoid such impacts.
Ecological resources	1	SMALL. Decommissioning after either the initial operating period or after a 20-year license renewal period is not expected to have any direct ecological impacts.
Socioeconomic impacts	1	SMALL. Decommissioning would have some short-term socioeconomic impacts. The impacts would not be increased by delaying decommissioning until the end of a 20-year relicense period, but they might be decreased by population and economic growth.
Environmental Justice		
Environmental justice [6]	NA [4]	NONE. The need for and the content of an analysis of environmental justice will be addressed in plant-specific reviews.[6]

[1] Data supporting this table are contained in NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants'' (xxxx 1996).

[2] The numerical entries in this column are based on the following category definitions:

Category 1: For the issue, the analysis reported in the Generic Environmental Impact Statement has shown:

(1) The environmental impacts associated with the issue have been determined to apply either to all plants or, for some issues, to plants having a specific type of cooling system or other specified plant or site characteristic;

(2) A single significance level (i.e., small, moderate, or large) has been assigned to the impacts (except for collective off site radiological impacts from the fuel cycle and from high level waste and spent fuel disposal); and

(3) Mitigation of adverse impacts associated with the issue has been considered in the analysis, and it has been determined that additional plant-specific mitigation measures are likely not to be sufficiently beneficial to warrant implementation.

The generic analysis of the issue may be adopted in each plant-specific review.

Category 2: For the issue, the analysis reported in the Generic Environmental Impact Statement has shown that one or more of the criteria of Category 1 can not be met, and therefore additional plant-specific review is required.

[3] The impact findings in this column are based on the definitions of three significance levels. Unless the significance level is identified as beneficial, the impact is adverse, or in the case of ''small,'' may be negligible. The definitions of significance follow:

SMALL—For the issue, environmental effects are not detectable or are so minor that they will neither destabilize nor noticeably alter any important attribute of the resource. For the purposes of assessing radiological impacts, the Commission has concluded that those impacts that do not exceed permissible levels in the Commission's regulations are considered small as the term is used in this table.

MODERATE—For the issue, environmental effects are sufficient to alter noticeably, but not to destabilize, important attributes of the resource.

LARGE—For the issue, environmental effects are clearly noticeable and are sufficient to destabilize important attributes of the resource.

For issues where probability is a key consideration (i.e. accident consequences), probability was a factor in determining significance.

[4] NA (not applicable). The categorization and impact finding definitions do not apply to these issues.

[5] Scientific evidence about a chronic biological effect on humans from exposure to transmission line electric and magnetic fields is inconclusive. If the Commission finds that a consensus has been reached by appropriate Federal health agencies that there are adverse health effects, the Commission will require applicants to submit plant-specific reviews of these health effects. Until such time, applicants for license renewal are not required to submit information on this issue.

[6] Environmental Justice was not addressed in NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants,'' because guidance for implementing Executive Order 12898 issued on February 11, 1994, was not available prior to completion of NUREG–1437. This issue will be addressed in individual license renewal reviews.

Dated at Rockville, MD, this 29th day of May, 1996.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 96–13874 Filed 6–4–96; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–161–AD; Amendment 39–9644; AD 96–12–02]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplanes, Excluding Model A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300 B2 and B4 series airplanes, that requires measurements of the thickness of the inner skin of the longitudinal lap joint from the inside of the fuselage at certain stringers. This amendment also requires inspections to detect stress corrosion cracking in the subject area, and repair, if necessary. This amendment is prompted by reports of stress corrosion cracking found in the skin at the longitudinal lap joint at certain stringers of the fuselage, which was caused by the increased stress level in the subject area when it was reworked beyond certain limits. The actions specified by this AD are intended to prevent such stress corrosion cracking which, if not detected and corrected in a timely manner, could result in rapid depressurization of the airplane.

DATES: Effective July 10, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 10, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

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 Airbus Model A300 B2 and B4 series airplanes was published in the Federal Register on February 28, 1996 (61 FR 7444). That action proposed to require measurements of the thickness of the inner skin of the longitudinal lap joint from the inside of the fuselage at certain stringers using the ultrasonic thickness measurement method. That action also proposed to require high frequency eddy current (HFEC) inspections to detect cracking in the subject area, and repair, if necessary.

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

Support for the Proposal

Both commenters support the proposed rule.

Conclusion

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 as proposed.

Cost Impact

The FAA estimates that 17 airplanes of U.S. registry will be affected by this AD, that it will take approximately 32 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 cost impact of the AD on U.S. operators is estimated to be $32,640, or $1,920 per airplane.

The 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.

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. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

96–12–02 Airbus Industrie: Amendment 39–9644. Docket 95–NM–161–AD.

Applicability: Model A300 B2 and B4 series airplanes, manufacturer serial numbers 003 through 156 inclusive; on which Airbus Modification 2611 has not 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 request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not

been eliminated, the request should include specific proposed actions to address it.

Note 2: Model A300–600 series airplanes are not subject to the requirements of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent stress corrosion cracking in the longitudinal lap joints of the fuselage, which could result in rapid depressurization of the airplane, accomplish the following:

Note 3: Any of the inspections and measurements required by this AD that were performed before the effective date of this AD in accordance with Airbus All Operator Telex (AOT) 53–05 (original issue), dated August 16, 1995, are considered acceptable for compliance with the applicable requirements of this AD.

(a) Within 60 days after the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) of this AD in accordance with Airbus All Operator Telex (AOT) 53–05, Revision 1, dated August 16, 1993.

(1) Measure the thickness of the inner skin of the longitudinal lap joint from the inside of the fuselage at stringer 57 between frames 65 and 72 using the ultrasonic thickness measurement method, in accordance with the AOT. If the thickness is less than or equal to the limits specified in the AOT, prior to further flight, repair the longitudinal lap joint in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(2) Perform a high frequency eddy current (HFEC) inspection to detect cracking of the longitudinal lap joint at stringer 57 between frames 65 and 72, in accordance with the AOT. If any cracking is detected, prior to further flight, repair the longitudinal lap joint in accordance with a method approved by the Manager, Standardization Branch, ANM–113.

(b) Within 6 months after the effective date of this AD, accomplish paragraphs (b)(1) and (b)(2) of this AD in accordance with Airbus AOT 53–05, Revision 1, dated August 16, 1993.

(1) Measure the thickness of the inner skin of the longitudinal lap joint from the inside of the fuselage at stringer 52 (left-and right-hand) between frames 58 and 65 using the ultrasonic thickness measurement method, in accordance with the AOT. If the thickness is less than or equal to the limits specified in the AOT, prior to further flight, repair the longitudinal lap joint in accordance with a method approved by the Manager, Standardization Branch, ANM–113.

(2) Perform a HFEC inspection to detect cracking of the longitudinal lap joint at stringer 52 (left- and right-hand) between frames 58 and 65, in accordance with the AOT. If any cracking is detected, prior to further flight, repair the longitudinal lap joint in accordance with a method approved by the Manager, Standardization Branch, ANM–113.

(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. 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 measurements and inspections shall be done in accordance with Airbus All Operator Telex (AOT) 53–05, Revision 1, dated August 16, 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 Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on July 10, 1996.

Issued in Renton, Washington, on May 28, 1996.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–13798 Filed 6–4–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 95–NM–133–AD; Amendment 39–9643; AD 96–12–01]

RIN 2120–AA64

Airworthiness Directives; Jetstream Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Jetstream Model 4101 airplanes, that requires replacement of the flexible cables of the power and condition controls of the engines with new flexible cables. This amendment also requires installation of protective tape on the outside case of these flexible cables, and reidentification of the cables. This amendment is prompted by reports of stiff operation of the power and condition controls of the engines due to heat damage to and moisture contamination of the flexible cable. The actions specified by this AD are intended to prevent heat damage and moisture contamination to the flexible cable, which could result in stiff operation of the power and condition controls and subsequent reduced engine control.

DATES: Effective July 10, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 10, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. 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) 227–1149.

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 Jetstream Model 4101 airplanes was published in the Federal Register on December 19, 1995 (60 FR 65258). That action proposed to require replacement of the flexible cables of power and condition controls of the engines with new flexible cables. The action also proposed to require installation of protective tape on the outside case of the new flexible cables of the power and condition controls of the engines, and reidentification of the assembly number of the cable.

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

Request to Provide Additional Terminating Action

One commenter requests that the FAA revise the proposal to require the accomplishment of the actions described in Jetstream Service Bulletin J41–76–013 () (Modification JM41485A), as interim action only. The commenter states that the flexible cables associated with the proposed action have a life limit of 6,000 hours time-in-service, and have not demonstrated reliability warranting an escalation of this limit. Instead, the commenter requests that the proposal be revised to include a

requirement to accomplish the actions described in Jetstream Service Bulletin SB J41–76–014 () (Modification JM41478), as the terminating action. The new improved flexible cable, which is associated with Modification JM41478, holds the promise of eventually qualifying for an escalation of its life limit to 12,000 hours time-in-service.

The FAA does not concur with the commenter's request to revise the AD. The FAA has determined that accomplishment of the procedures specified in Jetstream Service Bulletin J41–76–013, as proposed, adequately addresses the identified unsafe condition by preventing heat damage and moisture contamination to the flexible cables.

The FAA recognizes that some operators previously may have elected to accomplish Modification JM41478, which the FAA considers to address the identified unsafe condition adequately as well. However, the FAA points out that this AD is applicable only to Model 4101 airplanes on which Modification JM41478 or JM41485A has *not* been installed. Therefore, those airplanes are not subject to the requirements of this AD.

Request to Require Marking of Part Numbers

This commenter also requests that the FAA revise the proposal to require marking part numbers on the two types of engine control cables (Modifications JM414485A and JM41478) after installation of the cables. The commenter states that routing during installation of the cables requires removal of all identification bands, making verification in the absence of good recordkeeping virtually impossible.

The FAA does not consider a revision to be necessary. The FAA points out that paragraph (a)(2) of the final rule already requires reidentification of the assembly number of the cable. Since this AD does not require Modification JM41478, as stated previously, the FAA finds that including a requirement for such a marking need not be specified in this final rule.

Request to Revise Cost Impact Information

This same commenter asserts that the cost estimate presented in the preamble of the proposal was incorrect. The commenter notes that the FAA estimates that 25 airplanes of U.S. registry would be affected by this proposed AD; however, the commenter states that it currently operates 25 airplanes of U.S. registry, and knows that there are additional U.S. operators.

In addition, the commenter states that the required modification would necessitate 39 work hours, rather than the 11 work hours specified in the proposal.

After considering the data presented by the commenter, the FAA concurs that the number of U.S.-registered airplanes affected by the AD, and the number of necessary work hours, are higher than approximated previously. The FAA has revised the cost impact information, below, accordingly.

Conclusion

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 to the cost impact information described previously. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 44 airplanes of U.S. registry will be affected by this AD, that it will take approximately 39 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $102,960, or $2,340 per airplane.

The 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.

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. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

96–12–01 Jetstream Aircraft Limited: Amendment 39–9643. Docket 95–NM–133–AD.

Applicability: Model 4101 airplanes on which Jetstream Modification JM41478 or JM41485A has not 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 request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously. To prevent heat damage and moisture contamination to the flexible cable, which could result in stiff operation of the power and condition controls and subsequent reduced engine control, accomplish the following:

(a) Within 6 months after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD, in accordance with Jetstream Service Bulletin J41–76–013, dated May 5, 1995. Both requirements must be accomplished at the same time.

(1) Replace the flexible cables of power and condition controls of the left and right

engines with new flexible cables, in accordance with paragraphs 2.B. and 2.C. of the Accomplishment Instructions of the service bulletin; and

(2) Install protective tape on the outside case of the new flexible cables of the power and condition controls of the left and right engines; and reidentify the assembly number of the cable; in accordance with paragraph 2.D. of the Accomplishment Instructions of the service bulletin.

(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 replacement, installation, and reidentification shall be done in accordance with Jetstream Service Bulletin J41–76–013, dated May 5, 1995. 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 Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. 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 July 10, 1996.

Issued in Renton, Washington, on May 28, 1996.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–13797 Filed 6–4–96; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 12 and 178

[T.D. 96–46]

RIN 1515–AB96

Removal of Toshiba Sanction Regulations

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by removing the regulatory provisions that implemented the import sanctions against all products produced by the Toshiba Machine Company and the Kongsberg Trading Company. The ''Toshiba Sanctions'' were imposed by Executive Order No. 12661 for a three year time period, which expired on December 28, 1991.

EFFECTIVE DATE: June 5, 1996.

FOR FURTHER INFORMATION CONTACT: Louis Alfano, Office of Field Operations, Trade Compliance, Commercial Enforcement, (202) 927–0005.

SUPPLEMENTARY INFORMATION:

Background

As part of Customs continuing effort to ensure that its regulations are informative and up-to-date, Customs has determined that four of its regulatory provisions in Part 12 of the Customs Regulations (19 CFR Part 12) are obsolete and should be removed. The regulatory sections are found at 19 CFR 12.140–143, Customs Regulations, and were promulgated to implement the import sanctions mandated by section 2443(a)(2) of the Omnibus Trade and Competitiveness Act of 1988 (Pub.L. 100–418, 102 Stat. 1107, 1365, 50 U.S.C. App. 2410a note) and imposed by Executive Order No. 12661 of December 27, 1988 (53 FR 779, 3 CFR part 1988 Comp. p. 618, 24 Weekly Comp.Pres.Doc. 1661) for a three year time period against all products produced by the Toshiba Machine Company and the Kongsberg Trading Company. As the three year time period expired on December 28, 1991, Customs has decided to remove these four obsolete regulatory provisions, commonly referred to as the ''Toshiba Sanctions''. Also, because the Toshiba Sanction regulations required the submission of information to Customs, the listing of Office of Management and Budget (OMB) control numbers found at 19 CFR 178.2 is amended to remove the information collection authorization for § 12.143, which provided for declarations of exception from import sanctions.

Inapplicability of Public Notice and Comment Requirements, Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12866

Because this amendment removes obsolete regulatory provisions to conform the Customs Regulations to current legal requirements, which have no substantive effect on the public, pursuant to 5 U.S.C. 553 (b)(B), good cause exists for dispensing with notice and public procedure thereon as unnecessary. For the same reasons, it is determined under the provisions of 5 U.S.C. 553(d)(1) and (d)(3) that good cause exists for dispensing with a delayed effective date. Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This document does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

List of Subjects

19 CFR Part 12

Customs duties and inspection, Economic sanctions, Imports, Licensing, Prohibited merchandise, Restricted merchandise, Reporting and recordkeeping requirements, Sanctions, Seizure and forfeiture.

19 CFR Part 178

Administrative practice and procedure, Exports, Imports, Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons stated above, parts 12 and 178 of the Customs Regulations (19 CFR parts 12 and 178) are amended as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for Part 12 continues to read as follows, and the specific authority citation for §§ 12.140 through 12.143 is removed:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

2. Part 12 is amended by removing the undesignated centerheading ''Sanctions Against Toshiba Machine Company and Kongsberg Trading Company'' and §§ 12.140 through 12.143.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

§ 178.2 [Amended]

2. Section 178.2 is amended by removing the designation and description entry for § 12.143.

George J. Weise,

Commissioner of Customs.

Approved: May 15, 1996.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 96–14026 Filed 6–4–96; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–96–020]

RIN 2115–AE46

Special Local Regulations: Beaufort Water Festival, Beaufort, SC

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing permanent special local regulations for the Beaufort Water Festival. This event will be held annually on the last two Saturdays and Sundays of July, between 7:30 a.m. and 7 p.m. e.d.t. (Eastern Daylight Time). Historically, the raft races, sailboat regattas, aerial demonstrations, power boat races, and a parade of ships have drawn 75 event participants and 400 spectator craft to the Beaufort River each day of the event. The anticipated concentration of spectator and event participant vessels associated with the Beaufort Water Festival poses a safety concern. Furthermore, the nature of the event and the closure of the Beaufort River between the Ladys Island swing bridge and Spanish Point creates an extra or unusual hazard in the navigable waters during the event. These regulations are necessary to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: July 5, 1996.

FOR FURTHER INFORMATION CONTACT: ENS M.J. DaPonte, project officer, Coast Guard Group Charleston at (803) 724–7621.

SUPPLEMENTARY INFORMATION:

Regulatory History

On April 19, 1996, the Coast Guard published a notice of proposed rulemaking entitled ''Beaufort Water Festival, Beaufort, SC [CGD07–96–020] in the Federal Register (61 FR 17269). The comment period ended on May 20, 1996. The Coast Guard received no comments during the notice of proposed rulemaking comment period. A public hearing was not requested and no hearing was held.

Discussion of Regulations

These regulations are needed to provide for the safety of life during the Beaufort Water Festival. The regulations are intended to promote safe navigation on the waters of the Beaufort River between the Ladys Island swing bridge and Spanish Point by controlling the traffic entering, exiting, and traveling within these waters. Historically, the raft races, sailboat regattas, aerial demonstrations, power boat races and a parade of ships have drawn approximately 75 event participants and 400 spectator craft to the Beaufort River each day of the event. The anticipated concentration of spectator and event participant vessels associated with the Beaufort Water Festival poses a safety concern, which is addressed in these special local regulations.

These regulations will not permit movement of spectator vessels and other non-event participating vessel traffic within the regulated area, between the Ladys Island swing bridge (32°25′40″ N, 080°40′10″ W) and a line drawn directly across the Beaufort River at Spanish Point (32°24′00″ N) from 7:30 a.m. to 7 p.m. e.d.t, annually on the last two Saturdays and Sundays of July. All coordinates referenced use datum: NAD 1983. However, these regulations will permit the movement of spectator vessels and other non-event participant vessels between scheduled events and at the termination of the last scheduled event, at the discretion of the Coast Guard Patrol Commander.

Regulatory Evaluation

This rule is not a significant regulatory action under Section 3(f) of Executive Order 12866 and does not require an assessment of the potential costs and benefits under Section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. These regulations will last for only 11 and one half hours on each day of the event. No public comments were received during the notice of proposed rulemaking comment period.

Small Entities

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

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

Collection of Information

These regulations contain no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this rulemaking consistent with Section 2.B.2. of Commandant Instruction M16475.1B. In accordance with that section, this action has been environmentally assessed (EA completed), and the Coast Guard has concluded that it will not significantly affect the quality of the human environment. An environmental assessment and a finding of no significant impact have been prepared and are available in the docket for inspection.

List of Subjects in 33 CFR Part 100

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

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, the Coast Guard amends as follows:

PART 100—[AMENDED]

The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A new section 100.715 is added to read as follows:

§ 100.715 Annual Beaufort Water Festival, Beaufort River, Beaufort, SC.

(a) *Definitions.*

(1) *Regulated Area.*A regulated area is established on that portion of the Beaufort River, between the Ladys Island swing bridge at 32°25′40″ N, 080°40′10″ W and a line drawn directly across the Beaufort River at Spanish Point, at 32°24′00″ N. All coordinates referenced use datum: NAD 1983.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the United States Coast Guard who has been designated by the Commander, Coast Guard Group Charleston, Charleston, South Carolina.

(b) *Special local regulations.* (1) Entry into the regulated area by other than event participants is prohibited, unless otherwise authorized by the Coast Guard Patrol Commander.

(2) Between scheduled events the Coast Guard Patrol Commander may authorize vessels to resume normal operations.

(3) After termination of the Beaufort Water Festival events, all vessels may resume normal operation at the discretion of the Coast Guard Patrol Commander.

(c) *Effective Dates.* This section become effective annually from 7:30 a.m. to 7 p.m. EDT, on the last two Saturdays and Sundays of July.

Dated: May 14, 1996.

Roger T. Rufe, Jr.,

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

[FR Doc. 96–13999 Filed 6–4–96; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD07–96–005]

RIN 2115–AE46

Special Local Regulations: Fort Myers Beach Offshore Grand Prix; Fort Myers Beach, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing permanent special local regulations for the Fort Myers Offshore Grand Prix. This event will be held annually during the first Saturday and Sunday of June, between 12 p.m. and 3 p.m. (Eastern Daylight Time). Historically, there have been approximately 170 participant and spectator craft. The resulting congestion of navigable channels creates an extra or unusual hazard in the navigable waters. These regulations are necessary to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: July 5, 1996.

FOR FURTHER INFORMATION CONTACT: LTJG T. Stuhlreyer, project officer, Coast Guard Group St. Petersburg, FL at (813) 824–7533.

SUPPLEMENTARY INFORMATION:

Regulatory History

On March 20, 1996, the Coast Guard published a notice of proposed rulemaking entitled [CGD07–96–005] in the Federal Register (61 FR 11354). The Coast Guard received no written or oral comments during the proposed rulemaking comment period. A public hearing was not requested and one was not held.

Discussion of Regulations

These regulations are needed to provide for the safety of life during the Fort Myers Beach Offshore Grand Prix. These regulations are intended to promote safe navigation on the waters off Fort Myers Beach during the races by controlling the traffic entering, exiting, and traveling within these waters. The anticipated concentration of spectator and participant vessels associated with the Grand Prix poses a safety concern, which is addressed in these special local regulations. These regulations will not permit anchoring shoreward of the shoreside legs of the racecourse, from 11 a.m. to 3 p.m., on the first Saturday and Sunday of June. Spectator craft will be permitted near the race area but will be required to stay clear of the race lanes. These regulations will permit anchoring for spectators seaward of the seaside legs of the racecourse, but only in the designated spectator area defined in paragraph (b) of the regulations. All vessel traffic, not involved with the Fort Myers Beach Offshore Grand Prix, exiting Matanzas Pass between 11 a.m. and 3 p.m. will exit the marked channel at Matanzas Pass Channel daybeacon #3 (26°25.9′ N, 82°58.2′ W, LLNR 16365) and #4 (26°26.1′ N, 82°57.8′ W, LLNR 16370), and will proceed in a southwesterly direction seaward of the designated spectator area defined in paragraph (b) of these regulations, taking action to avoid a close-quarters situation until the vessel finally is past and clear of the racecourse. All coordinates referenced use datum: NAD 83. All vessel traffic, not involved with the Fort Myers Beach Offshore Grand Prix, exiting Big Carlos Pass between 11 a.m. and 3 p.m. will proceed in a southwesterly direction seaward of the designated spectator area defined in paragraph (b) of these regulations, taking action to avoid a close-quarters situation until finally past and clear of the racecourse.

Regulatory Evaluation

This rule is not a significant regulatory action under Section 3(f) of the Executive Order 12866 and does not require an assessment of the potential costs and benefits under Section 6(a)(3) of that Order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. These regulations will last for only 4 hours each day of the event.

Small Entities

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

For reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies that this action will not have a significant economic impact on a substantial number of small entities.

Collection of Information

These regulations contain no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this action and has concluded that preparation of an Environmental Impact Statement is not necessary. An Environmental Assessment and Finding of No Significant Impact are available in the docket for inspection or copying. The

Coast Guard has concluded that this action will not significantly affect the quality of the human environment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and record keeping requirements, Waterways.

Proposed Regulations

For reasons set out in the preamble, the Coast Guard amends 33 CFR Part 100 as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A new section 100.717 is added to read as follows:

§ 100.717 Annual Fort Myers Beach Offshore Grand Prix; Fort Myers, FL.

(a) *Regulated Area.* The regulated area is formed by a line drawn from the start/finish position, at the Fort Myers Beach pier (26°28.07′ N, 81°58.30′ W), thence to position 26°26.08′ N, 81°55.29′ W, thence to position 26°24.76′ N, 81°54.68′ W, thence to position 26°23.74′ N, 81°55.10′ W, thence to position 26°23.91′ N, 81°55.40′ W, thence to position 26°24.94′ N, 81°55.24′ W, thence to position 26°26.93′ N, 81°58.53′ W, thence to position 26°27.32′ N, 81°58.16′ W, thence back to the start/finish position, at the Fort Myers Beach pier (26°28.07, 81°58.30′ W). All coordinates referenced use datum: NAD 83.

(b) *Special local regulations.* (1) No vessel may anchor shoreward of the shoreside boundaries of the regulated area, from 11 a.m. to 3 p.m. edt.

(2) Spectator craft will be permitted to anchor seaward of the seaside boundaries of the regulated area, in the spectator area formed by a line drawn from the position 29°26.54′ N, 81°58.12′ W, thence to position 28°25.06′ N, 81°55.42′ W, thence to position 26°24.45′ N, 81°55.50′ W, thence to position 26°26.54′ N, 81°58.30′ W, thence back to position 29°26.54′ N, 81°58.12′ W, and in the spectator area formed by a line drawn from the position 26°25.06′ N, 81°54.18′ W, thence to position 26°23.47′ N, 81°54.00′ W, thence to position 25°24.05′ N, 81°54.47′ W, thence back to position 26°25.06′ N, 81°54.18′ W. All coordinates referenced use datum: NAD 83.

(3) All vessel traffic, not involved with the Fort Myers Beach Offshore Grand Prix, exiting Matanzas Pass between 11 a.m. and 3 p.m. will exit the marked channel at Matanzas Pass Channel daybeacon #3 (26°25.9′ N, 82°58.2′ W, LLNR 16365) and #4 (26°26.1′ N, 82°57.8′ W, LLNR 16370), and shall proceed in a southwesterly direction seaward of the spectator area defined in paragraph (b)(2) of this section, taking action to avoid a close-quarters situation until finally past and clear of the racecourse. All coordinates referenced use datum: NAD 83.

(4) All vessel traffic, not involved with the Fort Myers Beach Offshore Grand Prix, exiting Big Carlos Pass between 11 a.m. and 3 p.m. edt will exit the pass in a southwesterly direction seaward of the spectator area defined in paragraph (b)(2) of this section, taking action to avoid a close-quarters situation with the spectator craft until finally past and clear of the racecourse. All coordinates referenced use datum: NAD 83.

(5) Entry into the regulated area shall be in accordance with this regulation. Spectator vessels shall stay seaward of the seaside legs of the racecourse at all times in the spectator areas defined in paragraph (b)(2) of this section.

(c) *Effective Dates.* This section is effective at 11 a.m. and terminates at 3 p.m. edt annually during the first Saturday and Sunday of June.

Dated: May 22, 1996.

Roger T. Rufe, Jr.,

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

[FR Doc. 96–13998 Filed 6–4–96; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD07–96–021]

RIN 2115–AE46

Special Local Regulations: Augusta Southern National Drag Boat Races; Augusta, GA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing permanent special local regulations for the Augusta Southern National Drag Boat Races. As a permanent event, except this year, the Augusta Southern National Drag Boat Races will be held annually on Thursday, Friday, Saturday and Sunday during the third week of July, between 6 a.m. and 8 p.m. edt (Eastern Daylight Time). However, due to the 1996 Summer Olympic Games, this year's Augusta Southern National Drag Boat Races will be held on July 18–21, 1996 between 6 a.m. and 8 p.m. edt. Historically, there have been approximately 160, 16–18 foot drag boats racing two vessels per heat on a quarter mile long course on that portion of the Savannah River at Augusta, GA, between U.S. Highway 1 (Fifth St) Bridge at mile marker 199.45 and Eliot's Fish Camp at mile marker 197. The boats will be competing at high speeds and at close range. The nature of the event and the closure of the Savannah River create an extra or unusual hazard on the navigable waters. These regulations are necessary to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: July 5, 1996.

FOR FURTHER INFORMATION CONTACT: ENS M. J. DaPonte, project officer, Coast Guard Group Charleston at (803) 724–7621.

SUPPLEMENTARY INFORMATION:

Regulatory History

On April 18, 1996, the Coast Guard published a notice of proposed rulemaking entitled [CGD07–96–021] in the Federal Register (61 FR 16885). The comment period ended on May 20, 1996. The Coast Guard received no comments on the notice of proposed rulemaking. A public hearing was not requested and no hearing was held.

Discussion of Comments and Changes

No comments were received during the comment period. However, the regulations dates for this year are being changed due to the 1996 Olympic Yachting Competition. The Augusta Southern National Drag Races will occur permanently on an annual basis, except this year, on Thursday, Friday, Saturday, and Sunday of the third week in July from 6 a.m. to 8 p.m. edt. However, due to the Olympics this year's Augusta Southern National Drag Races will be held on July 18–21 from 6 a.m. to 8 p.m. edt.

Discussion of Regulations

These regulations are needed to provide for the safety of life during Augusta Southern National Drag Boat Races. These regulations are intended to promote safe navigation on the waters off Augusta on the Savannah River during the races by controlling the traffic entering, exiting, and traveling within these waters. The anticipated concentration of spectator and event participant vessels associated with the Drag Boat Races poses a safety concern, which is addressed in these special local regulations.

These regulations will not permit the entry or movement of spectator vessels and other non-event participating vessel traffic between the U.S. Highway Route

1 (Fifth Street) Bridge at mile marker 199.45 and Eliot's Fish Camp at mile marker 197 from 6 a.m. to 8 p.m. edt, on July 18, 19, 20, and 21, 1996, and then thereafter, annually on Thursday, Friday, Saturday and Sunday of the third week in July. These regulations will permit the movement of spectator vessels and other non-event participants after the termination of race each day, and during intervals between scheduled events at the discretion of the Coast Guard Patrol Commander.

Regulatory Evaluation

This regulation is not a significant regulatory action under Section 3(f) of the Executive Order 12866 and does not require an assessment of the potential costs and benefits under Section 6(a)(3) of that Order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. These regulations will only last for 14 hours each day of the event. No public comments were received during the notice of proposed rulemaking comment period.

Small Entities

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

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

Collection of Information

These regulations contain no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this rulemaking consistent with Section 2.B.2. of Commandant Instruction M16475.1B. In accordance with that section, this action has been environmentally assessed (EA completed), and the Coast Guard has concluded that it will not significantly affect the quality of the human environment. An environmental assessment and a finding of no significant impact have been prepared and are available for copying and inspection.

List of Subjects in 33 CFR Part 100

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

Final Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, the Coast Guard amends as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A new section 100.709 is added to read as follows:

§ 100.709 Annual Augusta Southern National Drag Boat Races; Savannah River, Augusta GA.

(a) *Definitions.* (1) *Regulated area.* The regulated area is formed by a line drawn directly across the Savannah River at the U.S. Highway 1 (Fifth Street) Bridge at mile marker 199.45 and directly across the Savannah River at Eliot's Fish Camp at mile marker 197. The regulated area encompasses the width of the Savannah River between these two lines.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Charleston, Charleston, South Carolina.

(b) *Special local regulations.* (1) Entry into the regulated area is prohibited to all non-event participants.

(2) After the termination of the Augusta Southern National Drag Boat Races each day, and during intervals between scheduled events, at the discretion of the Coast Guard Patrol Commander, all vessels may resume normal operations.

(c) *Effective Dates.* This section is effective annually on Thursday, Friday, Saturday and Sunday of the third week of July from 6 a.m. to 8 p.m. edt, except in 1996, the section is effective on July 18–21, 1996 from 6 a.m. to 8 p.m. edt.

Dated: May 22, 1996.

Roger T. Rufe, Jr.,

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

[FR Doc. 96–13997 Filed 6–4–96; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 6

RIN 1024–AC37

Change in Organizational Title From Regional Director to Field Director

AGENCY: National Park Service, Interior.

ACTION: Administrative amendment to final rule.

SUMMARY: The National Park Service (NPS) amended the General Provisions Definition of ''Regional Director'' to reflect a new organizational structure on November 3, 1995. With the recent reorganization of the NPS eliminating existing geographic regions (effective May 15, 1995), the term Regional Director is no longer an agency job position. The duties and responsibilities of these positions have been assumed by Field Directors. The amendment to the definitions replaced the term Regional Director with Field Director wherever it appeared in 36 CFR Parts 1–199, as well as eliminated all reference to the former geographic regions.

This change was necessary because the terms Region and Regional Director are no longer recognized in the NPS reorganizational structure. Certain responsibilities and delegations of authority associated with the former Regional Directors are now assumed by the positions identified by the term Field Director. Publication of this change is also a requirement of the Federal Register Act. Unfortunately, the necessary amendments to 36 CFR Part 6 were inadvertently omitted from the original document and are addressed through this administrative amendment to the final rule.

EFFECTIVE DATE: This final rule becomes effective on June 5, 1996.

FOR FURTHER INFORMATION CONTACT: Dennis Burnett, Ranger Activities Division, National Park Service, P.O. Box 37127, Washington, D.C., 20013–7127. Telephone 202–208–4874.

SUPPLEMENTARY INFORMATION:

Background

The National Park System of the United States comprises 369 areas covering over 80 million acres in 49 States, the District of Columbia, American Samoa, Guam, Puerto Rico, Sampan and the Virgin Islands. These areas of national significance justify special recognition and protection in accordance with various acts of Congress.

In 1995, as a result of: (1) the NPS's own assessment of a need to change how it accomplished its essential work with increasing constraints; (2) the National Performance Review (NPR), which directed Federal agencies to cut red tape, put customers first, empower employees to get results and reduce layers in organizations; and (3) The Federal Workforce Restructuring Act of 1994 (P.L. 103–226), a government-wide Workforce reduction, the NPS implemented a Servicewide restructuring of the organization. The reorganization effort drastically reduces central office staffs. The 10 NPS Regional Directors have been replaced by 7 Field Directors, who provide direction, oversight, budget formulation and assistance in media relations for the parks and support offices in their geographical field areas. With the change and revision of the regional concept, all national park units are now grouped into clusters to act collaboratively in sharing limited resources. A network of 16 system support offices provide services and support to the parks by cluster.

The President of the United States, through the Secretary of the Interior and the Director of the NPS, allowed the Regional Directors of the ten Regional Offices certain delegated authorities in the management of the park units. 36 CFR Parts 1–199 contains many of these authorities. Because the term Regional Director is codified in the CFR, the definition of Regional Director must be replaced to reflect the new authorities given to Field Directors as a result of the reorganization. Many of these authorities have the enforcement powers of law. On November 3, 1995, the NPS published a final rule in the Federal Register (60 FR 55789) changing the nomenclature in 36 CFR Parts 1–199 from Regional Director to Field Director.

The NPS adopts this final rule pursuant to the ''agency organization'' exception of the Administrative Procedure Act (5 U.S.C. 553(b)(A)) from general notice and comment rulemaking. The NPS believes that this exception from rulemaking procedures is warranted because it is merely a change in agency organizational structure. The NPS finds that notice and comment are unnecessary and contrary to the public interest for this final rule.

The NPS has also determined, in accordance with the Administrative Procedure Act (5 U.S.C. 553(d)(3)), that the publishing of this final rule 30 days prior to the rule becoming effective would be counterproductive and unnecessary for the reasons discussed above. A 30-day delay would be contrary to the public interest and the interest of the agency. Therefore, under the ''good cause'' exception of the Administrative Procedure Act (5 U.S.C. 553(d)(3)), it has been determined that this rulemaking is excepted from the 30-day delay in the effective date and shall therefore become effective on the date published in the Federal Register.

Drafting Information. The primary author of this final rule is Dennis Burnett, Washington Office of Ranger Activities, National Park Service.

Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

Compliance With Other Laws

This rule was not subject to Office of Management and Budget review under Executive Order 12866. The Department of the Interior has determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). The economic effects of this rulemaking are negligible.

The NPS has determined that this proposed rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce incompatible uses which compromise the nature and characteristics of the area or cause physical damage to it;

(c) Conflict with adjacent ownership or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, the regulation is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental guidelines in 516 DM 6 (49 FR 21438). As such, neither an Environmental Assessment (EA) nor an Environmental Impact Statement (EIS) has been prepared.

List of Subjects in 36 CFR Part 6

National parks, Natural resources, Penalties, Reporting and recordkeeping requirements, Waste treatment.

In consideration of the foregoing, and under the authority at 18 U.S.C. 1 and 3, 36 CFR Chapter I is amended as follows:

PART 6—SOLID WASTE DISPOSAL SITES IN UNITS OF THE NATIONAL PARK SYSTEM

1. The authority citation for 36 CFR part 6 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 4601–22(c).

2. 36 CFR Part 6 is amended by removing the term ''Regional Director'' and inserting the term ''Field Director'' in its place each time it appears.

Dated: May 29, 1996.

George T. Frampton,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 96–14122 Filed 6–4–96; 8:45 am]

BILLING CODE 4310–70–P

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36 CFR Part 7

RIN 1024–AC42

Appalachian National Scenic Trail, Powerless Flight

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service (NPS) is adopting this final rule to allow powerless flight along the Appalachian National Scenic Trail at times and locations designated by the Park Manager, pursuant to the terms and conditions of a permit. The terms and conditions of a Special Use Permit (SUP) will in all cases prohibit stunt flying, commercialization, advertising, publicity, contests, meets, demonstrations and motor vehicular access on non-public roads. In addition, the Park Manager may require, as a standard condition of the SUP, that all hang gliders using the designated site be qualified pilots licensed by the United States Hang Gliding Association. The frequency of launch sites, level of use, availability of alternate sites and cumulative impacts on the remote recreational experience and character of the Appalachian Trail will be significant factors in determining whether new launch and/or landing sites will be designated.

EFFECTIVE DATE: This final rule becomes effective on July 5, 1996.

FOR FURTHER INFORMATION CONTACT: Virginia F. Williams, NPS, Appalachian National Scenic Trail, Harpers Ferry Center, Harpers Ferry, WV 25425. Telephone (304) 535–6278

SUPPLEMENTARY INFORMATION:

Background

The Appalachian National Scenic Trail (AT) is a north-south hiking trail that stretches nearly 2,200 miles from Mt. Katahdin, Maine, to Springer Mountain, Georgia, along the crest of the Appalachian Mountains. The AT is administered by the Secretary of the Interior through the NPS, as part of the National Trails System.

At its inception, the AT traversed mostly private lands. Use of the private lands was enjoyed not only by hikers, but also by other types of outdoor enthusiasts. In the late 1970's, hang gliders in the area of Fox Gap, Pennsylvania, with the permission of the landowner, began launching from the ridgetop known as Kirkridge, along the crest of the Appalachian Mountains. The hang gliders formally organized and established the Water Gap Hang Gliding Club (WGHGC) for the purpose of promoting the safety of hang gliding and addressing liability issues.

Originally, the WGHGC used the area with the express permission of the landowner and, after the area was acquired by the NPS, the WGHGC requested permission from the NPS and was issued a SUP to continue using the AT area as a launch site. During the review process conducted by the NPS in 1995 for the renewal of the SUP for the WGHGC, the NPS discovered that a 1983 revision to the general regulations found at 36 CFR 2.17 had created the requirement of a special regulation before the NPS could renew the WGHGC permit. Private managing partners were consulted and they endorse seeking the special regulation.

Other sites along the AT have historically been used as launch sites for hang gliders prior to NPS acquisition. To date, the WGHGC is the only organized club that has requested a permit to maintain a launch site.

A proposed regulation was published in the Federal Register on January 31, 1996 (60 FR 3358) to allow hang gliding at the Fox Gap site pursuant to the terms and conditions of a permit. Public comment was invited. The comment period closed March 1, 1996.

Summary of Comments Received

During the public comment period, the NPS received 620 letters, of which 618 were identical form letters. After the close of the comment period, approximately 300 additional form letters were received. All of the respondents to the proposed rule endorsed hang gliding use of the Fox Gap site. However, the 918 form letters urged the NPS to seek a broader, non site-specific special regulation. After considering all of the public comments received, the NPS has decided to endorse a broader rule, and to proceed with a final rule with a modification of the proposed rule from a site specific regulation to a non site-specific special regulation that may allow powerless flight on AT acquired lands at times and locations designated by the Park Manager, pursuant to the terms and conditions of a permit.

Drafting Information. The primary authors of this final rule are Park Manager Pamela Underhill, Landscape Architect Virginia F. Williams at the Appalachian National Scenic Trail Office and Dennis Burnett, Washington Office of Ranger Activities, National Park Service.

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection requirements contained in this final rule have been approved by the Office of Management and Budget and assigned clearance number 1024–0026. This information is being collected for the Superintendent to issue a permit. The information will be used to grant administrative benefits. The obligation to respond is required to obtain a benefit.

Compliance With Other Laws

This rule was not subject to Office of Management and Budget review under Executive Order 12866. The Department of the Interior determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). Any economic effects of this rulemaking will be local in nature and negligible in scope.

The NPS has determined that this final rule will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce incompatible uses which compromise the nature and character of the area or causing physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, the regulation is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental guidelines in 516 DM 6 (49 FR 21438). As such, neither an Environmental Assessment (EA) nor an Environmental Impact Statement (EIS) has been prepared. However, as requests for permits for specific launch or landing sites are received, an EA in accordance with the procedural requirements of NEPA, and by Departmental guidelines, may be required.

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, 36 CFR Chapter I, is amended as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

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

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. Section 7.100 is amended by adding paragraph (c) to read as follows:

§ 7.100 Appalachian National Scenic Trail.

* * * * *

(C) Powerless flight. The use of devices designed to carry persons through the air in powerless flight is allowed at times and locations designated by the Park Manager, pursuant to the terms and conditions of a permit.

Dated: May 29, 1996.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 96–14103 Filed 6–4–96; 8:45 am]

BILLING CODE 4310–70–P

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36 CFR Part 17

RIN 1024–AC27

Conveyance of Freehold and Leasehold Interests

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service (NPS) is revising portions of the regulations for conveyance of freehold and leasehold interests on lands administered by the NPS. The final rule will allow bids for freehold and

leasehold interests on lands to be accompanied by earnest money equivalent to 2 percent of the appraised value or $2,500, whichever is greater, with the balance of the bid due within 45 days of the award. The NPS has experienced problems selling parcels of real estate under the current regulations, which require that bids be accompanied by certified checks, post office money orders, bank drafts or cashier's checks for the full amount of the bids. The changes to the regulations address this issue and will correct the problem identified with the previous regulations. With these changes, the NPS will be able to convey freehold and leasehold interests on federally owned lands.

This final rule also provides for a time frame for submitting the balance of the bid and describes what occurs if the successful bidder is unable to obtain the necessary financing in the case of a freehold interest. The NPS is revising and amending the current regulations on action at close of bidding, by allowing 45 days from the time of bid award to submit the balance due. Failure to submit the full bid price within 45 days will result in forfeiture of $1,000 of the deposited bid amount and the property will be awarded to the next highest bid.

EFFECTIVE DATE: This rule becomes final on July 5, 1996.

FOR FURTHER INFORMATION CONTACT: Jeff Winstel, Historian, Cuyahoga Valley National Recreation Area, 15160 Vaughn Road, Brecksville, OH 44114. Telephone (216) 546–5975.

SUPPLEMENTARY INFORMATION:

Background

The current NPS regulations regarding conveyance of freehold and leasehold interests on land are codified in 36 CFR part 17 and authorize sale of Federal real property acquired from non-Federal sources.

On June 3, 1993, Cuyahoga Valley National Recreation Area, a unit of the National Park System, held a bid opening for the purpose of selling 1.13 acres of improved Federally owned land. Improvements included a historic three-bedroom residence, a detached single car garage and two small sheds. Historic preservation deed restrictions were placed on the structures and scenic deed restrictions were placed on the property.

The property was marketed extensively. It was listed in the Federal Register, advertised in a local paper for five consecutive weeks, marketed with a local realtor, listed in the Multiple Listing Service, advertised on local television channels and open houses were held on four days. There was considerable interest in the property with 180 prospective buyers attending the open houses and private showings. Interviews with park officials by news media reporters regarding the property appeared on local TV stations and in local newspapers.

When the property was open for bid on June 3, 1993, not a single bid was received. This lack of response was a concern and inquiries were made of 50 people who had attended the open houses and expressed a sincere interest in buying the property. The major reason given for not bidding was the requirement that the full amount of the bid be enclosed with the bid. No lending institution would approve this type of arrangement.

The NPS is therefore revising this regulation. The NPS is amending the sixth sentence of 36 CFR 17.5 as follows: ''Bid must be accompanied by certified checks, post office money orders, bank drafts or cashier's checks made payable to the United States of America for 2 percent of the fair market value or $2,500, whichever is greater, in the case of a freehold interest or for the amount of the first year's rent in the case of a leasehold interest.''

The NPS is also amending 36 CFR 17.6 by adding the following two sentences to the end of the section: ''In the case of a freehold interest the high bidder must submit the balance of the bid within 45 days of the bid award in the form of certified check, post office money order, bank draft or cashier's check made payable to the United States of America. Failure to submit the full balance within 45 days will result in forfeiture of $1,000 of the bid deposit, unless the bidder has been released from the bid or an extension has been granted by the authorized officer, and the property will be awarded to the next highest bidder upon fulfillment of the requirements of this section.''

These changes will improve the existing regulations by permitting prospective bidders to participate without an outlay of a large sum of cash. This amendment will also facilitate the ''sellback'' of historic structures to the private sector and place real property on the local tax rolls. The historic and scenic values of the properties will be protected through deed restrictions.

On February 12, 1996, the NPS published the proposed regulation that will amend these regulations for conveyance of freehold and leasehold interests on lands administered by the NPS (61 FR 5356). The comment period closed on April 12, 1996. No comments were received during the public comment period. This rule becomes final 30 days after publication in the Federal Register.

Drafting Information. The primary author of this regulation is John P. Debo, Jr., Superintendent, Cuyahoga Valley National Recreation Area.

Paperwork Reduction Act

This final rule does not contain collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

Compliance With Other Laws

This final rule was not subject to Office of Management and Budget review under Executive Order 12866. The Department of the Interior determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). In fact, this rulemaking will lessen the economic burden on prospective bidders by not requiring the full amount of the bid at the time of the bid.

The NPS has determined that this rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce non-compatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulations in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment (EA) nor an Environmental Impact Statement (EIS) has been prepared.

List of Subjects in 36 CFR Part 17

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, 36 CFR Chapter I is amended as follows:

PART 17—CONVEYANCE OF FREEHOLD AND LEASEHOLD INTERESTS ON LANDS OF THE NATIONAL PARK SYSTEM

1. The authority citation for Part 17 continues to read as follows:

Authority: Sec 5(a) of the Act of July 15, 1968, 82 Stat. 354, 16 U.S.C. 4601–22(a).

2. Section 17.5 is amended by revising the sixth sentence to read as follows:

§ 17.5 Bids.

* * * Bids must be accompanied by certified checks, post office money orders, bank drafts, or cashier's checks made payable to the United States of America for 2 percent of the amount of the fair market value or $2,500, whichever is greater, in the case of a freehold interest or for the amount of the first year's rent in the case of a leasehold interest. * * *

3. Section 17.6 is amended by adding two sentences to the end of the section, to read as follows:

§ 17.6 Action at close of bidding.

* * * In the case of a freehold interest, the high bidder must submit the balance of the bid within 45 days of the bid award in the form of a certified check, post office money order, bank draft, or cashier's check, made payable to the United States of America. Failure to submit the full balance within 45 days will result in the forfeiture of $1,000 of bid deposit, unless the bidder has been released from the bid or an extension has been granted by the authorized officer, and the property will be awarded to the next highest bidder upon fulfillment of the requirements of this section.

Date: May 19, 1996.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 96–14104 Filed 6–4–96; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264, 265, 270, and 271

[FRL–5509–4]

RIN 2060–AB94

Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Amendment of final rule to postpone requirements.

SUMMARY: This document amends the EPA standards to postpone the effective date of the requirements in the December 6, 1994 final rule entitled, ''Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers'' until October 6, 1996.

DATES: These amendments are effective June 5, 1996.

ADDRESSES: Docket. The supporting information used for the final rule is available for public inspection and copying in the RCRA docket. The RCRA docket numbers pertaining to the final rule are F–91–CESP–FFFFF, F–92–CESA–FFFFF, F–94–CESF–FFFFF, F–94–CE2A–FFFFF, F–95–CE3A–FFFFF, and F–96–CE4A–FFFFF. The RCRA docket is located at Crystal Gateway, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. Review of docket materials is conducted at the Virginia address; an appointment is required to review docket materials. Appointments can be scheduled by calling the Docket Office at (703) 603–9230. The mailing address for the RCRA Docket Office is RCRA Information Center (5305W), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: For information about this postponement contact the RCRA Hotline at (800) 424–9346 toll-free, or (703) 920–9810.

SUPPLEMENTARY INFORMATION:

1. Postponement of Effective Date for Rule Requirements

The effective date of the requirements in the final rule, originally published December 6, 1994 (59 FR 62896) and postponed November 13, 1995 (60 FR 56952), are further postponed until October 6, 1996. The requirements of these final standards were originally scheduled to become effective as of June 5, 1995. The EPA specified in the final rule a schedule that established the compliance dates by which different requirements of the final rule must be met. These compliance dates and requirements are explained further in the final rule (59 FR 62896, December 6, 1994) under **SUPPLEMENTARY INFORMATION.** Today's amendment changes only the effective date of the requirements contained in the final standards. The effective date will be October 6, 1996 for all provisions of the standards, including the applicability of 40 CFR part 265 subparts AA, BB, and CC to 90-day accumulation units at hazardous waste generators, the applicability of 40 CFR part 265 subparts AA, BB, and CC to RCRA permitted units, and the applicability of the final standards to tanks in which waste stabilization activities are performed. All other compliance dates for the final rule remain as published in the final rule (59 FR 62896.)

The EPA initially extended the effective date of the requirements in the final rule for six months to allow time to clarify certain provisions of the final rule and develop other compliance options (see 60 FR 26828, May 19, 1995). On August 14, 1995 the EPA published a Federal Register notice, ''Proposed rule; data availability'' (60 FR 41870) and opened RCRA docket F–95–CE3A–FFFFF to accept comments on revisions that the EPA is considering for the final standards. The provisions of the final rule that these revisions would affect are the waste determination procedures, the standards for containers, and the applicability of the final standards to units that operate air emission controls in accordance with certain Clean Air Act standards. In addition, these revisions would reduce the monitoring, record keeping, and reporting requirements for affected tanks, surface impoundments, and containers.

The EPA accepted public comments on the appropriateness of these revisions through October 13, 1995, and is now in the process of finalizing amendments to the final rule to incorporate the described revisions, based on the information the EPA noticed and the comments EPA received. As anticipated, the amendments will provide certain compliance options for waste determination procedures and for container standards that are not currently available in the published final rule. On November 13, 1995 (60 FR 56952) the EPA again postponed the effective date of the rule requirements until June 6, 1996 to allow time for the EPA to publish amendments to the December 6, 1994 final standards. The EPA expects to publish these amendments in the near future. Given that the EPA is in the process of amending the rule in ways that would increase compliance flexibility and possibly reduce certain regulatory requirements, the EPA considers it appropriate to delay the June 6, 1996 effective date of the rule requirements for four months. (See 5 U.S.C. 705, ''when an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review.'') In particular, the EPA is not sure that it will have adequate time to promulgate the amendments before June 6, 1996 to allow facilities to avoid compliance expenditures based on the December 6, 1994 final rule, expenditures which may prove unnecessary in light of the projected amendments. This postponement will thus allow time for the EPA to publish

the amendments. The EPA anticipates that by October 6, 1996 affected sources will have had ample time to make any necessary alterations to their compliance plans in response to the amendments. Affected sources have been on notice of the final regulations since they were published in December of 1994. The EPA expects that by early 1995, most facilities had begun preparing their implementation strategies and planning for any necessary equipment modifications, in anticipation of the originally scheduled implementation date of June 6, 1995. Thus, the EPA considers today's four month extension to be sufficient time for affected facilities to become familiar with the revised requirements contained in the amended standards, and to make any necessary revisions to their implementation strategies.

The EPA has received a request to stay the rule from parties that brought judicial challenges to the December 6, 1994 published rule. In taking this action to postpone the effective date of the rule requirements, the EPA is not concurring that the criteria for a stay (such as likelihood of irreparable harm or likelihood that these parties will ultimately prevail should the rule be litigated) are met. Rather, as a prudential matter, the EPA believes that a four month delay is appropriate for the reasons explained above.

2. Retention of Final Compliance Date of December 8, 1997

The December 6, 1994 published rule set a final compliance date of December 8, 1997, by which time all required air emission control equipment must be operating (59 FR 62897). The EPA does not believe that postponing the effective date of the rule requirements necessitates any postponement of the December 8, 1997 compliance date. The final compliance date was chosen to allow time for facility modifications that may be involved in the compliance approach of certain facilities. The EPA believes that, for many air emission control applications, the required control devices can be installed and in operation within several months. However, the EPA agrees that under some circumstances, the owner's or operator's approach to complying with the air emission control requirements under the subpart CC standards may involve a major design and construction project which requires a longer time to complete. In recognition of these cases, the EPA decided that it is reasonable to allow up to December 8, 1997 for affected facilities to install and begin operation of air emission controls required by the supbart CC standards. (Hazardous Waste TSDF Background Information Document for Promulgated Organic Air Emission Standards, EPA–453/R–94–076b, page 9–7.)

The final rule requirements that may necessitate a major modification, as described above, for tanks are paragraphs (b) through (d) of 40 CFR parts 264.1084 and 265.1085. These paragraphs specify air emission control equipment that must be operated on tanks receiving affected hazardous waste. Similarly, the requirements that may necessitate such a major modification for surface impoundments are paragraphs (b) through (e) of 40 CFR parts 264.1085 and 265.1086. These paragraphs specify air emission control equipment that must be operated on surface impoundments receiving affected hazardous waste. To comply with these requirements for tanks and surface impoundments, facilities may choose to construct new hazardous waste management units to replace existing units, or may choose to modify existing hazardous waste management units. Examples of facility equipment modifications that could require an extended period of compliance would be replacing a large open surface impoundment with a series of covered tanks, or fitting an existing open tank with a fixed roof vented to a control device. The EPA recognizes that such major modifications or new construction can require several months or more, and therefore allows until December 8, 1997 for facilities to comply with the air emission control requirements of the final subpart CC standards.

In addition, certain States may require that a facility obtain a permit modification prior to performing a major modification such as those described above. The EPA recognizes that such permit modifications can be a lengthy process, and therefore felt it was appropriate to afford an extended compliance period to allow such modifications to be obtained (59 FR 62919). The EPA does not expect that such a lengthy period of implementation would be required in circumstances other than those described above, although § 264.1082(c) allows that such a period is available if necessary.

The final rule provisions that justified a compliance date of December 8, 1997 are not among those that are potentially affected by the revisions currently under EPA's consideration. Specifically, the EPA is not considering changes to the requirements for covers and air emission controls on tanks and surface impoundments. All affected facilities have been on notice of the final rule air emission control requirements for these units since the final rule publication on December 6, 1994. Therefore, the EPA does not consider it appropriate to postpone the compliance date of December 8, 1997, by which all required air emission control equipment must be operating.

3. Conclusion

The EPA is amending the final rule such that the final rule requirements are not effective until October 6, 1996. The final rule text affected by this postponement is amended as follows.

List of Subjects

40 CFR Parts 264 and 265

Air pollution control, Container, Control device, Hazardous waste, Incorporation by reference, Inspection, Miscellaneous unit, Monitoring, Reporting and recordkeeping requirements, Standards, Surface impoundment, Tank, TSDF, Waste determination.

40 CFR Part 271

Administrative practice and procedure, Air pollution control, Confidential business information, Hazardous waste, Reporting and recordkeeping requirements.

Dated: May 16, 1996.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

For the reasons set out in the preamble, title 40, chapter I, parts 264, 265, and 271 of the Code of Federal Regulations are amended as follows:

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924 and 6925.

Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

2. Section 264.1080 is amended by revising paragraphs (b)(1) and (c) to read as follows:

§ 264.1080 Applicability.

* * * * *

(b) * * *

(1) A waste management unit that holds hazardous waste placed in the unit before October 6, 1996, and in

which no hazardous waste is added to the unit on or after this date.

* * * * *

(c) For the owner and operator of a facility subject to this subpart and who received a final permit under RCRA section 3005 prior to October 6, 1996, the requirements of this subpart shall be incorporated into the permit when the permit is reissued in accordance with the requirements of 40 CFR 124.15 of this chapter or reviewed in accordance with the requirements of 40 CFR 270.50(d) of this chapter. Until such date when the owner and operator receives a final permit incorporating the requirements of this subpart, the owner and operator is subject to the requirements of 40 CFR Part 265 subpart CC.

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

3. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

4. Section 265.1080 is amended by revising paragraph (b)(1) and paragraph (c) introductory text to read as follows:

§ 265.1080 Applicability.

* * * * *

(b) * * *

(1) A waste management unit that holds hazardous waste placed in the unit before October 6, 1996, and in which no hazardous waste is added to the unit on or after this date.

* * * * *

(c) For the owner and operator of a facility subject to this subpart who has received a final permit under RCRA section 3005 prior to October 6, 1996, the following requirements apply:

* * * * *

5. Section 265.1082 is amended by revising paragraphs (a) introductory text, paragraph (a)(1), (a)(2) introductory text, (a)(2)(iii), and (a)(2)(iv) to read as follows:

§ 265.1082 Schedule for implementation of air emission standards.

(a) Owners or operators of facilities existing on October 6, 1996, and subject to subparts I, J, and K of this part shall meet the following requirements:

(1) Install and begin operation of all control equipment required by this subpart by October 6, 1995, except as provided for in paragraph (a)(2) of this section.

(2) When control equipment required by this subpart cannot be installed and in operation by October 6, 1996, the owner or operator shall:

* * * * *

(iii) For facilities subject to the recordkeeping requirements of § 265.73 of this part, the owner or operator shall enter the implementation schedule specified in paragraph (a)(2)(ii) of this section in the operating record no later than October 6, 1996.

(iv) For facilities not subject to § 265.73 of this part, the owner or operator shall enter the implementation schedule specified in paragraph (a)(2)(ii) of this section in a permanent, readily available file located at the facility no later than October 6, 1996.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

6. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

Subpart A—Requirements for Final Authorization

7. Section 271.1(j) is amended by revising the effective date of the following entry in Table 1 to read as follows:

§ 271.1 Purpose and Scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	**Federal Register** reference	Effective date
* *	* *	* *	* *
December 6, 1994	Air Emission Standards for Tanks, Surface Impoundments, and Containers.	59 FR 62896–62953	October 6, 1996.

8. Section 271.1(j) is amended by revising the effective date of the following entry in Table 2 to read as follows:

§ 271.1 Purpose and Scope.

* * * * *

(j) * * *

TABLE 2.—SELF-IMPLEMENTING PROVISIONS OF THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	**Federal Register** reference
* *	* *	* *	* *
October 6, 1996	Air Emission Standards for Tanks, Surface Impoundments, and Containers.	3004(n)	December 6, 1994, 59 FR 62896–62953.

[FR Doc. 96–14106 Filed 6–4–96; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 300

[FRL–5511–9]

Substances Contingency Plan: National Priorities List Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of deletion of the Waste Disposal Engineering Superfund Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Waste Disposal Engineering Inc. Site in Minnesota from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR part 300 which is National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. This action is being taken by EPA and the State of Minnesota, because it has been determined that Responsible Parties have implemented all appropriate response actions required. Moreover, EPA and the State of Minnesota have determined that remedial actions conducted at the site to date remain protective of public health, welfare, and the environment.

EFFECTIVE DATE: June 5, 1996.

FOR FURTHER INFORMATION CONTACT: Larry Schmitt at (312) 353–6565 (SR–6J), Remedial Project Manager or Gladys Beard at (312) 886–7253, Associate Remedial Project Manager, Superfund Division, U.S. EPA—Region V, 77 West Jackson Blvd., Chicago, IL 60604. Information on the site is available at the local information repository located at: The Anoka County Community Health and Environmental Service, Anoka County Government Center, RM. 360, 2100 3rd Ave., Anoka, MN 55303 and Andover City Hall, 1685 Crosstown Blvd., Andover, MN 55304. Requests for comprehensive copies of documents should be directed formally to the Regional Docket Office. The contact for the Regional Docket Office is Jan Pfundheller (H–7J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–5821.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Waste Disposal Engineering Inc. Site located in Andover, Minnesota. A Notice of Intent to Delete for this site was published March 26, 1996 (61 FR 13131). The closing date for comments on the Notice of intent to Delete was April 26, 1996. EPA received no comments and therefore no Responsiveness Summary was prepared.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund-) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL in the unlikely event that conditions at the site warrant such action. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous substances, Hazardous Waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

PART 300—[AMENDED]

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

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

Appendix B to Part 300 [Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the Site ''Waste Disposal Engineering Inc. Site, Andover, Minnesota''.

Dated: May 14, 1996.

Valdas V. Adamkus,

Regional Administrator, U.S. EPA, Region V.

[FR Doc. 96–13985 Filed 6–4–96; 8:45 am]
BILLING CODE 6560–50–M

Proposed Rules

Federal Register
Vol. 61, No. 109
Wednesday, June 5, 1996

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

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB56

Common Crop Insurance Regulations; Texas Citrus Fruit Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, Agriculture.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes specific crop provisions for the insurance of Texas citrus fruit. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured and combine the current Texas Citrus Endorsement with the Common Crop Insurance Policy for ease of use and consistency of terms.

DATES: Written comments, data, and opinions on this proposed rule will be accepted until close of business July 5, 1996 and will be considered when the rule is to be made final. The comment period for information collections under the Paperwork Act of 1995 continues through August 5, 1996.

ADDRESSES: Interested persons are invited to submit written comments to the Chief, Product Development Branch, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131. Written comments will be available for public inspection and copying in room 0324, South Building, USDA, 14th and Independence Avenue, S.W., Washington, D.C., 8:15 a.m.–5:45 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Louise Narber, Program Analyst, Research and Development Division, Product Development Branch, FCIC, Kansas City, MO, address listed above, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866 and Departmental Regulation 1512–1

This action has been reviewed under United States Department of Agriculture (USDA) procedures established by Executive Order No. 12866 and Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is April 30, 2001.

This rule has been determined to be not significant for the purposes of Executive Order No. 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

The information collection requirements contained in these regulations were previously submitted to OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) under OMB control number 0563–0003 through September 30, 1998.

The amendments set forth in this proposed rule do not contain additional information collections that require clearance by OMB under the provisions of 44 U.S.C. chapter 35.

The title of this information collection is ''Catastrophic Risk Protection Plan and Related Requirements including, Common Crop Insurance Regulations; Texas Citrus Fruit Crop Insurance Provisions.'' The information to be collected includes: a crop insurance acreage report, an insurance application, and continuous contract. Information collected from the acreage report and application is electronically submitted to FCIC by the reinsured companies. Potential respondents to this information collection are producers of Texas citrus fruit that are eligible for Federal crop insurance.

The information requested is necessary for the reinsured companies and FCIC to provide insurance and reinsurance, determine eligibility, determine the correct parties to the agreement or contract, determine and collect premiums or other monetary amounts, and pay benefits.

All information is reported annually. The reporting burden for this collection of information is estimated to average 16.9 minutes per response for each of the 3.6 responses from approximately 1,755,015 respondents. The total annual burden on the public for this information collection is 2,676,932 hours.

The comment period for information collections under the Paperwork Reduction Act of 1995 continues for the following: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information gathering technology.

Comments regarding paperwork reduction should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Bonnie Hart, Advisory and Corporate Operations Staff, Regulatory Review Group, USDA, Farm Service Agency, P.O. Box 2145, Ag Box 0570, Washington, D.C. 20013–2415. Telephone (202) 690–2857. Copies of the information collection may be obtained from Bonnie Hart at the above stated address.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, FCIC generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures of State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. When such a statement is needed for a rule, section

205 of the UMRA generally requires FCIC to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) of State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. Under the current regulations, an insured is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. An insured must use actual records of production or receive a transitional yield. This regulation does not alter those requirements. Therefore, the amount of work required of the insurance companies and Farm Service Agency (FSA) offices delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the insured. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

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

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require 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 No. 12778

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions in 7 CFR parts 11 and 780 must be exhausted before action for judicial review may be brought.

Environmental Evaluation

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

National Performance Review

This regulatory action is being taken as part of the National Performance Review initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

FCIC proposes to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR § 457.119, Texas Citrus Fruit Crop Insurance Provisions. The provisions will be effective for the 1998 and succeeding crop years. The proposed provisions will replace those found at 7 CFR § 401.115 (Texas Citrus Endorsement). Upon publication of 7 CFR § 457.119 as a final rule, the provisions for insuring Texas citrus fruit contained herein will supersede the current provisions contained in 7 CFR § 401.115. By separate rule, FCIC will revise 7 CFR § 401.115 to restrict its effect through the 1997 crop year and later remove that section.

This rule makes minor editorial and format changes to improve the Texas Citrus Crop Insurance Endorsement's compatibility with the Common Crop Insurance Policy. In addition, FCIC is proposing substantive changes in the provisions for insuring Texas citrus fruit as follows:

1. Section 1—Add definitions for ''days,'' ''direct marketing,'' ''FSA,'' ''good farming practices,'' ''interplanted,'' ''irrigated practice,'' ''local market price,'' ''production guarantee (per acre),'' ''type,'' ''ton,'' and ''written agreement'' for clarification purposes.

2. Section 1—Change the definitions for ''freeze,'' ''harvest,'' ''hedged,'' ''non-contiguous land,'' and ''topped,'' for clarification.

3. Section 1—Delete the definition for ''frost'' because frost as a cause of loss has been eliminated as unnecessary. The definition of ''freeze'' includes damage from frost. Also, replace the definition of ''excess moisture'' with ''excess rain'' for clarification.

4. Section 2—Add provisions to allow optional unit division by section, section equivalent, or FSA Farm Serial Number, or by non-contiguous land so that the unit structure will be the same in both the Texas Citrus Fruit Provisions and the Texas Citrus Tree Provisions. The previous provisions only allowed basic units to be divided into more than one unit by section if each unit was non-contiguous.

5. Section 3(a)—Clarify that an insured may select one price election for each citrus type, and that the price election selected for each type need not bear the same percentage relationship to the maximum price offered for each type. Since each type of Texas citrus fruit is considered a separate crop, it should not be treated any differently than any other crop with a separate price election. The insured may select any available price election. However, if separate price elections are available by variety within each type, the price elections the insured chooses within the type must have the same percentage relationship to the maximum price offered by the insurance provider for each variety within the type.

6. Section 3(b)—Add a provision for a 1-year lag period for the insured to report citrus production for Actual Production History (APH) because all of the fruit will not be harvested until after the production reporting date.

7. Section 3(c)—Add provisions for reporting the age and type, if applicable, of any interplanted perennial crop, its planting pattern, and any other information that the insurance provider requests in order to establish the yield upon which the insurance guarantee is based. If the producer fails to notify the insurance provider of any circumstances that may cause the expected yield to fall below the yield upon which the insurance guarantee is based, the insurance provider will reduce the production guarantee at any time the insurance provider becomes aware of the circumstances. This allows the insurance provider to limit liability before insurance attaches based on the condition of the citrus trees.

8. Section 3(d)—The yield upon which the guarantee is based will be determined from APH yields unless previous damage requires establishment of the yield based on the appraised yield

for the insured acreage. Currently the guarantee is based on crop appraisals because a hard freeze severely damaged the citrus trees a few years ago. Enough time has passed to determine the producers' guarantee based on the producers' individual yield.

9. Section 5—Change the cancellation and termination dates from November 30 to November 20 to be consistent with other perennial crops.

10. Section 6—Clarify that all premium computations will be based on the final stage production guarantee.

11. Section 7—Include the insurable citrus type designations in the Special Provisions rather than in the Texas Citrus Fruit Provisions. This will prevent the need for an amendment to the Texas Citrus Fruit Crop Provisions if it is later determined that additional types need to be added. Also, eliminate the provision that requires acceptable production records for the previous crop year for insurance to attach. There is a 1 year lag period for reporting production.

12. Section 8—Add a provision making interplanted citrus insurable if planted with another perennial crop unless after an inspection, the insurance provider determines it does not meet insurability requirements. This clause will make insurance available to more producers and will reduce the number of acres for which coverage would only be available under the noninsured crop disaster assistance program (NAP).

13. Section 9—Change the beginning of the insurance period from December 1 to November 21 to be consistent with other perennial crops. However, for the 1st crop year for which insurance is sought, if the application is accepted by the insurance provider after November 20, insurance will attach on the 10th day after the application is received in the insurance provider's local office. The current requirement that insurance will not attach for 30 days after the application is received if not received until after November 30, creates an unnecessary lag time during which the crop is not covered. Add provisions to clarify the procedure for insuring acreage when an insurable share is acquired or relinquished on or before the acreage reporting date. Under the current Texas Citrus Endorsement for acreage acquired (for which an application is in place) on or before the acreage reporting date, coverage would attach at the time the insurer considers the crop inspection as being acceptable provided it was on or after November 30 (and not a late filed application and the first year of insurance). In the same situation under these new provisions, coverage will have started on November 21 (except for a late filed application and the 1st year of insurance) even if the insurer considers the inspection as being acceptable on January 14. Under the current Texas Citrus Endorsement for acreage relinquished on or before the acreage reporting date but after coverage had attached, the premium would still be due from the insured even if the insured no longer had an insurable interest. In the same situation under these new provisions, insurance will not be considered to have attached so the premium will not be due unless a transfer of right to an indemnity was completed.

14. Section 10—Add a clause clarifying that any failure of the irrigation water supply must be caused by an insured peril occurring during the insurance period. Delete ''frost'' as a cause of loss because the definition of freeze also includes damage from frost. Also, delete damage by Mediterranean Fruit Fly as an insurable cause and specify that we will not insure against damage or loss of production due to disease or insect infestation, unless an insured cause of loss prevents the proper application of control measures, causes properly applied control measures to be ineffective, or causes disease or insect infestation for which no effective control mechanism is available.

15. Section 11—Require the producer to give notice at least 15 days before any production from any unit will be marketed directly to consumers because insureds usually have inadequate records of such marketing and an appraisal is necessary to accurately determine the direct marketed production.

16. Section 12—Add a provision clarifying the procedure for when the insured intends to abandon or not care for the acreage. If the insured and the insurer agree on potential production on acreage the insured wishes to abandon or no longer care for, the insurance period for that acreage will end. If agreement is not reached, the claim may be deferred if the insured agrees to continue to care for the crop. The insurance provider will make another appraisal when the insured notifies them of further damage or that harvest is general in the area unless the crop is harvested, in which case the harvested production will be used to determine the production to count. If the insured does not continue to care for the crop the appraisal made prior to deferring the claim will be used to determine the production to count. Also add a provision to clarify that if individual records of juice content are not available, the average juice content will be obtained from the nearest juice plant, if available, or from an appraisal to determine the average juice content. Delete the provision which allows the contract price to be an applicable price for undamaged citrus fruit if the contract was executed between the producer and buyer before damage occurred because it allowed a potential for abuse and was seldom used.

17. Section 13—Add provisions for providing insurance coverage by written agreement. FCIC has a long standing policy of permitting certain modifications of the insurance contract by written agreement for some policies. This amendment will extend this practice to Texas citrus fruit and will make it possible to tailor the policy to a specific insured in certain instances.

List of Subjects in 7 CFR Part 457

Crop insurance, Texas citrus fruit.

Proposed Rule

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the Common Crop Insurance Regulations (7 CFR part 457), effective for the 1998 and succeeding crop years, as follows:

PART 457—[AMENDED]

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l) and 1506(p).

2. A new § 457.119 is added to read as follows:

§ 457.119 Texas Citrus Fruit Crop Insurance Provisions

The Texas Citrus Fruit Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

TEXAS CITRUS FRUIT CROP PROVISIONS

If a conflict exists among the Basic Provisions (§ 457.8), these crop provisions, and the Special Provisions, the Special Provisions will control these crop provisions and the Basic Provisions, and these crop provisions will control the Basic Provisions.

1. Definitions

Crop year—The period beginning with the date insurance attaches to the citrus crop and extends through normal harvest time, and will be designated by the calendar year following the year in which the bloom is normally set.

Days—Calendar days.

Direct marketing—Sale of the insured crop directly to consumers without the intervention of an intermediary such as a wholesaler, retailer, packer, processor,

shipper, or buyer. Examples of direct marketing include selling through an on-farm or roadside stand or a farmer's market, and permitting the general public to enter the field for the purpose of picking all or a portion of the crop.

Excess rain—An amount of precipitation that damages the crop.

Excess wind—A natural movement of air that has sustained speeds in excess of 58 miles per hour recorded at the U. S. Weather Service reporting station nearest to the crop at the time of crop damage.

Freeze—The formation of ice in the cells of the tree or its fruit caused by low air temperatures.

FSA—The Farm Service Agency, an agency of the United States Department of Agriculture or any successor agency.

Good farming practices—The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee, and generally recognized by the Cooperative Extension Service as compatible with agronomic and weather conditions in the county.

Harvest—The severance of mature citrus fruit from the tree by pulling, picking, or any other means, or by collecting marketable fruit from the ground.

Hedged—A process of trimming the branches of the citrus trees for better or more fruitful growth of the citrus fruit.

Interplanted—Acreage on which two or more crops are planted in any form of alternating or mixed pattern.

Irrigated practice—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

Local market price—The applicable citrus price per ton offered by buyers in the area in which you normally market the insured crop.

Non-contiguous land—Any two or more tracts of land owned by you, or rented by you for any consideration other than a share in the insured crop, whose boundaries do not touch at any point. Land that is separated by a public or private right-of way, waterway or irrigation canal will be considered to be touching.

Production guarantee (per acre):

(a) First stage production guarantee—The second stage production guarantee multiplied by 40 percent.

(b) Second stage production guarantee—The quantity of citrus (in tons) determined by multiplying the approved yield per acre by the coverage level percentage you elect.

Ton—Two thousand (2,000) pounds avoirdupois.

Topped—A process of trimming the upper most portion of the citrus trees for better and more fruitful growth of the citrus fruit.

Type—Classes of fruit with similar characteristics that are grouped for insurance purposes as specified in the Special Provisions.

Written agreement—A written document that alters designated terms of a policy in accordance with section 13.

2. Unit Division

(a) A unit as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8), will be divided into basic units by each citrus type designated in the Special Provisions.

(b) Unless limited by the Special Provisions, these basic units may be divided into optional units if, for each optional unit you meet all the conditions of this section or if a written agreement to such division exists.

(c) Basic units may not be divided into optional units on any basis including, but not limited to, production practice, type, and variety, other than as described in this section.

(d) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined, that portion of the premium paid for the purpose of electing optional units will be refunded to you pro rata for the units combined.

(e) All optional units must be identified on the acreage report for each crop year.

(f) The following requirements must be met for each optional unit:

(1) You must have records, which can be independently verified, of acreage and production for each optional unit for at least the last crop year used to determine your production guarantee;

(2) You must have records of marketed production or measurement of stored production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must be kept separate until loss adjustment is completed by us; and

(3) Each optional unit must meet one of the following criteria as applicable:

(i) *Optional Units by Section, Section Equivalent, or FSA Farm Serial Number:* Optional units may be established if each optional unit is located in a separate legally identified section. In the absence of sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands, as the equivalent of sections for unit purposes. In areas that have not been surveyed using the systems identified above, or another system approved by us, or in areas where such systems exist but boundaries are not readily discernible, each optional unit must be located in a separate farm identified by a single FSA Farm Serial Number; or

(ii) *Optional Units on Acreage Located on Non-Contiguous Land:* In lieu of establishing optional units by section, section equivalent or FSA Farm Serial Number, optional units may be established if each optional unit is located on non-contiguous land.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8):

(a) You may select only 1 price election and coverage level for each citrus fruit type designated in the Special Provisions that you elect to insure. The price election you choose for each type need not bear the same percentage relationship to the maximum price offered by us for each type. For example, if you choose one hundred percent (100%) of the maximum price election for early oranges, you may choose seventy-five percent (75%) of the maximum price election for late oranges. However, if separate price elections are available by variety within each type, the price elections you choose within the type must have the same percentage relationship to the maximum price offered by us for each variety within the type.

(b) Instead of reporting your citrus production for the previous crop year, as required by section 3 of the Basic Provisions (§ 457.8), there is a one-year lag period. Each crop year you must report your production from two crop years ago, *e.g.*, on the 1998 crop year production report, you will provide your 1996 crop year production.

(c) In addition to the reported production, each crop year you must report by type:

(1) The number of trees damaged, topped, hedged, pruned or removed; any change in practices that may reduce the expected yield below the yield upon which the insurance guarantee is based; and the number of affected acres;

(2) The number of bearing trees on insurable and uninsurable acreage;

(3) The age of the trees and the planting pattern; and

(4) For the first year of insurance for acreage interplanted with another perennial crop, and anytime the planting pattern of such acreage is changed:

(i) The age of the interplanted crop, and type, if applicable;

(ii) The planting pattern; and

(iii) Any other information that we request in order to establish your approved yield.

We will reduce the yield used to establish your production guarantee as necessary, based on our estimate of the effect of the following: interplanted perennial crop; removal, topping, hedging, or pruning of trees; damage; and change in practices on the yield potential of the insured crop. If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce your production guarantee as necessary at any time we become aware of the circumstance.

(d) The yield used to compute your production guarantee will be determined in accordance with Actual Production History (APH) regulations, 7 CFR part 400, subpart G, and applicable policy provisions unless previous damage or changes to the grove or trees require establishment of the yield by another method. In the event of such damage, your production guarantee will be established based on our appraisal of the yield potential for the insured acreage.

(e) The production guarantee per acre is progressive by stage and increases at specific

intervals to the final stage production guarantee. The stages and production guarantees per acre are:

(1) The first stage extends from the date insurance attaches through April 30 of the calendar year of normal bloom. The production guarantee will be 40 percent of the yield calculated in paragraph (d) of this section multiplied by your coverage level.

(2) The second or final stage extends from May 1 of the calendar year of normal bloom until the end of the insurance period. The production guarantee will be the yield calculated in paragraph (d) of this section multiplied by your coverage level.

(f) Any acreage of citrus damaged to the extent that the majority of producers in the area would not further maintain it will be deemed to have been destroyed even though you may continue to maintain it. The production guarantee for such acreage will be the guarantee for the stage in which such damage occurs.

4. Contract Changes

In accordance with Section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is August 31 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with Section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are November 20.

6. Annual Premium

In lieu of the premium computation method in Section 7 (Annual Premium) of the Basic Provisions (§ 457.8), the annual premium amount is computed by multiplying the second stage production guarantee per acre by the price election, the premium rate, the insured acreage, your share at the time coverage begins, and by any applicable premium adjustment percentages contained in the Special Provisions.

7. Insured Crop

In accordance with Section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the acreage in the county of each citrus type designated in the Special Provisions that you elect to insure and for which a premium rate is provided by the actuarial table:

(a) In which you have a share;

(b) That are types adapted to the area;

(c) That are irrigated;

(d) That has produced an average yield of at least three tons per acre the previous year, unless the trees are inspected by us and we agree in writing to insure such acreage with less potential; and

(e) That is grown in a grove that, if inspected, is considered acceptable by us.

8. Insurable Acreage

In lieu of the provisions in Section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8), that prohibit insurance attaching to a crop planted with another crop, citrus interplanted with another perennial crop is insurable unless we inspect the acreage and determine it does not meet the requirements for insurability contained in these crop provisions.

9. Insurance Period

(a) In accordance with the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(1) Coverage begins on November 21 of each crop year except that, for the first crop year, if the application is accepted by us after November 20, insurance will attach on the 10th day after the application is received in your insurance provider's local office.

(2) The calendar date for the end of the insurance period for each crop year is May 31.

(b) In addition to the provisions of Section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(1) If you acquire an insurable share in any insurable acreage after coverage begins, but on or before the acreage reporting date for the crop year, and after any inspection we consider the acreage acceptable, insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period.

(2) If you relinquish your insurable share on any insurable acreage of citrus on or before the acreage reporting date for the crop year, insurance will not be considered to have attached to such acreage for that crop year unless;

(i) A transfer of coverage and right to an indemnity, or a similar form approved by us is completed by all affected parties; and

(ii) We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date. If you relinquish your share, no premium will be due and no indemnity paid unless a transfer of coverage is properly executed.

10. Causes of Loss

(a) In accordance with the provisions of Section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss that occur within the insurance period:

(1) Excess rain;

(2) Excess wind;

(3) Fire, unless weeds and other forms of undergrowth have not been controlled or pruning debris has not been removed from the grove;

(4) Freeze;

(5) Hail;

(6) Tornado;

(7) Wildlife; or

(8) Failure of the irrigation water supply, if caused by an insured peril that occurs during the insurance period.

(b) In addition to the causes of loss excluded in Section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), we will not insure against damage or loss of production due to:

(1) Disease or insect infestation, unless a cause of loss specified in section 10(a):

(i) Prevents the proper application of control measures or causes properly applied control measures to be ineffective; or

(ii) Causes disease or insect infestation for which no effective control mechanism is available; and

(2) Inability to market the citrus for any reason other than actual physical damage from an insurable cause specified in this section. For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production.

11. Duties in the Event of Damage or Loss

In addition to the requirements of Section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), you must notify us at least 15 days before any production from any unit will be marketed directly to consumers. We will conduct an appraisal that will be used to determine your production to count for direct marketed production. If damage occurs after this appraisal, we will conduct an additional appraisal. These appraisals, and any acceptable records provided by you, will be used to determine your production to count. Failure to give timely notice that production will be marketed directly to consumers will result in an appraised amount of production to count that is not less than the production guarantee per acre if such failure results in our inability to make an accurate appraisal.

12. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide production records:

(1) For any optional unit, we will combine all optional units for which acceptable production records were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim on a unit basis by:

(1) Multiplying the insured acreage for each type crop by its respective production guarantee (see sections 1 and 3);

(2) Multiplying each result in section 12(b)(1) by the respective price election for each type, or variety within a type;

(3) Totaling the results in section 12(b)(2);

(4) Multiplying the total production to be counted of each type or variety, if applicable, (see section 12(c)) by the respective price election;

(5) Totaling the results of section 12(b)(4);

(6) Subtracting the total of section 12(b)(5) from the total in paragraph (3); and

(7) Multiplying the result of section 12(b)(6) by your share.

(c) The total production to count (in tons) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee per acre for acreage:

(A) That is abandoned;

(B) Marketed directly to consumers if you fail to meet the requirements contained in section 11;

(C) Damaged solely by uninsured causes; or

(D) For which you fail to provide acceptable production records;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production; and

(iv) Potential production on insured acreage you intend to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end. If you do not agree with our appraisal,

we may defer the claim only if you agree to continue to care for the crop. We will then make another appraisal when you notify us of further damage or that harvest is general in the area unless you harvested the crop, in which case we will use the harvested production. If you do not continue to care for the crop, our appraisal made prior to deferring the claim will be used to determine the production to count; and

(2) All harvested production from the insurable acreage.

(d) Any citrus fruit that is not marketed as fresh fruit and, due to insurable causes, does not contain 120 or more gallons of juice per ton, will be adjusted by:

(1) Dividing the gallons of juice per ton obtained from the damaged citrus by 120; and

(2) multiplying the result by the number of tons of such citrus.

If individual records of juice content are not available, an average juice content from the nearest juice plant will be used, if available. If not available, a field appraisal will be made to determine the average juice content.

(e) Where the actuarial table provides for, and you elect, the fresh fruit option, citrus fruit that is not marketable as fresh fruit due to insurable causes will be adjusted by:

(1) Dividing the value per ton of the damaged citrus by the price of undamaged citrus fruit; and

(2) Multiplying the result by the number of tons of such citrus fruit.

The applicable price for undamaged citrus fruit will be the local market price the week before damage occurred.

(f) Any production will be considered marketed or marketable as fresh fruit unless, due solely to insured causes, such production was not marketed as fresh fruit.

(g) In the absence of acceptable records of disposition of harvested citrus fruit, the disposition and amount of production to count for the unit will be the guarantee on the unit.

(h) Any citrus fruit on the ground that is not harvested will be considered totally lost if damaged by an insured cause.

13. Written Agreements

Designated terms of this policy may be altered by written agreement. The following conditions will apply:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in paragraph (e) of this section.

(b) The application for written agreement must contain all terms of the contract between you and us that will be in effect if the written agreement is not approved.

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election.

(d) Each written agreement will only be valid for 1 year. If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy.

(e) An application for written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington, D.C., on May 23, 1996.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 96–13590 Filed 6–4–96; 8:45 am]

BILLING CODE 3410–FA–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products: Public Workshop on the Rulemaking Priority Setting for the Appliance Standards Rulemaking Process

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of public workshop.

SUMMARY: The Department of Energy (the Department or DOE) will hold a public workshop to discuss rulemaking priority setting for the appliance standards rulemaking process. The Department is developing a straw man list prioritizing the appliance standards rulemakings for stakeholder review and comment. The Department will discuss issues that should be considered in determining the rulemaking priority and the order of priority proposed in the straw man listing. In addition, there may be other issues the participants will want to address. All persons are hereby given notice of the opportunity to attend the public workshop.

DATES: The public workshop will be held on Friday, June 14, 1996, from 9:00 a.m. to 4:30 p.m.

ADDRESSES: The workshop will be held at the Embassy Row Hotel, 2015 Massachusetts Avenue NW., Washington DC 20036, (202) 265–1600.

Copies of the straw man listing of appliance standards rulemakings and this notice may be viewed at the DOE Freedom of Information Reading Room, Forrestal Building, Room 1E–190, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6020 between the hours of 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–43, 1000 Independence Avenue SW., Washington, DC 20585–0121, (202) 586–0371

Douglas W. Smith, U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–70, 1000 Independence Avenue SW., Washington, DC 20585–0103, (202) 586–3410

Deborah E. Miller, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–1, 1000 Independence Avenue SW., Washington, DC 20585–0121, (202) 586–8888.

SUPPLEMENTARY INFORMATION: The Department has initiated a comprehensive process improvement effort to examine, through a series of stakeholder meetings and interviews, issues surrounding the appliance standards program. A workshop was held on March 19–20, 1996, to discuss the initial findings from these meetings and interviews. Discussion topics included the planning and prioritization process, data collection and analysis, and decision making criteria. A preliminary draft report of the ''Interim Results of the Appliance Rulemaking Process Improvement Effort'' dated April 26, 1996, was circulated for review.

Based on the criteria discussed in the March workshop and addressed in the preliminary draft report, the Department has developed a straw man list prioritizing the appliance standards rulemakings for stakeholder review and comment.

The Department will be holding a workshop on June 14, 1996, at the Embassy Row Hotel in Washington D.C. to discuss issues that should be considered in determining the rulemaking priority and the order of priority proposed in the straw man listing. The finalized priority listing will be published in the Department's Regulatory Agenda which will be issued in October 1996.

The workshop will be professionally facilitated to encourage discussion and comments on the topics.

Copies of the straw man listing and this notice are available in the DOE Freedom of Information Reading Room. A copy of the workshop transcript will be available in the DOE public reading room approximately 10 days after the workshop.

The straw man listing will be sent to all participants that notify the Department in advance that they will attend and to other interested parties

requesting this listing. The Department welcomes written comments on the proposed priority list. Written comments on the proposed priority list must be received by July 26, 1996. Please notify Bryan Berringer at the above listed address of your intention to attend the workshop or if you expect to provide written comments.

Issued in Washington, DC on May 28, 1996.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 96–13904 Filed 6–4–96; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–81–AD]

RIN 2120–AA64

Airworthiness Directives; Allied Signal Commercial Avionics Systems CAS–81 Traffic Alert and Collision Avoidance Systems (TCAS) as Installed In, But Not Limited To, Various Transport Category Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise an existing airworthiness directive (AD), applicable to various transport category airplanes equipped with Allied Signal Commercial Avionics Systems CAS–81 TCAS. That AD currently requires a revision to the Airplane Flight Manual (AFM) to provide the flightcrew with procedures to cycle power to the TCAS processor via the circuit breaker or power bus, and to perform a TCAS functional test to verify proper operation of the TCAS. That action was prompted by reports of failure of the audio output of the CAS–81 TCAS. The actions specified by that AD are intended to ensure that the flightcrew is advised of the potential hazard associated with failure of the audio output of the CAS–81 TCAS, and of the procedures necessary to address it. This action would add a revision of the AFM requirements that would provide an alternative method of compliance with the currently required AFM revision; and would provide for a modification to the TCAS processor, which, if accomplished, terminates the requirements of the AD.

DATES: Comments must be received by July 15, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–81–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 Allied Signal Aerospace, Technical Publications, Dept. 65–70, P.O. Box 52170, Phoenix, Arizona 85072–2170. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: David Crew, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7335; fax (404) 305–7348.

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 96–NM–81–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. 96–NM–81–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 22, 1996, the FAA issued AD 95–26–15, amendment 39–9495 (61 FR 2699, January 29, 1996), applicable to various transport category airplanes equipped with Allied Signal Commercial Avionics Systems CAS–81 Traffic Alert and Collision Avoidance Systems (TCAS). That AD requires a revision to the FAA-approved Airplane Flight Manual (AFM) to provide the flightcrew with procedures to cycle power to the TCAS processor via the circuit breaker or power bus, and to perform a TCAS functional test to verify proper operation of the TCAS. That action was prompted by reports of failure of the audio output of the CAS–81 TCAS. The requirements of that AD are intended to ensure that the flightcrew is advised of the potential hazard associated with failure of the audio output of the CAS–81 TCAS, and of the procedures necessary to address it.

Explanation of New Service Information

Since the issuance of that AD, Allied Signal has issued Service Bulletin TPA–81A–34–82, dated January 1996, which describes procedures for a modification (Unit Mod 13) of the TPA–81A TCAS processor receiver. This modification adds two 100k ohm resistors to circuitry on the voice synthesizer module (VSM) to provide a direct current (DC) return for the Op-Amp. Additionally, the modification adds four diodes to the ADV. INHIBIT #1, #2, #3, and #4 lines (advisory inhibit) at connector P3011 for isolation. This modification will eliminate audio noise and prevent a lack of AUDIO alert due to the absence of a return path to ground in an alternate current (AC) coupled filter in the VSM. The modification also will eliminate the need to isolate diodes of the advisory inhibit lines in certain configurations.

Allied Signal also issued Service Bulletin TPA–81A–34–84, dated January 1996, which describes procedures for modification of the TPA–81A TCAS processor receiver. The modification involves redesignating (rolling) the part numbers of processors modified to Unit Mod 13. This modification will prevent failure of the

audio alert annunciation circuit when a unit has power applied for more than twelve hours at elevated temperatures.

The FAA has reviewed and approved these service bulletins, and has determined that accomplishment of these modifications will positively address the unsafe condition identified as failure of the audio output of the CAS–81 TCAS.

Comments Received in Response to AD 95–26–15

In response to the request for comments to AD 95–26–15, Airbus requests that the AD include a currently approved alternative means of compliance with the AFM revision required by paragraph (a) of the AD. For airplanes on which the manufacturer has substantiated 30 degrees Celsius as a maximum ambient temperature for the avionics compartment, this alternative method of compliance revises the Limitations Section of the FAA-approved AFM by including the following:

In order to ensure that the audio output of the CAS–81 TCAS operates properly, accomplish the following:

Prior to each flight of up to 18 hours duration, reset the TCAS circuit breaker and conduct a TCAS self-test.

The FAA concurs, and has added a new paragraph (b) to this proposal accordingly.

Airbus also requests that additional information be added to the AD to clarify that maintenance personnel should perform the revisions to the AFM and should enter and sign-off the required actions into the logbook.

The FAA does not concur that this AD should be revised to include the additional information requested by the commenter. Persons authorized to perform the work required by an AD are generally not prescribed by an AD. Part 43 (''Maintenance, Preventive Maintenance, Rebuilding, and Alteration'') and part 121 (''Certification and Operations: Domestic, Flag, and Supplemental Air Carriers and Commercial Operators of Large Aircraft'') of the Federal Aviation Regulations (14 CFR parts 43 and 121) specify persons authorized to perform maintenance, preventive maintenance, rebuilding, and alterations, as well as maintenance record entry requirements, and approval for return to service of the airplane after maintenance.

Additionally, Airbus requests that Models A300B2, A300B4, A310–200, A310–200, A300–600, A320–100, A320–200, A321–100, A330–300, A340–200, and A340–300 series airplanes be included in the list of airplanes included in the applicability of the AD.

The FAA concurs. The FAA points out, however, that the proposed AD (as well as the previously issued AD) is applicable to the subject TCAS unit itself, notwithstanding the model of airplane on which it is installed. As an aid to operators in identifying whether or not they are subject to the rule, the FAA has included a list of the airplane models on which the TCAS unit is known to be installed. However, this list is limited in that it does not include every airplane on which the TCAS may be installed.

Explanation of Requirements of 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 revise AD 95–26–15 to add a new AFM requirement that would specify an alternative method of compliance with the currently required AFM revision. The proposed AD would provide for a modification of the TCAS processor, which, if accomplished, terminates the requirements of the existing AD. The proposed AD also identifies additional airplane models on which the subject TCAS unit may be installed.

Cost Impact

There are approximately 5,000 various transport category airplanes in the worldwide fleet on which the subject TCAS unit may be installed. The FAA estimates that 3,650 airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 95–26–15, and retained in this proposed revision, take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the existing AD on U.S. operators is estimated to be $219,000, or $60 per airplane.

The 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.

Should an operator elect to accomplish the proposed optional terminating modification rather than continue using the AFM revision, it would take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would be furnished by the manufacturer at no cost to the operator. Based on these figures, the cost impact of this optional terminating action is estimated to be $180 per airplane.

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. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9495 (61 FR 2699, January 29, 1996), and by adding a new airworthiness directive (AD), to read as follows:

Allied Signal Commercial Avionics Systems: Docket 96–NM–81–AD. Revises AD 95–26–15, Amendment 39–9495.

Applicability: CAS–81 Traffic Alert and Collision Avoidance Systems (TCAS) that are installed in, but not limited to, the following airplanes, certificated in any category:

Aerospatiale Models ATR42 and ATR72 series airplanes;

Airbus Industrie Models A300B2, A300B4, A310–200, A310–300, A300–600, A320–100, A320–200, A321–100, A330–300, A340–200, and A340–300 series airplanes;

Beech Models 1900 and BE–65 through –90 (inclusive) series airplanes;

Boeing Models 727–100, 727–200, 737–200, 737–300, 737–400, 737–500, 747–100, 747–200, 747–300, 747–400, 747SP, 757–200, 767–200, and 767–300 series airplanes;

Convair Model CV–580 airplanes;

de Havilland DHC–7 series airplanes and Model DHC–8–100 airplanes;

Embraer Model EMB–120 series airplanes;

Fairchild Model F227 airplanes;

Fokker Models F28 Mark 100, Mark 1000, and Mark 4000 series airplanes;

General Dynamics Models Convair 340 and 440 airplanes;

Gulfstream Models G–159 and G-IV airplanes;

Lockheed Model L1011 series airplanes;

McDonnell Douglas Models DC–8–60, DC–9–31, DC–9–51, DC–10–10; DC–10–30, DC–10–30F, MD–11, and MD–80 series airplanes;

Rockwell International NA–265–65 airplanes;

Saab Model 340 series airplanes; and

Shorts Model 360 series airplanes.

Note 1: This AD applies to each airplane on which the TCAS unit identified in the preceding applicability provision has been installed, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For affected TCAS units or airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Note 2: CAS–81 Traffic Alert and Collision Avoidance Systems (TCAS) processors having serial numbers 6066 and subsequent, are not subject to the requirements of this AD.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flightcrew is advised of the potential hazard associated with failure of the audio output of the CAS–81 TCAS, and of the procedures necessary to address it, accomplish the following:

(a) Within 3 calendar days after February 5, 1996 (the effective date of AD 95–26–15, amendment 39–9495), revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following. This may be accomplished by inserting a copy of this AD in the AFM.

''In order to ensure that the audio output of the CAS–81 TCAS operates properly, accomplish the following:

• Prior to the first flight of the day; prior to the accumulation of 10 hours of power; and at the mid-point of any one flight scheduled to exceed hours: Cycle the power to the TCAS processor via the circuit breaker or power bus.

• Prior to taxi before takeoff: Initiate the TCAS functional test in accordance with AFM procedures to verify operational condition of the CAS–81 TCAS.''

(b) For airplanes on which the manufacturer has substantiated 30 degrees Celsius as a maximum ambient temperature for the TCAS processor location, the following is considered to be an alternative method of compliance for the AFM revision requirements: Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following. This may be accomplished by inserting a copy of this AD in the AFM. After revising the AFM, the AFM revision required by paragraph (a) of this AD may be removed from the AFM.

''In order to ensure that the audio output of the CAS–81 TCAS operates properly, accomplish the following:

Prior to each flight of up to 18 hours duration, reset the TCAS circuit breaker and conduct a TCAS self-test.''

(c) Modification of the TPA–81A TCAS processor receiver in accordance with Allied Signal Service Bulletin TPA–81A–34–82, dated January 1996, and Allied Signal Service Bulletin TPA–81A–34–84, dated January 1996, constitutes terminating action for the requirements of this AD. After this modification is accomplished, the AFM revisions specified in paragraphs (a) and (b) of this AD may be removed from the AFM.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, 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 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(e) 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 May 30, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–14038 Filed 6–4–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 95–ANE–57]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT9D Series Turbofan 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 Pratt & Whitney JT9D series turbofan engines. This proposal would require installing an improved design turbine exhaust case (TEC) with a thicker containment wall or modified TEC. This proposal is prompted by reports of 64 uncontained engine failures since 1972. The actions specified by the proposed AD are intended to prevent release of uncontained debris from the turbine exhaust case following an internal engine failure, which can result in damage to the aircraft.

DATES: Comments must be received by August 5, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–57, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be submitted to the Rules Docket by using the following Internet address: ''epd-adcomments@mail.hq.faa.gov''. 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 Pratt & Whitney, Publications Department, Supervisor Technical Publications Distribution, M/S 132–30, 400 Main St., East Hartford, CT 06108; telephone (860) 565–7700. 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: Daniel Kerman, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7130, 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 95–ANE–57.'' 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. 95–ANE–57, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) has determined that the turbine exhaust case (TEC) on Pratt & Whitney (PW) JT9D–3, –7, –20, –59A, –70A, –7Q, and –7R4 series turbofan engines may not be capable of containing a release of engine debris should an internal engine failure occur. The FAA has determined, based on service experience, that TEC penetrations have resulted from multiple internal gas path failure modes. Primary penetrations of the TEC have been isolated to the outer wall between the leading edge of the casing struts and the forward ''P'' flange. This condition, if not corrected, could result in release of uncontained debris from the turbine exhaust case following an internal engine failure, which can result in damage to the aircraft.

Service experience has demonstrated that there exists a need for out-of-plane, aft containment. The FAA has received reports of 64 uncontained failures of the TEC since 1972.

These TEC penetrations have resulted from a variety of failure modes. In some incidents, the engine failures have occurred as far upstream as the fan module No. 1 bearing to as far downstream as the sixth stage low pressure turbine blades. In all instances these failures have caused a balling effect in which downstream debris has penetrated through the TEC shell wall. As a result of these uncontainments, PW has refined their analytical containment model based on the results of ballistics testing. PW utilized this data to establish new casing wall thickness requirements for aft containment. Pratt & Whitney has developed three containment improvements: a redesigned, thick-wall TEC developed for all models of the JT9D engine; containment shields for all models of the JT9D engine; and a new TEC ''P'' flange and case wall replacement for all models of the JT9D engine excluding the Model JT9D–7R4D (BG–700 series) turbofan engines.

The FAA has reviewed and approved the technical contents of the following PW Service Bulletins (SB's): SB No. 6113, dated April 13, 1993; SB No. 5977, dated December 14, 1990; SB No. JT9D–7R4–72–479, Revision 1, dated November 12, 1993; SB No. 6243, dated February 1, 1996; SB No. JT9D–7R4–72–513, Revision 2, dated January 10, 1996; SB No. 5907, dated March 27, 1990; SB No. JT9D–7R4–72–407, Revision 1, dated August 16, 1990; SB No. JT9D–7R4–72–466, Revision 2, dated May 10, 1996; SB No. 6118, Revision 3, dated January 10, 1996; and SB No. 6157, dated February 9, 1994. These SB's describe replacing the previous TEC with a new, thicker case wall TEC, installing a new containment shield for enhanced containment capability, and replacing the TEC ''P'' flange and case wall with a thicker cross section.

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 installing an improved design TEC with a thicker containment wall, modifying the existing TEC to incorporate a containment shield, or modifying the existing TEC to replace the ''P'' flange and case wall. The FAA has established a compliance end-date of 48 months after the effective date of this AD based upon shop visit rates for hot section overhaul. The actions would be required to be accomplished in accordance with the service bulletins described previously.

There are approximately 2,748 engines of the affected design in the worldwide fleet. The FAA estimates that 740 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 14 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 $1,404 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,660,560.

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. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

Pratt & Whitney: Docket No. 95–ANE–57.

Applicability: Pratt & Whitney (PW) JT9D–3, –7, –20, –59A, –70A, –7Q, and –7R4 series turbofan engines, installed on but not limited to Airbus A300 and A310 series; Boeing 747 and 767 series; and McDonnell Douglas DC–10 series aircraft.

Note: This airworthiness directive (AD) applies to each engine 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 engines 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 Federal Aviation Administration (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 engine from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent release of uncontained debris from the turbine exhaust case (TEC) following an internal engine failure, which can result in damage to the aircraft, accomplish the following:

(a) At the next removal of the TEC from the low pressure turbine case ''P'' flange for overhaul, where the No. 4 bearing, carbon seals, lubrication pressurization lines, or scavenge lines are removed for maintenance after the effective date of this AD, but not later than 48 months after the effective date of this AD, accomplish the following:

(1) For PW JT9D–3A, –7, –7A, –7AH, –7H, –7F, –7J, –20, and –20J series turbofan engines, accomplish any one of the following actions:

(i) Install a thicker-walled TEC, with Part Numbers (P/N's) listed in PW SB No. 6113, dated April 13, 1993, as applicable; or

(ii) Install a modified TEC that incorporates a containment shield, with P/N's listed in PW SB No. 5907, dated March 27, 1990, as applicable; or

(iii) Install a modified TEC that incorporates a replacement ''P'' flange and case wall, with P/N's listed in PW SB No. 6118, Revision 3, dated January 10, 1996.

(2) For PW JT9D–7Q and –7Q3 series turbofan engines, accomplish any one of the following actions:

(i) Install a thicker-walled TEC, with P/N's listed in PW SB No. 5977, dated December 14, 1990; or

(ii) Install a modified TEC that incorporates a containment shield, with P/N's listed in PW SB No. 5907, dated March 27, 1990, as applicable; or

(iii) Install a modified TEC that incorporates a replacement ''P'' flange and case wall, with P/N's listed in PW SB No. 6157, dated February 9, 1994.

(3) For PW JT9D–59A and –70A series turbofan engines, accomplish one of the following actions:

(i) Install a thicker-walled TEC, with P/N's listed in PW SB No. 6243, dated February 1, 1996; or

(ii) Install a modified TEC that incorporates a containment shield, with P/N's listed in PW SB No. 5907, dated March 27, 1990, as applicable;

(iii) Install a modified TEC that incorporates a replacement ''P'' flange and case wall, with P/N's listed in PW SB No. 6157, dated February 9, 1994.

(4) For PW JT9D–7R4D (BG–700 series) turbofan engines, accomplish either of the following actions:

(i) Install a thicker-walled TEC, with P/N's listed in PW SB No. JT9D–7R4–72–479, Revision 1, dated November 12, 1993; or

(ii) Install a modified TEC that incorporates a containment shield, with P/N's listed in PW SB No. JT9D–7R4–72–407, Revision 1, dated August 16, 1990, as applicable.

(5) For PW JT9D–7R4D (BG–800 series), –7R4D (BG–900 series), –7R4D1 (AI–500 series), –7R4E (BG–800 series), –7R4E (BG–900 series), –7R4E1 (AI–500 series), –7R4E1 (AI–600 series), –7R4E4 (BG–900 series), –7R4G2 (BG–300 series), and –7R4H1 (AI–600 series) turbofan engines, accomplish any one of the following actions:

(i) Install a thicker-walled TEC, with P/N's listed in PW SB No. JT9D–7R4–72–513, Revision 2, dated January 10, 1996; or

(ii) Install a modified TEC that incorporates a containment shield, with P/N's listed in PW SB No. JT9D–7R4–72–466, Revision 2, dated May 10, 1996; or

(iii) Install a modified TEC that incorporates a replacement ''P'' flange and case wall, with P/N's listed in PW SB No. JT9D–7R4–72–513, Revision 2, dated January 10, 1996.

(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 Principal 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 May 22, 1996.

Robert E. Guyotte,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 96–14033 Filed 6–4–96; 8:45 am]

BILLING CODE 4910–13–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

19 CFR Part 132

Extension of Comment Period for Administration of Tobacco Tariff-Rate Quota

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of extension of comment period.

SUMMARY: On February 20, 1996, the Office of the United States Trade Representative (USTR) published a notice soliciting comments and views on the administration of the tariff-rate quota on leaf tobacco, established on September 13, 1995, which was operating on a first-come, first-served basis (61 FR 6333). Because of request by interested parties for an extension of the comment period, USTR is extending the comment period until June 19, 1996.

DATES: Comment period extended until June 19, 1996.

ADDRESSES: Office of the U.S. Trade Representative, Room 222, 600 17th Street, NW., Washington, DC 20508, attention: Tobacco Tariff-Rate Quota.

FOR FURTHER INFORMATION CONTACT: Tom Perkins, Senior Economist, Office of Agricultural Affairs, USTR, (202) 395–6127; or Rachel Shub, Assistant General Counsel, USTR (202) 395–7305.

SUPPLEMENTARY INFORMATION: Persons submitting written comments should provide a statement, in ten copies, by noon June 19, 1996 to Sybia Harrison, Office of the United States Trade Representative, Room 222, 600 17th Street, NW., Washington, DC 20508, attention: Tobacco Tariff-Rate Quota. Non-confidential information received will be available for public inspection by appointment, in the USTR Reading Room, Room 101, Monday through Friday, 10:00 a.m. to 12:00 noon and 1:00 p.m. to 4:00 p.m. For an appointment call Brenda Webb at (202) 395–6186. Business confidential information will be subject to the requirements of 15 CFR 2003.6 Any business confidential material must be clearly marked as such on the cover letter or page and each succeeding page, and must be accompanied by a non-confidential summary thereof.

Jennifer Hillman,

General Counsel.

[FR Doc. 96–13992 Filed 6–4–96; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 151

RIN 1515–AB75

Detention of Merchandise

AGENCY: Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes amendments to the Customs Regulations to provide for procedures regarding the detention of merchandise that is undergoing extended Customs examination. It is intended that the

Customs Regulations regarding this subject accurately reflect recent amendments to the underlying statutory authority, enacted as part of the Customs modernization portion of the North American Free Trade Agreement Implementation Act.

DATES: Comments must be received on or before August 5, 1996.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, Franklin Court, 1099 14th Street, Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jeremy Baskin, Penalties Branch, 202–482–6950.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, amendments to certain Customs and navigation laws became effective as the result of the enactment of the North American Free Trade Agreement (NAFTA) Implementation Act, Public Law 103–182, Title VI of which is the Customs modernization portion thereof, popularly known as the Customs Modernization Act (Mod Act). Section 613 of the Mod Act amended the provisions of section 499 of the Tariff Act of 1930, as amended (19 U.S.C. 1499), to provide for the detention of merchandise in any case where Customs is unable, upon initial examination, to make a determination as to whether that imported merchandise complies with requirements of the laws of the United States. Much of the new legislation brought the law into conformity with existing Customs practice with regard to the examination and detention of merchandise.

Prior to this amendment, Customs, while having extensive examination authority, had no specific statutory or regulatory procedures for detaining merchandise whose admissibility had not yet been determined. The Mod Act codified Customs current detention practices. Importers are provided an accelerated method to receive administrative or judicial review of any decision to exclude.

Customs has five days after merchandise is presented for examination to determine whether such merchandise should be detained or can be released. Through this document Customs is proposing that merchandise shall be considered to be presented for Customs examination when it is in a condition to be viewed and examined by a Customs officer. Mere presentation to the examining officer of a cargo van, container or instrument of international traffic in which the merchandise to be examined is contained will not be considered to be presentation of the merchandise for Customs examination for purposes of starting the five-day period in which the decision to detain or release must be made. Further, consistent with the provisions of § 151.7 of the Customs Regulations (19 CFR 151.7), relating to the examination of merchandise at a place other than the public stores, the importer shall bear any expense involved in preparing the merchandise for Customs examination.

Customs is required to issue a written notice of detention to the importer or other party having an interest in the subject merchandise. The notice shall advise the importer or other interested party of the initiation of the detention, the specific reason for same, the anticipated length of the detention, the nature of the tests or inquiries to be conducted and the nature of any information which, if supplied to Customs, may accelerate the disposition of the detention. The importer or other interested party shall be afforded the opportunity to remedy the cause for detention and bring the detained merchandise into compliance within 30 days after issuance of the notice. After 30 days or such longer period as authorized by law, if Customs has not made a final determination to release or seize, the goods are deemed to be excluded. Under Customs proposal, the 30-day limitation may be extended when the importer or interested party requests in writing an extension of the detention period, in order to comply with Customs requirements. In the absence of a written request for an extension, the importer or interested party may file a protest as to the exclusion. If, within 30 days after filing of the protest, Customs fails to act, the importer or interested party may seek judicial review in the Court of International Trade. The detention/exclusion period will generally not extend beyond 60 days (unless a longer period is authorized by law) without the importer or interested party being afforded judicial review. At any time during the detention period, the merchandise may be seized and forfeited, if the facts so warrant. The proposed regulations also permit Customs to allow exportation of the goods in lieu of seizure with all costs of exportation being borne by the importer.

The law compels Customs to make timely decisions, provide timely notices, disclose available testing results and descriptions of procedures and methodologies that are not proprietary to Customs or the holder of any copyright or patent, and process any exclusion protests within a prescribed statutory time period. If a notice to exclude is not issued within such time period, the burden of proof is on Customs to show, by a preponderance of the evidence, good cause as to why an admissibility decision had not been made prior to the time the importer commenced suit. If Customs makes the decision to exclude, an importer wishing to challenge the decision shall bear the burden of proof. These procedures are applicable to those cases where Customs has the responsibility and authority to determine the admissibility of the merchandise. They do not apply to those situations where the decision of admissibility lies with another Federal agency.

This document proposes to amend the regulations to accurately reflect the statutory changes promulgated by the Mod Act.

Comments

Before adopting the proposed amendments, consideration will be given to any written comments (preferably in triplicate) that are timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Regulations (31 CFR 1.4) and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, 1099 14th Street, NW., Suite 4000, Washington, DC.

Regulatory Flexibility Act and Executive Order 12866

For the reasons given in the preamble to this document, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the proposed amendments would not have a significant economic impact on a substantial number of small entities. Thus, they are not subject to the requirements of 5 U.S.C. 603 or 604. Nor would the proposed rule result in a ''significant regulatory action'' under E.O. 12866.

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 1995 (44 U.S.C. 3507).

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless the collection of information displays a valid control number.

The collection of information in this document is in § 151.16 (d) and (f). This information is necessary and will be used to determine the admissibility of imported merchandise and to otherwise comply with the requirements of the Mod Act and protect the revenue. The likely respondents and/or recordkeepers are business or other for-profit institutions.

Estimated annual reporting and/or recordkeeping burden: 500 hours.

Estimated average annual burden per respondent/recordkeeper: 2 hours.

Estimated number of respondents and/or recordkeepers: 250.

Estimated annual frequency of responses: 1.

Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229. Comments should be submitted within the time frame that comments are due regarding the substance of the proposal.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

List of Subjects in 19 CFR Part 151

Examination, Sampling and testing of merchandise.

Proposed Amendments to the Regulations

It is proposed to amend part 151, Customs Regulations (19 CFR part 151), as set forth below:

PART 151—EXAMINATION, SAMPLING AND TESTING OF MERCHANDISE

1. The general authority citation for part 151, and the specific authority for subpart A, would continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Notes 20 and 21, Harmonized Tariff Schedule of the United States), 1624. Subpart A also issued under 19 U.S.C. 1499. * * *

2. It is proposed to amend part 151 by adding a new § 151.16 to read as follows:

§ 151.16 Detention of merchandise.

(a) *Other agencies not affected.* The provisions of this section are not applicable to detentions effected by Customs on behalf of other agencies of the U.S. Government.

(b) *Decision to detain or release.* Within the 5-day period (excluding weekends and holidays) following the date on which merchandise is presented for Customs examination, Customs shall decide whether to release or detain the merchandise. Merchandise which is not released within such 5-day period shall be considered to be detained merchandise. For purposes of this section, merchandise shall be considered to be presented for Customs examination when it is in a condition to be viewed and examined by a Customs officer. Mere presentation to the examining officer of a cargo van, container or instrument of international traffic in which the merchandise to be examined is contained will not be considered to be presentation of merchandise for Customs examination for purposes of this section. All costs relating to the preparation of merchandise for examination shall be borne by the importer.

(c) *Notice of detention.* If a decision to detain merchandise is made, Customs shall issue a notice to the importer or other party having an interest in such merchandise no later than 5 days (excluding weekends and holidays) after such decision. The notice shall be prepared by the Customs officer detaining the merchandise and shall advise the importer or other interested party of the:

(1) Initiation of the detention;

(2) Specific reason for the detention;

(3) Anticipated length of the detention;

(4) Nature of the tests or inquiries to be conducted; and

(5) Nature of any information which, if supplied to the Customs, may accelerate the disposition of the detention.

(d) *Providing testing results.* Upon written request by the importer or other party having an interest in the detained merchandise, Customs shall provide copies of the results of any testing conducted on the merchandise together with a description of the testing procedures and methodologies used (unless such procedures or methodologies are proprietary to the holder of a copyright or patent or were developed by Customs for enforcement 9 purposes). The results and test description shall be in sufficient detail to permit the duplication and analysis of the testing and the results.

(e) *Seizure and forfeiture; denial of entry or exportation.* If otherwise provided by law, detained merchandise may be seized and forfeited. In lieu of seizure and forfeiture, Customs may deny entry and, where not otherwise prohibited by law, permit the merchandise to be exported with all expenses of exportation being borne by the importer.

(f) *Final decisions; extension of time.* A final decision with respect to detained merchandise will be made within 30 days from the date the shipment was detained. The 30-day limitation may be extended when the importer or interested party requests in writing an extension of the detention period, in order to comply with Customs requirements.

(g) *Effect of failure to make a determination.* The failure by Customs to make a final determination with respect to the admissibility of detained merchandise within 30 days after the merchandise has been presented for Customs examination, or such longer period if specifically authorized by law, or such extension of time as allowed by paragraph (f) of this section, shall be treated as a decision by Customs to exclude the merchandise for purposes of § 514(a)(4) of the Tariff Act of 1930, as amended (19 U.S.C. 1514(a)(4)). Such decision may be the subject of a protest.

(h) *Effect of failure to decide protest.* If a protest which is filed as a result of exclusion of detained merchandise is not allowed or is denied in whole or in part before the 30th day after the day on which the protest was filed, it shall be treated as having been denied on such 30th day.

(i) *Burden of proof and decisions of the court.* Once an action respecting a detention is commenced, unless Customs establishes by a preponderance of the evidence that an admissibility decision has not been reached for good cause, the court shall grant the appropriate relief which may include, but is not limited to, an order to cancel the detention and release the merchandise.

George J. Weise,

Commissioner of Customs.

Approved: April 18, 1996.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 96–14124 Filed 6–4–96; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 70, 73, 74, 80, 81, 82, 101, 178, 201, and 701

[Docket Nos. 79N–0043 and 92N–0334]

Permanent Listing of Color Additive Lakes; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration is extending to August 3, 1996, the comment period for a proposed rule that published March 4, 1996 (61 FR 8372). The document proposed to list certain color additive lakes permanently as suitable and safe for use in foods, drugs, and cosmetics. FDA is taking this action in response to a request for additional time to review and understand the details of the proposed rule.

DATES: Written comments by August 3, 1996.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Process descriptions, identity information for anions in precipitants, and ingredient specifications for substrata (including rosin), and rosin samples to the Colors Technology Branch (HFS–126), Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

FOR FURTHER INFORMATION CONTACT:

Regarding proposed certification procedures and proposed product ingredient declarations: Julie N. Barrows, Center for Food Safety and Applied Nutrition (HFS–105), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4662.

Regarding other issues: Arthur L. Lipman, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3073.

SUPPLEMENTARY INFORMATION: In the Federal Register of March 4, 1996 (61 FR 8372), FDA issued a proposed rule to list certain color additive lakes permanently as suitable and safe for use in foods, drugs, and cosmetics. The proposed rule modified a July 21, 1995, proposed rule regarding label declaration of FD&C Yellow No. 6 (60 FR 37611). Interested persons were given until June 3, 1996, to submit written comments on the proposal.

The agency has received a request from the Cosmetic, Toiletry, and Fragrance Association (CTFA) for an extension of the comment period for the proposal. Although FDA's general policy is not to extend such comment periods so that necessary regulations can be issued as expeditiously as possible, in this case the agency agrees that the requestor and others may need additional time to study the ramifications of this complex proposal in order to submit meaningful comments. Therefore, after careful consideration, FDA is extending the comment period for the proposal for an additional 60 days, until August 3, 1996.

Interested persons may, on or before August 3, 1996, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number of the rulemaking or rulemakings to which the comment is relevant. As stated in the March 4, 1996, proposed rule (61 FR 8372 at 8406), comments on modifications to the July 21, 1995 (60 FR 37611), proposal regarding label declaration of FD&C Yellow No. 6 should be identified with both docket numbers found in brackets in the heading of this document; comments on other aspects of the proposed rule should be identified with docket number 79N–0043 only. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In addition, interested persons may, on or before August 3, 1996, submit to the Office of Cosmetics and Colors (address above) written comments containing process information relating to the identity and current use of substrata (including rosin) in lakes, and samples of such substrata. Written comments regarding the use of anions other than chloride and sulfate in precipitants may also be submitted to this address. Two copies of each comment and one 5-pound sample are to be submitted, and each submission is to be identified with the docket number (79N–0043) found in brackets in the heading of this document.

Dated: May 29, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–14053 Filed 5–31–96; 12:12 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC19

Unitization

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: MMS proposes to amend its unitization regulations by removing the model unit agreements for exploration, development, and production units and development and production units. The model agreements would be available from the Regional Supervisor. The rule would also be written in ''plain English.'' We take this action to support the President's initiative to reform Government regulations. Our interest is to shorten the regulation and clarify the wording.

DATES: MMS will consider all comments received by August 5, 1996. We will begin reviewing comments at that time and may not fully consider comments we receive after August 5, 1996.

ADDRESSES: Mail or hand-carry written comments to the Department of the Interior, Minerals Management Service, 381 Elden Street, Mail Stop 4700, Herndon, Virginia 22070–4817, Attention: Chief, Engineering and Standards Branch.

FOR FURTHER INFORMATION CONTACT: Judith M. Wilson, Engineering and Standards Branch, telephone (703) 787–1600.

SUPPLEMENTARY INFORMATION: The rules on unitization in 30 CFR part 250, implementing Section 5(a)7 of the Outer Continental Shelf (OCS) Lands Act Amendments of 1978, were published on May 2, 1980. The rules were amended on February 16, 1982. The amended rulemaking removed the provisions that required segregation of the portion of the OCS oil and gas lease not included in the unit agreement. That amendment was based on the Department of the Interior (DOI) Solicitor's Opinion M–36927. The rules were amended again in April 1988, when MMS restructured and consolidated into one document the rules governing oil, gas, and sulphur exploration, development, and production operations on the OCS. The model unit agreements were incorporated at this time. The last revision was in July 1991, to include sulphur operations in unitization.

This subpart, 30 CFR part 250, Subpart M, Unitization, is intended to

prevent waste, conserve natural resources (protection of marine life was incorporated into conservation in 1971), and/or protect correlative rights. The rules include provisions to:

- explain the authority and requirements for unitization;
- provide for compulsory or voluntary unitization;
- explain requirements for competitive reservoir operations;
- explain how a lessee may request a determination of whether a reservoir is competitive;
- explain how to submit a joint development and production plan;
- explain the process for voluntary unitization;
- explain the process for compulsory unitization; and
- explain the role of a model agreement.

This proposed rule does not intend any substantive changes to this regulation. It would shorten existing regulations by removing the model unit agreements. The ''plain English'' would clarify the rule.

There are two model unit agreements, one for exploration, development, and production units, the other for development and production units. The model agreements would continue to be available from the Regional Supervisor. The Regional Supervisor could approve variations from the model agreements for good cause.

Author: This document was prepared by Judy Wilson, Engineering and Standards Branch, Offshore Resource Evaluation Division, MMS.

Executive Order (E.O.) 12866

This rule does not meet the criteria for a significant rule requiring review by the Office of Management and Budget under E.O. 12866.

Regulatory Flexibility Act

Since this proposed amendment has no economic effects, DOI has determined that this proposed rule will not have a significant effect on a substantial number of small entities.

Paperwork Reduction Act

This proposed rule contains a collection of information which has been submitted to the Office of Management and Budget (OMB) for review and approval under section 3507(d) of the Paperwork Reduction Act of 1995. As part of our continuing effort to reduce paperwork and respondent burden, MMS invites the public and other Federal agencies to comment on any aspect of the reporting burden. Submit your comments to the Office of Information and Regulatory Affairs, OMB, Attention Desk Officer for the Department of the Interior (OMB control number 1010–0068), Washington, DC 20503. Send a copy of your comments to the Chief, Engineering and Standards Branch; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070–4817. You may obtain a copy of the proposed collection of information by contacting the Bureau's Information Collection Clearance Officer at (703) 787–1242.

The title of this collection of information is ''30 CFR 250, Subpart M, Unitization.'' OMB previously approved it under OMB control number 1010–0068.

The collection of information consists of a proposed unit agreement; a proposed initial plan of operation; supporting geological, geophysical, and engineering data; and any other information necessary to show that the unitization proposal meets the criteria in § 250.190. If approved, respondents will submit to MMS a unit agreement, unit operation agreement, and the initial plan of operation as the Regional Supervisor may require.

MMS uses the information to ensure that operations under the proposed unit agreement will prevent waste, conserve natural resources, and protect correlative rights including the Government's interests.

Respondnets are Federal OCS oil, gas, and sulphur lessees. MMS receives approximately 53 responses each year. The frequency of submission varies.

MMS estimates the annual reporting burden to be approximately 2,424 hours, an average of 45.7 hours per response. Based on $35 per hour, the burden hour cost to respondents is estimated to be $84,840. The estimate of other annual costs to respondents is unknown.

MMS will summarize written responses to this notice and address them in the final rule. All comments will become a matter of public record.

1. MMS specifically solicits comments on the following questions:

(a) Is the proposed collection of information necessary for the proper performance of MMS's functions, and will it be useful?

(b) Are the estimates of the burden hours of the proposed collection reasonable?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other forms of information technology?

2. In addition, the Paperwork Reduction Act of 1995 requires agencies to estimate the total annual cost burden to respondents or recordkeepers resulting from the collection of information. MMS needs your comments on this item. Your response should split the cost estimate into two components:

(a) Total capital and startup cost component and

(b) Annual operation, maintenance, and purchase of services component.

Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: before October 1, 1995; to comply with requirements not associated with the information collection; for reasons other than to provide information or keep records for the Government; or as part of customary and usual business or private practice.

The Paperwork Reduction Act of 1995 provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Takings Implication Assessment

The DOI certifies that this rule does not represent a governmental action capable of interference with constitutionally protected property rights. A Takings Implication Assessment prepared pursuant to E.O. 12630, Government Action and Interference with Constitutionally Protected Property Rights, is not required.

Unfunded Mandate Reform Act of 1995

This rule does not contain any unfunded mandates to State, local, or tribal governments or the private sector.

E.O. 12988

DOI has certified to OMB that this proposed rule meets the applicable civil justice reform standards provided in Sections 3(b)(2) of E.O. 12988.

National Environmental Policy Act

MMS has examined the proposed rulemaking and has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(c)).

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

For the reasons set forth in the preamble, the Minerals Management Service proposes to amend 30 CFR part 250 as follows:

PART 250—SUBPART M—UNITIZATION

1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1334.

2. Subpart M is revised to read as follows:

Subpart M—Unitization

Sec.
250.190 What is the purpose of this subpart?
250.191 What are the requirements for unitization?
250.192 What if I have a competitive reservoir on my lease?
250.193 How do I get approval for voluntary unitization?
250.194 How will MMS require unitization?

Subpart M—Unitization

§ 250.190 What is the purpose of this subpart?

This subpart explains how Outer Continental Shelf (OCS) leases are unitized. If you are an OCS lessee, use the regulations in this subpart for both voluntary and required unitization situations. The purpose of unitization is to:

(a) Conserve natural resources;

(b) Prevent waste; and/or

(c) Protect correlative rights, including Federal royalty interests.

§ 250.191 What are the requirements for unitization?

(a) *Voluntary unitization.* You and other OCS lessees may ask the Regional Supervisor to approve a request for voluntary unitization. The Regional Supervisor may approve the request for voluntary unitization if unitized operations:

(1) Will promote and expedite lease exploration and development; or

(2) Are necessary to prevent waste, conserve natural resources, or protect correlative rights, including Federal royalty interests, of a reasonably delineated and productive reservoir.

(b) *Compuslory unitization.* The Regional Supervisor may require you and other lessees to unitize operations if unitized operations are necessary to prevent waste, conserve natural resources, or protect correlative rights of a reasonably delineated and productive reservoir.

(c) *Unit area.* The area that a unit includes is the minimum number of leases that will allow the lessees to minimize the number of platforms, facility installations, and wells necessary for efficient exploration, development, and production. A unit may include whole leases of portions of leases.

(d) *Unit agreement.* You and the other lessees of the leases in the unit must enter into a unit agreement that allocates benefits to unitized leases. The unit agreement must designate a unit operator and specify the effective date of the unit agreement. A unit agreement of terminates when the unit no longer produces unitized substances and the unit operator no longer conducts drilling or well-workover operations under the unit agreement, unless the Director orders or approves a suspension of production under § 250.10.

(e) *Unit operating agreement.* The unit operator and the owners of working interests in the unitized leases must enter into a unit operating agreement. The unit operating agreements must describe how all the unit participants will apportion all costs and liabilities incurred maintaining or conducting operations. When a unit involves one or more net-profit-share leases, the unit operating agreement must describe how to attribute costs and credits to the net-profit-share lease(s).

(f) *Termination or adjustment of a unit agreement.* If your unit agreement expires or terminates, or if MMS adjusts the unit area to exclude your lease from the unit, your lease expires unless:

(1) Its initial term has not expired;

(2) You conduct drilling, production, or well-reworking operations on your lease consistent with applicable regulations; or

(3) MMS orders or approves a suspension of production or operations for your lease.

(g) *Unit operations.* If your lease is subject to a unit agreement, the entire lease continues for the term provided in the lease and as long thereafter as any portion of your lease remains part of the unit area, and as long as operations continue the unit in effect.

(1) Drilling, production, and well-reworking operations performed on any lease in accordance with the unit agreement benefit all leases in the unit. If your unit ceases drilling activities for a period between the discovery and delineation of one or more reservoirs and the initiation of actual development and production operations and that time period would extend beyond your lease's primary term, you must request and obtain MMS approval of a suspension of production under § 250.10.

(2) When a lease in a unit agreement is beyond the primary term and the lease or unit is not producing, the lease will expire unless:

(i) You conduct a continuous drilling or well reworking program designed to develop or restore the lease or unit production; or

(ii) MMS orders or approves a suspension of operations under § 250.10.

§ 250.192 What if I have a competitive reservoir on my lease?

(a) The Regional Supervisor may require you to conduct development and production operations in a competitive reservoir under either a voluntary joint Development and Production Plan or a unitization agreement. A competitive reservoir has one or more producing or producible well completions on each of two or more leases, or portions, with different owners. For purposes of this paragraph, a producible well completion is a well which is capable of production and which is shut in but not necessarily connected to production facilities, and from which the operator plans future production.

(b) You may request that the Regional Supervisor make a preliminary determination whether a reservoir is competitive. When you receive the preliminary determination, you have 30 days (or longer if the Regional Supervisor allows additional time) to concur or to submit an objection with supporting evidence if you do not concur. The Regional Supervisor will make a final determination and notify you.

(c) If you conduct drilling or production operations in a competitive reservoir, you and the other affected lessees must submit for approval a joint plan of operations. You must submit the joint plan within 90 days after the Regional Supervisor makes a final determination that the reservoir is competitive. The joint plan must provide for the development and/or production of the reservoir. You may submit supplemental plans for the Regional Supervisor's approval.

(d) If you and the other affected lessees cannot reach an agreement on a joint Development and Production Plan within the approved period of time, each lessee must submit a separate plan to the Regional Supervisor. The Regional Supervisor may hold a hearing to resolve differences in the separate plans. If the differences in the separate plans are not resolved at the hearing and the Regional Supervisor determines that unitization is necessary under § 250.191(b), MMS will initiate unitization under § 250.194.

§ 250.193 How do I get approval for voluntary unitization?

(a) You must file a request with the Regional Supervisor for approval of a unit. Your request must include:

(1) A draft of the proposed unit agreement;

(2) A proposed initial plan of operation;

(3) Supporting geological, geophysical, and engineering data; and

(4) Other information that may be necessary to show that the unitization proposal meets the criteria of § 250.190.

(b) The unit agreement must comply with the requirements of this part. MMS will provide a model unit agreement for you to follow. If you make changes to the model agreement, you must obtain the approval of the Regional Supervisor.

(c) After the Regional Supervisor approves your unitization proposal, you and the unit operator must sign it and file copies of the unit agreement, the unit operating agreement, and the plan of operation with the Regional Supervisor.

§ 250.194 How will MMS require unitization?

(a) If the Regional Supervisor determines that unitization of operations within a proposed unit area is necessary to prevent waste, conserve natural resources of the OCS, or protect correlative rights, including Federal royalty interests, the Regional Supervisor may order unitization according to a plan for unitization. This plan will conform to the model unit agreement available from the Regional Supervisor unless the Regional Supervisor approves a variation.

(b) If you ask MMS to compel unitization, you must file a request with the Regional Supervisor. Include a proposed unit agreement as described in § 250.192(b), a proposed unit operating agreement, and a proposed initial plan of operation together with supporting geological, geophysical, and engineering data, and any other information that may be necessary to show that unitization meets the criteria of § 250.190. The proposed unit agreement must include a counterpart executed by each lessee seeking compulsory unitization. Lessees seeking compulsory unitization must simultaneously serve, on the non-consenting lessees, copies of:

(1) The request;

(2) The proposed unit agreement with executed counterparts;

(3) The proposed unit operating agreement; and

(4) The proposed initial plan of operation.

(c) If the Regional Supervisor initiates compulsory unitization, MMS will serve all lessees of the proposed unit area with a copy of the plan for unitization and a statement of reasons for the proposed unitization.

(d) The Regional Supervisor will not compel unitization until MMS provides all lessees of the proposed unit area written notice and an opportunity for a hearing. If you want MMS to hold a hearing, you must request it within 30 days after you receive written notice from the Regional Supervisor or after you are served with a request for compulsory unitization from anther lessee.

(e) MMS will not hold a hearing under this paragraph until at least 30 days after MMS provides written notice of the hearing date to all parties owning interests which would be made subject to the unit agreement. The Regional Supervisor must give all lessees of the proposed unit area an opportunity to submit views orally or in writing and to question both those seeking and those opposing compulsory unitization. Adjudicatory procedures are not required. The Regional Supervisor will make a decision based upon a record of the hearing, including any written information made a part of the record. The Regional Supervisor will arrange for a court reporter to make a verbatim transcript. The party seeking compulsory unitization must pay for the court reporter and pay for and provide to the Regional Supervisor within 10 days after the hearing three copies of the verbatim transcript, made by a court reporter.

(f) The Regional Supervisor will issue an order that requires or rejects compulsory unitization. That order must include a statement of reasons for the action taken including identification of those parts of the record which form the basis of the decision. Any party may appeal the final order of the Regional Supervisor under 30 CFR part 290.

[FR Doc. 96–13990 Filed 6–4–96; 8:45 am]

BILLING CODE 4310–MR–M

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30 CFR Part 256

RIN 1010–AC15

Drilling Requirements for Outer Continental Shelf Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Minerals Management Service (MMS) proposes to amend its lease term regulations to remove the requirement that all lessees begin an exploratory well within the first 5 years of the primary term for new 8-year leases on the Outer Continental Shelf (OCS). MMS is proposing this change because recently enacted legislation provides more effective incentives to expedite lease development. A drilling requirement would apply when MMS stipulates a drilling requirement in the notice of sale.

DATES: MMS will consider all comments received by August 5, 1996. We will begin reviewing comments at that time and may not fully consider comments we receive after August 5, 1996.

ADDRESSES: Mail or hand-carry written comments to the Department of the Interior; Minerals Management Service; 381 Elden Street; Mail Stop 4700; Herndon, Virginia 22070–4817; Attention: Chief, Engineering and Standards Branch.

FOR FURTHER INFORMATION CONTACT: Judith M. Wilson, Engineering and Standards Branch, telephone (703) 787–1600.

SUPPLEMENTARY INFORMATION: Section 8(b) of the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1331 *et seq.*, as amended, 92 Stat. 629, states that an oil and gas lease is issued ''for an initial period of five years; or not to exceed ten years where the Secretary finds that such longer period is necessary to encourage exploration and development in areas because of unusually deep water * * *.'' Currently, MMS offers 10-year terms for leases in water depths of 900 meters or more. In water depths of 400 to 900 meters, MMS offers 8-year lease terms

subject to a requirement that the lessee begin an exploratory well within the first 5 years, 30 CFR 256.37.

The OCSLA requires a lessee to be diligent in exploring and developing a lease. If production begins within the primary term, then the lease continues for as long as production continues, 30 CFR 256.37(b). However, 5 years may not be adequate time in which to begin exploratory drilling even for a diligent lessee. Because of unusual circumstances such as deep water, the lessee risks losing a lease through no fault of its own.

Due to the number of changes facing the oil and gas leasing program—such as lower oil prices, technological advances, subsalt discoveries and expansion to deeper waters—MMS initiated a review of OCS leasing policy several years ago. MMS found that the requirement that 8-year leases be drilled by the end of the fifth year did not result in meaningful increases in drilling. Most of the offered tracts were relinquished at the end of the fifth year. In particular, between 1985 and 1992, 421 tracts were leased for 8-year terms. Only 29 of the 421 leases had been drilled. Of those 29 leases, only 18 were still active by the end of 1993.

With the enactment of the OCS Deep Water Royalty Relief Act (DWRRA), P.L. 104–58, new deepwater leases are offered for sale with available royalty volume suspensions. Royalty volume suspensions are available for new fields in at least 200 meters of water and lying west of 87 degrees, 30 minutes West longitude. Royalty payments on volumes of production are suspended for at least the first 17.5 million barrels of oil equivalent (mmboe) in 200 to 400 meters of water; 52.5 mmboe in 400 to 800 meters; and 87.5 mmboe in more than 800 meters of water. MMS views this significant financial incentive as more effective than the drilling requirement as a means of achieving earlier drilling. In addition, the rental rates for all leases lying in waters deeper than 200 meters may be increased (e.g., they were increased from $5.00 to $7.50/acre in Sale 157) to encourage earlier drilling.

Therefore, MMS proposes to amend its regulation at 30 CFR 256.37 to remove the requirement that the lessee must begin drilling within 5 years on 8-year leases issued on or after the date this rule becomes final. The amendment would also change the 400 to 900 meter depth requirement for 8-year leases to 400 to 800 meters to be consistent with the DWRRA.

Author: This document was prepared by Judy Wilson, Engineering and Standards Branch, and Mary Vavrina, Offshore Resource Evaluation Division, MMS.

Executive Order (E.O.) 12866

This rule is not a significant rule requiring Office of Management and Budget review under E.O. 12866.

Regulatory Flexibility Act

The Department of the Interior (DOI) has determined that this proposed rule will not have a significant effect on a substantial number of small entities. Most entities that engage in offshore activities as operators are not small because of the technical and financial resources and experience necessary to conduct offshore activities. Small entities are more likely to operate onshore or in State waters—areas not covered by the proposed regulation. When small entities work in the OCS, they are more likely to be contractors rather than operators. For example, a company that collects geologic and geophysical data might be a small entity. While these contractors must follow rules governing OCS operations, we are not changing the rules that govern the actual operations of a lease. We are only proposing to modify the rules that govern the length of time required for drilling an exploratory well. The rule could have a positive secondary effect. By extending the time available to begin drilling an exploratory well in unusual circumstances, more leases may be active and this could result in an increase in opportunities for small entities to perform services. The added time could also work to benefit small companies who have slower computers and could benefit from a longer period of time to review data.

Paperwork Reduction Act

The proposed rule does not contain new information collection requirements that require approval by the Office of Management and Budget (OMB). The information collection requirements in 30 CFR part 256 are approved by OMB under approval No. 1010–0006.

Takings Implication Assessment

The DOI certifies that this rule does not represent a governmental action capable of interference with constitutionally protected property rights. A Takings Implication Assessment prepared pursuant to E.O. 12630, Government Action and Interference with Constitutionally Protected Property Rights, is not required.

Unfunded Mandate Reform Act of 1995

This rule does not contain any unfunded mandates to State, local, or tribal governments or the private sector.

E.O. 12988

The DOI has certified to OMB that this proposed rule meets the applicable civil justice reform standards provided in Sections 3(b)(2) of E.O. 12988.

National Environmental Policy Act

MMS has examined the proposed rulemaking and has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(c)).

List of Subjects in 30 CFR Part 256

Administrative practice and procedures, Continental shelf, Environmental Protection, Government contracts, Mineral royalties, Oil and gas exploration, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Surety bonds.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

For the reasons set forth in the preamble, the Minerals Management Service proposes to amend 30 CFR parts 256 as follows:

PART 256–LEASING OF SULPHUR OR OIL OR GAS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 256 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*

2. In § 256.37, paragraph (a)(2) is revised to read as follows:

§ 256.37 Lease term.

(a)(1) * * *

(2) If your oil and gas lease is in water depths of 400 meters or more, it will have an initial lease term of at least 8 years but not more than 10 years. The initial term for each lease will be stated in the Final Notice of Sale.

(i) For leases issued before [the effective date of the final rule], you must commence an exploratory well within the first 5 years of the initial 8-year term or MMS will cancel the lease.

(ii) For leases issued on or after [the effective date of the final rule], MMS will incorporate into the lease terms by

lease stipulation any drilling requirements.

* * * * *

[FR Doc. 96–13989 Filed 6–4–96; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

36 CFR Part 7

RIN 1024–AC45

Big Thicket National Preserve, Moored Houseboats

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) is proposing regulations that will require all houseboat owners to register their houseboats at the Office of the Superintendent of the Preserve to adhere to regulations pertaining specifically to moored houseboats within the boundaries of the Preserve. This rulemaking will also include regulations pertaining to sanitation and refuse (trash removal), fire extinguishers and personal flotation devices on board houseboats. The addition of the proposed regulations will allow the NPS to identify each houseboat owner in the event emergency notification is needed while the houseboat is vacant. The regulations will also assist the park in monitoring recreational activities directly related to houseboats. These regulations will enhance protection of the resources in the Preserve while providing improved visitor protection services by park personnel.

DATES: Written comments will be accepted through August 5, 1996.

ADDRESSES: Comments should be addressed to: Superintendent, Big Thicket National Preserve, 3785 Milam, Beaumont, Texas 77701.

FOR FURTHER INFORMATION CONTACT: Robert D. Appling, Chief Ranger Big Thicket National Preserve, Telephone 409–839–2689.

SUPPLEMENTARY INFORMATION:

Background

Houseboats have been moored on the Neches River and its tributaries since before Big Thicket National Preserve was established. The mooring of houseboats within the Preserve is considered a traditional use and should be allowed to continue. Houseboat owners are primarily local residents of the Southeast Texas area.

Houseboat owners and the recreational activities associated with these moored houseboats have been mostly unregulated since the Preserve was established in 1974 (16 U.S.C. 698). Activities associated with houseboats have led to the degradation of Preserve resources in a variety of ways, including the poaching of fish and game, damage to and removal of vegetation to establish egress routes, concentrated human use impacts, stream bank erosion and the prohibited discharge of sewage, animal and fish remains, and other aquatic pollutants.

Houseboats have been left unattended for long periods of time and many are utilized only during the approved hunting season. Attempts by Preserve personnel to contact houseboat owners to inform them of damage to their property or to advise them of violations of regulations have proven to be extremely difficult. Many houseboat owners do not have telephones and the park does not have permanent addresses where the owners can be contacted.

The NPS believes that the addition of these regulations will provide for better management of the land and water resources of the Preserve and improve overall communications with houseboat owners by providing accurate and updated information concerning hunting, fishing, boating and water use activities.

Public Participation

It is the policy of the Department of Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule to the address noted at the beginning of this rulemaking. Big Thicket National Preserve will also publish public notices in local papers informing the general public of the proposed rule. The NPS will review comments and consider making changes to the final rule based upon an analysis of the comments.

Drafting Information. The primary authors of this proposed rule are Robert D. Appling, Chief Ranger and Richard F. Strahan, Chief, Division of Resource Management, and Dennis Burnett, Washington Office of Ranger Activities, National Park Service.

Paperwork Reduction Act

This proposed rule does not contain collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

Compliance With Other Laws

This rule was not subject to Office of Management and Budget review under Executive Order 12866. The Department of the Interior determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 USC 601 *et seq.*). The economic effects of this rulemaking are local in nature and negligible in scope.

The NPS has determined that this proposed rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce incompatible uses which compromise the nature and character of the area or causing physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, the regulation is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental guidelines in 516 DM 6 (49 FR 21438). As such, neither an Environmental Assessment (EA) nor an Environmental Impact Statement (EIS) has been prepared.

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, it is proposed to amend 36 CFR Chapter I as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. Section 7.85 is amended by adding new paragraph (e) to read as follows:

§ 7.85 Big Thicket National Preserve.

* * * * *

(e) *Moored houseboats.* Except as otherwise provided, the following regulations will be applicable:

(1) All houseboats moored on waterways within the boundaries of Big Thicket National Preserve are required to be registered with the Office of the Superintendent, Big Thicket National Preserve. Houseboats will be assigned a number and a decal at the beginning of each calendar year. It is further required that written notification will be given to the Office of the Superintendent prior to relocation of a houseboat from its registered location.

(2) Houseboats will be located a minimum distance of one-half mile from other houseboats.

(3) New houseboats that have buoyancy flotation devices enabling the houseboat to float will be limited to styrofoam-type material or commercially made flotation products such as pontoon floats. Houseboats utilizing containers made of metal (e.g., 55 gallon drums for buoyancy/flotation) will not be permitted unless the container has never been used to store any type of product inside and proof to this effect is provided.

(4) Houseboats will have a chemical or other marine-type approved holding tank or storage container. Discharge of sewage into waters within the Preserve is prohibited.

(5) All trash and other waste material accumulated on houseboats will be properly disposed of outside the Preserve boundaries. Burying or burning trash is prohibited.

(6) All weapons on houseboats will be unloaded and cased.

(7) Houseboats will be equipped with a minimum of one approved Type B-l fire extinguisher, one Type I personal flotation device for each individual occupying the houseboat, and one Type IV buoyant cushion or ring buoy.

(8) Houseboats will have a minimum of three reflective devices located so as to be visible to other marine type traffic from sunset to sunrise.

(9) Fires on Preserve land will not be left unattended and will be completely extinguished before leaving the area of the moored houseboat.

(10) Damage to any trees or vegetation on Preserve land surrounding the moored houseboat is prohibited. This includes such actions as, but not limited to:

(i) Mooring houseboats to trees;

(ii) Nailing objects to trees;

(iii) Clearing of vegetation; and

(iv) Streambank modification.

(11) All persons registering a houseboat within the boundaries of Big Thicket National Preserve will comply with all regulations pertaining to moored houseboats.

Dated: May 9, 1996.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 96–14105 Filed 6–4–96; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OR–14–1–5535; FRL–5514–3]

Approval and Promulgation of State Implementation Plans: Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA invites public comment on its proposed approval of a State Implementation Plan (SIP) revision submitted by the State of Oregon for the purpose of bringing about the attainment of the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10). The implementation plan was submitted by the State to satisfy certain Federal requirements for an approvable moderate nonattainment area PM–10 SIP for the Klamath Falls, Oregon, PM–10 nonattainment area.

DATES: Comments must be postmarked on or before July 5, 1996.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, Office of Air Quality (OAQ–107), EPA, Docket #OR–14–1–5535, 1200 Sixth Avenue, Seattle, Washington, 98101.

Copies of the State's request and other information supporting this proposed action are available for inspection during normal business hours at the following locations: EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, and the Oregon Department of Environmental Quality, 811 SW., Sixth Avenue, Portland, Oregon 97204–1390.

FOR FURTHER INFORMATION CONTACT: Rindy Ramos, EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington, 98101, (206) 553–6510.

SUPPLEMENTARY INFORMATION

I. Background

A. 1990 Amendments to the Clean Air Act

The area within the Klamath Falls, Oregon, Urban Growth Boundary (UGB), was designated nonattainment for PM–10 and classified as moderate under Sections 107(d)(4)(B) and 188(a) of the Clean Air Act (CAA), upon enactment of the Clean Air Act Amendments (CAAA) of 1990.[1] See 56 FR 56694 (November 6, 1991) and 40 CFR 81.338. The air quality planning requirements for moderate PM–10 nonattainment areas are set out in Subparts 1 and 4 of Title I of the Act.[2] EPA has issued a ''General Preamble'' describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under Title I of the Act, including those state submittals containing moderate PM–10 nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in this proposed approval and the supporting rationale. In this rulemaking action for the PM–10 SIP for the Klamath Falls nonattainment area, EPA's proposed action is consistent with its interpretations, discussed in the General Preamble, and takes into consideration the specific factual issues presented in the SIP. Additional information supporting EPA's action on this particular area is available for inspection at the address indicated above. EPA will consider any comments received by the date indicated above.

Those states containing initial moderate PM–10 nonattainment areas (those areas designated nonattainment under Section 107(d)(4)(B)) were required to submit, among other things, the following provisions by November 15, 1991:

1. Provisions to assure that Reasonably Available Control Measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of Reasonably Available Control Technology (RACT)) shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every 3 years and which demonstrate Reasonable Further

[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Pub. L. No. 101–549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended (''the Act''). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C., Sections 7401, *et seq.*

[2] Subpart 1 contains provisions applicable to nonattainment areas generally and Subpart 4 contains provisions specifically applicable to PM–10 nonattainment areas. At times, Subpart 1 and Subpart 4 overlap or may conflict. EPA has attempted to clarify the relationship among these provisions in the ''General Preamble'' and, as appropriate, in today's notice and supporting information.

Progress (RFP) toward attainment by December 31, 1994; and

4. Provisions to assure that the control requirements applicable to major stationary sources of PM–10 also apply to major stationary sources of PM–10 precursors except where the Administrator determines that such sources do not contribute significantly to PM–10 levels which exceed the NAAQS in the area. See Sections 172(c), 188, and 189 of the Act.

States with initial moderate PM–10 nonattainment areas were required to: 1) submit a permit program for the construction and operation of new and modified major stationary sources of PM–10 by June 30, 1992 (see Section 189(a)); and 2) submit contingency measures by November 15, 1993, which were to become effective without further action by the state or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM–10 NAAQS by the applicable statutory deadline (see Section 172(c)(9) and 57 FR 13543–13544). Oregon has made submittals in response to both of the above described requirements. EPA intends to address that submittal containing the new source review permit program in a separate action.

B. Plan Development

The Klamath Falls Attainment Plan was developed by the Oregon Department of Environmental Quality (ODEQ) in consultation with officials of the City and County of Klamath Falls, the Oregon Department of Transportation, the Oregon Department of Forestry, and EPA.

The original Attainment Plan was developed under the CAA prior to the amendments of 1990 and adopted by the Oregon Environmental Quality Commission (OEQC) on January 31, 1991. To address the 1990 Clean Air Act Amendments, the Plan was initially revised and adopted by the OEQC on November 8, 1991. This version of the Plan was submitted to EPA on November 15, 1991. The Plan was revised again and adopted by the OEQC on August 18, 1995, and submitted to EPA on September 22, 1995. Therefore, the 1991 and 1995 submittals constitute the State Implementation Plan (SIP) for the Klamath Falls PM–10 nonattainment area. This action will address the 1991 and 1995 submittals.

The 1991 Plan was revised for four main reasons. The first was to update the Vehicle Miles Travelled (VMT) estimates and emission inventory. The Oregon Department of Transportation has provided ODEQ with more accurate information to determine the Plan's base year and attainment year transportation emissions. These emissions are referred to as the area's transportation emission budget.

The second reason was to account for additional emission reductions due to the area's woodstove replacement program that were not accounted for in the 1991 Plan. The 1991 Plan estimated that 325 woodstoves would be replaced when, in reality, 743 stoves were replaced.

The third reason was to analyze what effect an increase in an allowable emission limit has had on the Plan's attainment demonstration. Since the Plan was first developed in 1991, the state has revised Oregon Administrative Rules (OAR) Chapter 340, Division 25, Sections 305, 320, and 325, resulting in an increase in the allowable emission limit for a Jeld-Wen hardboard plant located in the nonattainment area. Because attainment of the NAAQS is determined based on, among other things, allowable point source emissions, the State needed to review the Plan's attainment demonstration to show that the increase in allowable emissions would not jeopardize attainment of the NAAQS.

In fact, the 1991 Plan already accounted for the revised limit. During development of the 1991 attainment plan, ODEQ was aware that the hardboard rule emission limit would be revised in the future. In anticipation of the Division 25 revision (1995), ODEQ estimated that Jeld-Wen's allowable emissions would increase by 129 pounds per day, up to a maximum of 24 tons per year. Therefore, ODEQ allocated these extra emissions to Jeld-Wen's inventoried emissions and used these ''adjusted'' emissions in the Plan's 1994 attainment demonstration. When the hardboard rule was finalized (1995), the plant's emissions did not increase by the estimated 24 tons per year. Instead, the revised emission limit resulted in an allowable increase of only 13.1 tons per year—10.9 tons per year less than the amount originally allotted in the 1991 plan (24 tons per year estimated in 1991 minus 13.1 tons per year finalized in 1995).

The revision to Division 25 was adopted by the OEQC on January 20, 1995, and became state-effective February 17, 1995. It was submitted to EPA as a revision to the Oregon SIP on August 29, 1995, and will be reviewed in accordance with the CAA in a separate technical support document and rulemaking action.

The fourth main reason the 1991 Plan was revised was to use a 1995 dispersion modeling analysis to re-evaluate the effect a Weyerhaeuser Company facility has on the Plan's attainment demonstration. The 1995 analysis indicates that the facility's impact, at the monitoring site upon which the Plan's attainment demonstration is based, is not significant. This analysis is discussed in more detail in the *Evaluation of Attainment Demonstration* section of the Technical Support Document (TSD) that corresponds with this action.

II. This Action

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565–13566). In this action, EPA is proposing to approve the plan revisions submitted to EPA on November 15, 1991, and September 22, 1995. EPA has determined that the submittals meet all of the applicable requirements of the Act due on November 15, 1991, with respect to moderate area PM–10 submittals. Also, as described in Part II.5 below, EPA is proposing to grant the exclusion from PM–10 control requirements applicable to major stationary sources of PM–10 precursors. In addition, as described in Part II.7 below, EPA is proposing to approve the SIP revision submitted on November 15, 1991, as meeting the requirement for contingency measures.

Analysis of State Submission

1. Procedural Background

The Act requires states to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a state must be adopted after reasonable notice and public hearing.[3] Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a state under the Act must be adopted by such state after reasonable notice and public hearing.

EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA six months after receipt of the submission.

[3] Also, Section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of Section 110(a)(2).

The State of Oregon held a public hearing on the 1991 Plan on October 24, 1991. This Plan was submitted to EPA for review on November 15, 1991. The Attainment Plan was subsequently revised in 1995. Public hearings for this revision were held on June 16 and 20, 1995. This 1995 revision was submitted to EPA on September 22, 1995, as a revision to the Oregon SIP.

The SIP revisions were reviewed by EPA to determine completeness shortly after submittal, in accordance with the completeness the criteria set out at 40 CFR part 51, appendix V. Letters dated May 7, 1992, and February 28, 1996, were forwarded to the Director of ODEQ indicating the completeness of the submittals and the next steps to be taken in the review process. In this action EPA is proposing to approve the State of Oregon's PM–10 SIP submittal for the Klamath Falls PM–10 nonattainment area and invites public comment on the action.

2. Accurate Emissions Inventory

Section 172(c)(3) of the Act requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. The emissions inventory should also include a comprehensive, accurate, and current inventory of allowable emissions in the area. See, e.g., Section 110(a)(2)(K) of the Act. Because the submission of such inventories is necessary to an area's attainment demonstration (or demonstration that the area cannot practicably attain), the emissions inventories must be received with the submission (see 57 FR 13539).

The base year for analysis was 1986 (July 1, 1986, through June 30, 1987). This year was chosen because it represents some of the most severe air quality episodes the area has experienced. There were forty days when monitored concentrations of PM–10 were above the 24-hour standard. In addition to the base year inventory (1986), a design year inventory (1994 attainment year), and a maintenance demonstration year inventory (2004) were developed.

The 1986 inventory identified that, on a 24-hour, worst case day, the major sources of PM–10 emissions are residential wood combustion (80%), fugitive dust (winter road sanding) (8%), industry (7%), transportation (4%), and other (1%). Annual emissions for the same timeframe are residential wood combustion (61%), fugitive dust (10%), industry (10%), solid waste disposal (which includes residential open burning, on-site incineration, and agricultural burning) (9%), transportation (8%), and other (2%).

After implementation of all control measures, ODEQ estimates that the 24-hour 1994 attainment year inventory will be as follows: industry (43%), residential woodburning (21%), transportation (18%), fugitive dust (16%), other (2%), and solid waste disposal (0%). Annual emissions for the 1994 attainment year are estimated to be: industry (30%), residential woodburning (24%), fugitive dust (20%), transportation (17%), other (6%), and solid waste disposal (3%).

The emission inventory was originally reviewed and commented on by EPA in October 1991, when this SIP revision was in draft form. The issues raised by EPA during October 1991 were resolved by ODEQ before the November 15, 1991, SIP revision was submitted.

EPA is proposing to approve the emissions inventory because it generally appears to be accurate and comprehensive, and provides a sufficient basis for determining the adequacy of the attainment demonstration for this area consistent with the requirements of Sections 172(c)(3) and 110(a)(2)(K) of the CAA.[4]

3. RACM (Including RACT)

As noted, the initial moderate PM–10 nonattainment areas were required to submit provisions to assure that RACM (including RACT) are implemented no later than December 10, 1993 (see Sections 172(c)(1) and 189(a)(1)(C)). The General Preamble contains a detailed discussion of EPA 's interpretation of the RACM (including RACT) requirement (see 57 FR 13539–13545 and 13560–13561).

ODEQ performed a cost and technical analysis of the area's emission sources to evaluate available control measures needed to bring the area into attainment with the NAAQS. Results of the emission inventory and Chemical Mass Balance (CMB) analysis indicated that, overwhelmingly, emissions from residential wood combustion were the most significant contributor to exceedances of the NAAQS on a 24-hour, worst case day basis. This analysis also indicated that industrial emissions were relatively minor (7%) when compared to residential wood combustion (80%). ODEQ's analysis further showed that attainment of the NAAQS can be demonstrated by controlling RACM sources (e.g., wood smoke, road sanding, and open burning) instead of industrial sources.

It is EPA's policy that RACM (including RACT) does not require the implementation of all available control measures where an area demonstrates timely attainment and the implementation of additional controls would not expedite attainment (see 57 FR 13540–13544). Based on the available control measures adopted (described below), the SIP demonstrates attainment of the PM–10 NAAQS by December 31, 1994. The SIP also demonstrates continued maintenance of the NAAQS between December 1994 and the year 2004. Accordingly, the attainment demonstration does not include additional industrial controls beyond those currently required by the Oregon SIP. However, ODEQ has included additional point source controls as a contingency measure should the area not attain the NAAQS by December 31, 1994, or demonstrate RFP. The Plan's attainment demonstration, contingency measures, and RFP are discussed in more detail later in this document. In conclusion, EPA proposes to approve the existing industrial controls as meeting the RACM (including RACT) requirement.

Attainment of the 24-hour standard is based on the following: (1) A mandatory woodstove curtailment program, (2) a woodstove certification program, (3) a woodstove removal program, and (4) reduction in winter road sanding emissions.

Attainment of the annual standard is based upon: (1) A mandatory woodstove curtailment program, (2) woodstove certification program, (3) a reduction in winter road sanding emissions, (4) a woodstove opacity limitation, and (5) a year-round prohibition on agricultural open burning. The following table summarizes the anticipated emission reductions and their associated reduction credits.

[4] The EPA issued guidance on PM–10 emissions inventories prior to the enactment of the Clean Air Act Amendments in the form of the 1987 *PM–10 SIP Development Guideline*. The guidance provided in this document appears to be consistent with the Act. See Section 193 of the Act.

SUMMARY—ATTAINMENT STRATEGIES

Attainment measures—1994	Credit requested		Emission reductions	
	24-Hour	Annual	Number per hour (24-Hour)	Tons per year (Annual)
Woodstove curtailment	86%	74%	16,625	938
Woodstove certification	24%	24%	582	78
Opacity restriction—20%	(*)	5%	.....	12
Woodstove removal	53%	(**)	973	.....
Winter road sanding	60%	60%	1,265	17
Agricultural burning	(***)	100%	.....	156
Total reductions	.....	.....	19,445	1201
Reductions needed by 12/31/94	.....	.....	18,877	1035
Excess reductions	.....	.....	568	166

* Not applicable on a 24-hour worst case day basis: woodstoves would not be in use due to the curtailment program.
** Not quantified.
*** Not applicable; this activity did not occur during exceedances of the 24-hour NAAQS.

A. Mandatory Woodburning Curtailment Program

On July 31, 1991, the Klamath County Board of Commissions adopted Ordinance No. 63 (codified as Chapter 406), establishing a mandatory woodburning curtailment program. The City of Klamath Falls adopted Ordinance No. 6630 on September 16, 1991, which grants Klamath County the authority to implement the Klamath County Air Quality Program (Chapter 406) within the city limits of Klamath Falls. The program became fully implemented within the nonattainment area on November 1, 1991. Prior to the mandatory program, a voluntary program had been operated by Klamath County since 1988. The following is a brief discussion of the program's key elements. For a detailed analysis and discussion, the reader is referred to the TSD that corresponds with this action.

Daily wood heating advisories are disseminated by the County via local television and radio stations. The County also maintains a burning advisory telephone system which, during the 1990/1991 woodheating season, answered 122,000 public calls. An additional 5,000 calls were handled by the Klamath County Air Quality staff. During the 1992/1993 woodheating season, there were 160,311 public calls. The increase in calls between the two seasons seems to indicate an increase in public awareness of the wood heating advisory and of the purpose of the curtailment program.

For a specified period of time, Klamath County Air Quality could grant an exemption from complying with the curtailment program during poor air quality periods provided that the solid fuel-fired heating appliance is the sole source of heat for a specific residence. However, after December 31, 1992, it became unlawful for a solid fuel-fired heating appliance to be the sole source of heat in any nonowner (tenant-occupied) dwelling. Exemptions to this phaseout can be granted to landlords due to low income. This sole source, low income, nonowner-occupied exemption terminates December 31, 1997. All sole source, low income, nonowner-occupied dwellings must have a secondary source of heat by that time. In addition, all sole source heat households, except those that are tenant-occupied, had until December 31, 1995, to install a secondary heat source. No exemptions will be issued after this date unless the household (person) qualifies under a low income exemption.

A person who demonstrates economic need by certifying through proof that his/her income is less than 1.2 times the low income guidelines established by the United States Department of Housing and Urban Development, may be granted a low income exemption from installing a secondary form of heat to be used during yellow and red curtailment days. After December 31, 1995, no further exemptions will be granted.

Woodburning curtailment forecasts are made twice daily at 7 am and 4 pm during the woodheating season (October 1 through March 31). The curtailment calls are based on a forecast algorithm using: National Weather Service upper air and barometric pressure data; forecasts of synoptic meteorology; surface temperatures; and wind speed and direction. Nephelometer measurements of hourly light scattering and local observations of air quality conditions are also used. (Appendix 7 of ODEQ's Attainment Plan contains a more detailed discussion).

Woodburning curtailment advisories are issued at three levels. A green advisory is issued when NAAQS exceedances are unlikely. Woodburning is unrestricted during these periods but the public is asked to follow good woodburning practices. Green advisories are issued when PM–10 concentrations are forecast to not exceed 80 $\mu g/m^3$ for a 24-hour average.

A yellow advisory is issued when PM–10 concentrations are forecast to exceed or are exceeding 81 $\mu g/m^3$ for a 24-hour average. The public is asked to curtail all unnecessary woodburning. However, permitted pellet stoves and certified stoves may be used; and dwellings granted exemptions described above may burn.

A red advisory is issued when PM–10 concentrations are forecast to exceed or are exceeding 150 $\mu g/m^3$ for a 24-hour average. No person can operate any solid fuel-fired heating appliance, except for a permitted pellet stove, during a red advisory, unless an exemption has been granted by the County.

In addition, during a yellow or red advisory, all open burning, including burn barrels/incineration is prohibited unless a variance has been approved by Klamath County Air Quality.

The Klamath Falls curtailment program includes a surveillance and enforcement element. A standard operating procedure and evaluation measure has been developed to be used during yellow and red advisories. During surveillance and effectiveness evaluations, infra-red detectors are used at night to detect ''hot'' chimneys. Visible emission readings are taken during the daytime hours.

When Klamath County Air Quality inspectors have visually observed that a person has violated the Klamath County Clean Air Ordinance, Ordinance Number 63, a Notice and Order setting forth the alleged violation is required to be issued. The Notice will require the alleged violator to take corrective action, such as to cease and desist from operating the noncomplying appliance. The violator is to notify Klamath County Air Quality that corrective action has been taken.

In cases when a person has not complied with the Notice and Order, the County is required to issue a Compliance Order and/or Summons and Complaint with the Court of competent jurisdiction for violation of the ordinance. The County may also obtain injunctive relief, abate the nuisance, or otherwise correct the violation of the ordinance through the Court.

Continued operation of a solid-fuel fired device without an exemption, or performing open burning following the declaration of a red or yellow advisory, will result in enforcement action. The penalties which may be imposed upon conviction based on Summons and Complaint for a violation of any provision of Chapter 406.100 (General Rules and Regulations) and Chapter 406.150 (Pollution Prohibitions), excluding Prohibited Materials Burning, of the ordinance are:

(1) First offense violators may receive a warning and be fined $25.

(2) Second offense violators shall be fined $100.

(3) Subsequent offense violators shall be fined a maximum of $250 per occurrence.

The County has conducted several curtailment surveys since the 1989/1990 woodheating season. During this voluntary compliance period (the program was not a mandatory one until 1991), red advisory nighttime compliance rates ranged from about 37% to 50% when compared to the number of woodstoves being used during a green advisory nighttime baseline. The green advisory nighttime baseline was also established during the 1989/1990 woodheating season.

For the January 1993 and December 1993 to January 1994 periods, five red advisory day surveys were conducted in the morning hours. When compared to the 1989/1990 green advisory baseline, compliance rates for the five red advisory days were about 95%. This comparison may not be entirely applicable given the nighttime baseline and the morning compliance survey. However, it does provide some indication of overall compliance during red curtailment days.

During the 1994/1995 winter season, only two red advisory calls were made. An evening red advisory occurred on November 22, 1994, and a daytime red advisory occurred on January 17, 1995. During these two events, the County did not conduct surveys. However, both red advisories were preceded by yellow advisories; therefore, survey data collected during the yellow advisories can give an indication of compliance on red advisory nights. The data show compliance with the yellow advisories, ranging from 84% to 97%.[5]

Considering the above program elements, survey results, and the phasing out of the sole source and low income exemptions, EPA believes that the 86% credit requested by ODEQ on a 24-hour basis is achievable and is being achieved and, therefore, accepts the credit claimed. EPA also accepts ODEQ's annual credit of 74%. In acceptance of the credits, EPA considered the fact that the nonattainment area has not had a monitored exceedance of the 24-hour standard since January 1991, and the area has not exceeded the annual standard since 1989.

B. Woodstove Certification

In 1983, the Oregon Legislature directed the ODEQ to require that all new woodstoves sold in the State be certified through laboratory testing. As a result, stoves sold after July 1986 were required to emit particles at a rate at least 50% less than conventional woodstoves. After July 1988, new woodstoves were required to have a particle emission rate at least 70% less than conventional woodstoves.

The OEQC adopted on March 2, 1990, revisions to Oregon's Woodstove Certification Program, making it consistent with EPA's New Source Performance Standard (NSPS) 40 CFR Part 60, Subpart AAA. Currently, all woodstoves sold in the State of Oregon must be both ODEQ and EPA-certified. The SIP revision was approved by EPA as part of the Oregon SIP on June 9, 1992 (see 57 FR 24373).

ODEQ estimates that the woodstove certification program provides a 24% credit against baseline 1986 woodstove emissions by 1994.[6] Oregon has historically pursued an aggressive woodstove certification program. Oregon was the first state in the Nation to adopt, implement, and enforce a program of this type (1984). EPA promulgated the NSPS on February 26, 1988, modeled after Oregon's program.

The projected emission reductions in conjunction with a statewide ban (OAR 340–34–010) on the sale of used uncertified stoves, a ban on the installation of used uncertified stoves, and Oregon's model woodstove certification program supports EPA's acceptance of Oregon's woodstove certification credit claim.

C. Woodstove Removal and Home Weatherization Program

Between May 1990 and December 1993 the City and County of Klamath Falls received funds totalling approximately $1.9 million from the State of Oregon Community Block Grant funds for a home weatherization and woodstove replacement program. Woodstoves in 743 low income, sole source homes have been replaced by natural gas (90%), oil (6%), electric (2%), certified stove (1%), and propane (1%) heating sources. These funds were administered under Klamath Falls's Particulate Urban Resources Effort (PURE) project. The average cost of converting and weatherizing each home was $2,200.

For the 1994 attainment year, ODEQ estimates that total PM–10 emissions from low income, sole source homes have been reduced by 973 pounds per day, which equates to 67 tons per year. ODEQ therefore requests a 53% credit for this strategy (973 lbs per day 1994 controlled/1843 lbs per day 1994 uncontrolled). This 53% credit is calculated for replacing uncertified woodstoves as follows: Electric heat (100% PM–10 reduction), natural gas (99% PM–10 reduction), propane (99% PM–10 emission reduction), oil (99% PM–10 reduction), and certified woodstoves (50% PM–10 reduction). Because of the demonstrated success of the program, EPA proposes to accept the 53% credit requested by ODEQ.

D. Winter Road Sanding Control Program

Winter road sanding has been shown to adversely affect the PM–10 levels throughout the Western United States, including Klamath Falls, in areas that experience measurable snowfall. The silt-laden, friable sand is placed on roads by local and state highway

[5] This discussion is based on information in a memorandum from David Collier, ODEQ, to Rindy Ramos, EPA Region 10, dated March 4, 1996.

[6] This estimate uses a 1986 baseline inventory and assumes or relies on: 1) a 1% annual growth in firewood consumed by woodstoves; 2) information from building permit authorities in Klamath Falls that essentially all permitted installations are certified stoves, and that about 20% of these are pellet stoves; 3) a useful stove life of 20 years; 4) the fact that typical certified woodstoves and pellet stoves respectively emit 50% and 90% less PM–10 than a conventional stove. EPA believes this is an accurate portrayal of the situation in Klamath Falls.

departments to provide better traction on snow and ice. However, once the snow has melted and the roads have dried out, the remaining dry, silty road sand is easily resuspended by moving vehicular traffic.

In Klamath Falls, winter road sanding emissions peak during periods when several inches of snow cover the area. During these periods, as much as 70 cubic yards per day of aggregate are spread on roads within the UGB. Because snow covers the roadways and landscape, it is ODEQ's position that essentially all of the fugitive dust emissions (during this time period) are assumed to originate from road sanding. Chemical analysis of PM–10 samples collected on days exceeding the 24-hour NAAQS indicated that 9% of the PM–10 mass was soil dust. Road sanding emissions were therefore estimated to be of similar magnitude in the emission inventory, or approximately 1,900 pounds per day during the 27 days per year when road sanding occurs. The worst case day emission estimates provide the basis for the annual emission estimates for road sanding.

Sanding materials used in the Klamath Falls area are obtained from a gravel pit located near Merrill, Oregon, where volcanic cinders, pea gravel, silts, and clays have been deposited. Nearly all of the aggregate used within the UGB is applied by the Oregon Department of Transportation Highway Division, mostly on US 97, South Sixth Street, Alameda Bypass, and the South Side Bypass. The City, County, and State all maintain sections of Washburn Way and other streets in south suburban Klamath Falls. The City maintains streets within the Central Business District.[7]

Oregon requests a 60% credit for its winter road sanding control strategy. The 60% credit is based on the Highway Division's commitment to reduce winter road sanding by 60% through: (1) Replacement of aggregate with a de-icing material; (2) a reduction in the amount of aggregate applied; and (3) rapid cleanup using street washing or sweeping of road sanding materials used on major thoroughfares. During worst case winter days, ODEQ estimates that this strategy will reduce emissions by 1,265 pounds per day and, on an annual basis, it will reduce emissions by 17 tons per year. EPA proposes to accept ODEQ's projection that the road sanding measures will reduce PM–10 emissions from winter road sanding by 60%. See Appendix 4 of the SIP for additional information.

[7] State Implementation Plan for PM–10 in Klamath Falls, October 1991, Section 12.3.2.

E. 20% Woodstove Opacity Limitation

The Klamath County woodsmoke control ordinance (No. 63) provides for a year-round 20% woodstove plume opacity limitation. Visible emissions are not to exceed 20% opacity for a period or periods aggregating more than three minutes in any one hour period. The ordinance does, however, grant an exemption during a fire's start-up period. Visible emission are exempt during a fifteen minute start-up period provided they do not exceed 40% opacity. If the opacity is greater than 40% during start-up, then the stove is in violation of the ordinance.

The 5% emission reduction credit requested by ODEQ is reasonable and is consistent with the recommendations in EPA's *Guidance Document for Residential Wood Combustion Emission Control Measures* and, therefore, EPA proposes to approve it.

F. Open Burning Restriction

Chapter 406 of the Klamath County Clean Air Ordinance regulates residential open burning, including burn barrels/incinerators and agricultural burning. Residential open burning, including burn barrels/incinerators, is prohibited during red and yellow advisories within Klamath County unless a variance has been approved by Klamath County. ODEQ does not request any credit for this strategy.

Agricultural open burning within the nonattainment area and within one-fourth mile of the nonattainment area boundary is prohibited throughout the year. ODEQ estimates that the elimination of agricultural burning will reduce PM–10 emissions by 156 tons on an annual basis and requests a 100% emission reduction credit for elimination of this activity. EPA believes ODEQ's claim is reasonable and, therefore, proposes to approve this control measure.

G. Other Sources

Where sources of PM–10 contribute insignificantly to the PM–10 problem in the area, EPA's policy is that it would be unreasonable and would not constitute RACM to require the sources to implement potentially available control measures (see 57 FR at 13540). The State does, however, have in place the following measures which will further reduce PM–10 emissions. The State does not request any emission reduction credits for the measures.

1. Fugitive Dust—Paved and Unpaved Roads

ODEQ determined through their analysis of the nonattainment area, on a 24-hour, worst case day basis, that PM–10 emissions of re-entrained road dust from paved and unpaved roads are negligible due to snow cover. The application of road sanding materials is the main source of road traffic-related emissions. On an annual basis, emissions from paved and unpaved roads account for 163 tons, or approximately 8% of the 1986 annual emission inventory.

Even though reducing emissions from this source category is not needed to attain the standard, the State does regulate this category. Referencing the suggested available fugitive dust control measures listed in Appendix C1 (57 FR 18072), rules requiring measures 1, 2, 3, 4, 10, 11, and 12 are currently part of the Oregon SIP and are contained in OAR 340, Division 21. These rules are enforced under OAR 340–21–060. The rules were previously approved by EPA and are contained in the State of Oregon Air Quality Control Program; Volume 2; The Federal Clean Air Act State Implementation Plan (and other State Regulations).

2. Prescribed Burning

Historically, PM–10 emissions from prescribed burning and slash burning have not significantly impacted on the nonattainment area on either a 24-hour basis (zero emissions) or on an annual basis (zero emissions); however, this activity does have the potential to significantly impact on the area.

To address this issue, a voluntary smoke management program was developed and implemented. The provisions of this program are coordinated by the Oregon Department of Forestry (ODOF) which provides daily smoke management forecasts and advisories for Klamath County. A Memorandum of Understanding (MOU) was signed in 1991 by and between the Klamath-Lake District of ODOF, Cavenham Forest Industries (Bend, Oregon), Modoc Lumber Company, Thomas Lumber Company, Weyerhaeuser Company (Klamath Falls), Whiskey Creek Timber Company, Winema National Forest, Fremont National Forest, and the Bureau of Land Management (Lakeview District). The MOU provides that the parties will abide by the elements of the smoke management plan and is based on a cooperative operations plan that was in effect January 10, 1990, between the above parties.

EPA has reviewed ODEQ's submittals and associated documentation and concluded that they adequately justify the control measures to be implemented. Because all control measures were implemented by the

CAA RACM implementation date of December 10, 1993, implementation of the Klamath Falls PM–10 nonattainment plan control strategies has resulted in meeting the requirement of the Act that the attainment of the PM–10 NAAQS be achieved as expeditiously as practicable and no later than December 31, 1994.

4. Demonstration

As noted, the initial moderate PM–10 nonattainment areas must submit a demonstration (including air quality modeling) showing that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 (see Section 189(a)(1)(B) of the Act). The General Preamble sets out EPA's guidance on the use of modeling for moderate area attainment demonstrations (see 57 FR 13539). Alternatively, the State must show attainment by December 31, 1994, or that attainment is impracticable. The 24-hour PM–10 NAAQS is 150 micrograms/cubic meter (μg/m^3), and the standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 μg/m^3 is equal to or less than one (see 40 CFR section 50.6). The annual PM–10 NAAQS is 50 μg/m/^{3}, and the standard is attained when the expected annual arithmetic mean concentration is less than or equal to 50 μg/m^3 (id.).

Generally, EPA recommends that attainment be demonstrated according to the PM–10 SIP Development Guideline (June 1987), which presents three methods. Federal regulations require demonstration of attainment ''by means of a proportional model or dispersion model or other procedure which is shown to be adequate and appropriate for such purposes'' (40 CFR Section 51.112). The preferred method is the use of both dispersion and receptor modeling in combination. The regulation and the guideline also allows the use of dispersion modeling alone, or the use of two receptor models in combination with proportional rollback.

As indicated in the General Preamble, 57 FR at 13539, EPA has developed a supplemental attainment demonstration policy for initial PM–10 nonattainment areas such as Klamath Falls. The Preamble provides additional flexibility in meeting the PM–10 attainment demonstration requirements. An earlier April 2, 1991, memorandum titled, ''PM–10 Moderate Area SIP Guidance: Final Staff Work Product,'' contained ''Attachment 5'' describing the same policy. The policy explains that in certain circumstances a modified attainment demonstration may be appropriate on a case-by-case basis. It may be reasonable to accept a modified attainment demonstration in cases where ''time constraints, inadequate resources, inadequate data bases, lack of a model for some unique situations, and other unavoidable circumstances would leave an area unable to submit an attainment demonstration'' by November 15, 1991. The policy further explains that its application is reserved for those initial PM–10 nonattainment areas that have ''completed the technical analysis * * * and made a good-faith effort to submit a final SIP by their November 15, 1991, due date.''

During development of the Klamath Falls initial moderate area PM–10 attainment plan, ODEQ did not use dispersion modeling to estimate the design values or in the attainment and maintenance demonstrations. This was due to: (1) the lack of adequate historical meteorological data, (2) the late receipt in the development process of spatially resolved emission inventory data needed for modeling, (3) the intense and extremely shallow inversions and calm winds (typical wind speeds during exceedances days are less than one meter per second) are not conducive to dispersion modeling (EPA does not have and has not developed an approved guideline model for conditions of this type), and (4) the fact that on winter days, when worst case air quality conditions occur, the airshed is heavily dominated by emissions from woodstoves, fireplaces, and road sanding.

ODEQ conducted an attainment demonstration based upon receptor modeling proportional roll-back calculations to estimate the emission reductions required in 1994 to achieve the NAAQS. Emission inventory estimates were reconciled with Chemical Mass Balance (version 7.0) receptor modeling. Results from two emission estimation methods, emission inventory and receptor modeling, were in agreement that woodsmoke and soil dust are the major sources of emissions on exceedance days. According to the emission inventory, woodsmoke equals 80% and soil dust equals 8% of total PM–10 particulate. According to the CMB analysis, woodsmoke equals 82% and soil dust equals 10.9% of particulate.

EPA guidance on CMB modeling specifies that the apportionment should account for at least 80% of the measured aerosol mass. ODEQ's analysis accounted for 96% of the mass.

ODEQ determined the 1994 24-hour, worst case day design value (without controls) to be 600 μg/m3 based on monitored data utilizing EPA's graphical procedure, including adjustments for emission growth. The 1994 annual design value (without controls) was determined to be 82, μg/m3 calculated as an arithmetic average. Monitored concentrations for the 3-year period July 1, 1986, through June 30, 1989, were used in both cases. Appendix 1 of the SIP lists the 24-hour concentrations used to determine the design values, and Appendix 2 provides detailed information on the design value calculations, including which concentrations were used when data from different methods were collected on the same day.

The Attainment Plan has been criticized for not requiring implementation of point source emission controls on a Weyerhaeuser facility located outside, but near, the nonattainment area. As discussed in the Area Designation History section of the Technical Support Document (TSD), it was ODEQ's position, during establishment of the Klamath Falls PM–10 Group I Areas of Concern, that the Weyerhaeuser facility did not significantly impact on the Peterson School ambient monitoring site during exceedance days (significant is defined as 5 μg/m^3). ODEQ took the same position, when by operation of law, the Klamath Falls Group I area (as defined by the UGB), was designated as a moderate nonattainment area on November 15, 1990. The classification of the Klamath Falls area as a Group I area and, its subsequent designation as a nonattainment area, was based on technical information available at that time. This information did not indicate that Weyerhaeuser significantly impacted on the Peterson School monitoring site. To support ODEQ's position, ODEQ committed to requiring Weyerhaeuser to dispersion model the plant's impact. A preliminary 1992 modeling analysis was performed and followed by a definitive 1995 modeling analysis. The model used was the EPA point source guideline model-ISCST2. [ISCST3 was not yet available when the modeling was performed.]

The 1995 analysis indicates that on exceedance days, the Weyerhaeuser facility does not have a significant impact at the Peterson School site, which is the site on which attainment with the NAAQS is determined.[8] The source's modeled 1995 allowable emissions are drastically lower than 1992 allowable emissions. This is due to, among other things, the facility forfeiting unassigned plant site emission limits and replacing five hog fuel-fired

[8] This statement is based on information in a letter from David Collier, ODEQ, to Rindy Ramos, EPA Region 10, dated February 6, 1996.

boilers with natural gas fired boilers. Furthermore, Weyerhaeuser's Air Contaminant Discharge Permit, issued on November 20, 1995, reflects an allowable pounds per hour limit of 111 (down from the previously permitted limit of 152 pounds per hour). The analysis, and subsequent permit, account for emission credits of 11.79 pounds per hour (down from the previous permitted level of 332 pounds per hour). Forfeiting of unassigned emission credits reduces allowable emissions alone by over 600 tons per year to a 1995 permitted level of 371 tons.[9]

Based on the previously discussed design values, ODEQ estimates that 1994 worst case day emissions must be reduced by 75.6%, which equals 18,877 pounds per day. Thus, percent reduction required=((1994 design value − 24-hour standard)/(1994 design value − background)×100); or, [((60 − 1350 μg/m^3)/(600 − 7 μg/m^3)]×100=75.6%. Annual emissions for the projected 1994 attainment year must be reduced by 47%, which equals 1035 tons. Percent reduction required=[((82 − 50 μg/m^3)/(82 − 15 μg/m^3)]×100=47%.

ODEQ estimates that 1994 24-hour, worst case day emissions must be reduced by 18,877 pounds to attain the 24-hour NAAQS, and annual emissions must be reduced by 1035 tons in order to attain the annual NAAQS. The previously discussed control measures are designed to reduce projected 1994 worst case day emissions by 19,445 pounds (568 pounds beyond the level needed for attainment and annual emissions by 1,201 tons (166 tons beyond the level needed for attainment). According to the principle of proportional roll-back modeling, a reduction of 19,445 pounds from the Klamath Falls PM–10 emission sources will result in a 1994 worst case day ambient concentration of 136.5 μg/m^3. An annual reduction of 1,201 tons will result in an annual concentration of 44.9 μg/m^3. Both values demonstrate attainment with their respective standards.

EPA proposes to approve the attainment demonstration. It is EPA's opinion that the appropriate air quality model was used and all significant emission sources and impacts were considered. The Attainment Plan demonstrates attainment by December 31, 1994. EPA has also considered the fact that, based on monitored air quality for the calendar years 1992, 1993, 1994, and 1995, the area has, in fact, attained both the 24-hour and annual NAAQS. As to the adequacy of the nonattainment area boundary, the UGB was established as the nonattainment area boundary upon passage of the CAAA of 1990 and, therefore, the existing nonattainment area boundary is defined in the CAA itself.

5. PM–10 Precursors

The control requirements which are applicable to major stationary sources of PM–10 also apply to major stationary sources of PM–10 precursors, unless EPA determines such sources do not contribute significantly to PM–10 levels in excess of the NAAQS in that area (see Section 189(e) of the Act). The General Preamble contains guidance addressing how EPA intends to implement Section 189(e) (see 57 FR 13539–13542).

As previously discussed, ODEQ's technical analysis of candidate control measures indicated that emissions from industrial point sources had substantially less of an impact on the 24-hour standard than residential wood combustion (7% vs. 80%). Previous violations of the 24-hour standard occurred during periods of extensive poor ventilation (stagnation conditions) and cold temperatures. In addition, the CMB analysis indicates that secondary particulate is not a major component of the area's PM–10 emissions. This analysis identified that, on an average winter exceedance day, 3.2% of the mass (10.7 μg/m^3) comprises secondary particulate. On an annual basis, 1.9% of the mass (1.5 μg/m^3) comprises secondary particulate.

Therefore, EPA believes that sources of PM–10 precursors do not contribute significantly to PM–10 levels in excess of the NAAQS, and hereby grants the exclusion from control requirements authorized under Section 189(e) for major stationary sources of PM–10 precursors.

Note that, while EPA is making a general finding for the Klamath Falls area about precursor contribution to PM–10 NAAQS exceedances, this finding is based on the current character of the area including, for example, the existing mix of sources in the area. It is possible, therefore, that future growth could change the significance of precursors in the area.

6. Quantitative Milestones and Reasonable Further Progress

The PM–10 nonattainment area plan revisions demonstrating attainment must contain quantitative milestones which are to be achieved every three years until the area is redesignated attainment and which demonstrates RFP, as defined in Section 171(1), toward attainment by December 31, 1994 (see Section 189(c) of the CAA).

While Section 189(c) plainly provides that quantitative milestones are to be achieved until an area is redesignated attainment, it is silent in indicating the starting point for counting the first 3-year period or how many milestones must be initially addressed. In the General Preamble, EPA addressed the statutory gap in the starting point for counting the 3-year milestone, indicating that it would begin from the due date for the applicable implementation plan revision containing the control measures for the area (i.e., November 15, 1991, for initial moderate PM–10 nonattainment areas) (see 57 FR 13539).

As to the number of milestones, EPA believes that at least two milestones must be initially addressed. Thus, the submittal to address the SIP revisions due on November 15, 1991, for the initial moderate PM–10 nonattainment areas must demonstrate that two milestones will be achieved (First milestone: November 15, 1991, through November 15, 1994; Second milestone: November 15, 1994, through November 15, 1997).

For the initial PM–10 nonattainment areas that demonstrate attainment, the emissions reduction progress made between the SIP submittal (due date of November 15, 1991) and the attainment date of December 31, 1994 (46 days beyond the November 15, 1994, milestone date) will satisfy the first quantitative milestone (see 57 FR 13539). For areas that demonstrate timely attainment of the PM–10 NAAQS, the milestones beyond the attainment achievement date should, at a minimum, provide for continued maintenance of the standards.[10]

This SIP demonstrates attainment of the PM–10 NAAQS by December 31, 1994, and maintenance of the NAAQS through the year 2004, satisfying five milestones. Therefore, EPA proposes to approve the submittal as meeting the

[9] EPA is aware, however, that a recent (1995) modeling analysis that looked at impacts from the Weyerhaeuser facility in the area outside of the UGB indicates that the facility may be causing an exceedance of the 24-hour NAAQS at an unmonitored site. EPA is working with the State to resolve this distinct and separate issue.

[10] Section 189(c) of the Act provides that quantitative milestones are to be achieved ''until the area is redesignated attainment.'' However, this endpoint for quantitative milestones is speculative because redesignation of an area as attainment is contingent upon several factors and future events. Therefore, EPA believes it is reasonable for states to initially address at least the first two milestones. Addressing two milestones will ensure that the state continues to maintain the NAAQS beyond the attainment date for at least some period during which an area could be redesignated attainment. However, in all instances, additional milestones must be addressed if an area is not redesignated attainment.

quantitative milestone requirement currently due. Finally, once a milestone has passed, the State will have to demonstrate that the milestone was, in fact, achieved for the Klamath Falls area as provided in Section 189(c)(2) of the Act.

7. Enforceability Issues

All measures and other elements in the SIP must be enforceable by ODEQ and EPA (See Sections 172(c)(6), 110(a)(2)(A) and 57 FR 13556). EPA criteria addressing the enforceability of SIPs and SIP revisions were stated in a September 23, 1987, memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, et al. (see 57 FR 13541). Nonattainment area plan provisions must also contain a program that provides for enforcement of the control measures and other elements in the SIP (see section 110(a)(2)(C)).

The particular control measures contained in the SIP were addressed above under the section headed ''RACM (including RACT).'' These control measures apply to the types of activities identified in that discussion, including woodstoves and other wood burning activities. The SIP provides that the control measures apply throughout the entire nonattainment area.

During EPA's review of a SIP revision involving Oregon's statutory authority, a problem was detected which affected the enforceability of point source permit limitations. Even though the SIP does not contain additional point source controls to attain the standard, existing and federally approved point source emission limitations are relied upon to maintain and demonstrate attainment with the PM–10 NAAQS.

EPA determined that, because the five-day advance notice provision required by ORS.126(1) (1991) bars civil penalties from being imposed for certain permit violations, ORS 468 fails to provide the adequate enforcement authority the State must demonstrate to obtain SIP approval, as specified in Section 110 of the Clean Air Act and 40 CFR 51.230. Accordingly, the requirement to provide such notice would preclude federal approval of a PM–10 nonattainment area SIP revision.

EPA notified Oregon of the deficiency. To correct the problem, the Governor of Oregon signed into law new legislation amending ORS 468.126 on September 3, 1993. This amendment added paragraph 468.126(2)(e) which provides that the five-day advance notice required by ORS 468.126(1) does not apply if the notice requirement will disqualify the State's program from federal approval or delegation. ODEQ responded to EPA's understanding of the application of 468.126(2)(e) and agreed that, if federal statutory requirements preclude the use of the five-day advance notice provision, no advance notice will be required for violations of SIP requirements contained in permits.

In regard to a separate enforceability issue, the following is a summary of the city, county, and interagency commitments which EPA proposes to approve as part of the SIP as either a required control measure or SIP strengthening measure. The content of the two ordinances and their relationship to the SIP control strategies are discussed in more detail in the TSD.

City and County Ordinances

A. City of Klamath Falls—Ordinance No. 6630. The ordinance grants Klamath County the authority to implement the Klamath County Air Quality Program (Chapter 406) within the city limits of Klamath Falls (authority to regulate—control measure).

B. Klamath County Clean Air Ordinance No. 63. This ordinance adds Chapter 406 to the Klamath County Code and is entitled the ''Klamath County Clean Air Ordinance.'' The provisions in Chapter 406 establish the mandatory air quality program, area boundaries, and enforcement controls (control measure).

C. Klamath County Air Quality Program—Resolution 89–116. This resolution recognizes the need for establishing control strategies (measures) to reduce PM–10 concentrations in Klamath County (SIP strengthening measure).

Interagency Commitments

A. Winter Road Sanding Program, Oregon Department of Transportation Highway Division—Memorandum of Understanding. This sets forth the Highway Department's commitment to: (1) replace cinder sanding material with a liquid de-icing agent, (2) minimize street sanding application rates consistent with traffic safety objectives, (3) rapid cleanup of sanding materials, and (4) ''review construction contract Standard Specifications and Project Provisions for compatibility with local ordinances concerning trackout. Tracking mud onto a highway is a citable offense (control measure).

B. Voluntary Smoke Management Plans. EPA is proposing to approve both of the Memorandums of Understanding (MOUs) contained in Appendix 4 of the SIP as SIP strengthening measures. One MOU is between members of Klamath County's forestry community. The other MOU is between the Klamath County Farm Bureau of Directors.

ODEQ's submittal and the TSD contain further information on enforceability requirements. In addition, the TSD contains a discussion of the personnel and funding intended to support effective implementation of the control strategy.

8. Contingency Measures

As provided in Section 172(c)(9) of the Act, all moderate nonattainment area SIPs that demonstrate attainment must include contingency measures. See generally 57 FR 13543–13544. These measures must be submitted by November 15, 1993, for the initial moderate nonattainment areas. Contingency measures should consist of other available measures that are not part of the area's control strategy. These measures must take effect without further action by the State or EPA, upon a determination by EPA that the area has failed to make RFP or attain the PM–10 NAAQS by the applicable statutory deadline. EPA guidance recommends that the emission reductions expected from implementation of the contingency measures equal twenty-five percent of the total reduction in actual emissions in the plan's control strategy (57 FR 13544). However, the CAA does not specify how many contingency measures are needed or the magnitude of emissions reductions that must be provided by these measures (see 57 FR 13511). EPA believes that, consistent with the statutory scheme, contingency measures must at a minimum provide for continued progress toward the attainment goal in the interim period after an area fails to attain and while additional measures required as a result of being reclassified to serious are being adopted (see 57 FR 13511). The Klamath Falls nonattainment area SIP contains the following contingency measures:

a. Uncertified woodstove removal: The 1991 Oregon Legislature authorized by statute the removal and destruction of uncertified woodstoves upon sale of a home within any area that fails to meet the PM–10 SIP attainment date of December 31, 1994. EPA approved these rules (OAR 340–34–200 through 215) as part of the Oregon SIP on June 9, 1992 (see 57 FR 24373).

b. Industrial Emissions: ODEQ developed an industrial contingency plan designed to reduce industrial emissions should an area fail to attain by the CAA attainment date. The regulations requiring emission reductions, with specific source emission limits, are contained in OAR 340–21–200 through 245. EPA approved

these rules as part of the SIP on August 19, 1992 (see 57 FR 37468). The rules apply to existing sources in all of Oregon's PM–10 nonattainment areas. The sources regulated include wood waste boilers, wood particle dryers at particleboard plants, hardboard manufacturing plants, and air conveying systems. The rules also require fugitive emission control plans for large sawmills, plywood mills or veneer manufacturing plants, hardboard plants, and charcoal manufacturing plants. In addition, OAR 340–21–200 through 340–21–245 applies to a major source located outside of a PM–10 nonattainment area which has a significant impact upon a nonattainment area. According to OAR 340–21–210(2)(b), upon request by ODEQ, the owner or operator of any source with the potential to have a significant impact on a PM–10 nonattainment area shall conduct, prior to the attainment date required in the Clean Air Act and in accordance with a study protocol approved by ODEQ, a receptor and dispersion modeling study of the impact of emissions from the source on the PM–10 nonattainment area. As previously stated, significant impact is defined as 5μg/m[63].

c. The continuation of the woodstove certification program after December 31, 1994), will provide a net reduction in residential wood burning emissions between the years 1994 and 2004, and on into the future.

d. Chapter 406.650(1) through Chapter 406.650(9) of the Klamath County Clean Air Ordinance delineates the contingency measures adopted by Klamath County. They include, among other things, measures to further reduce woodsmoke and fugitive dust.

As stated above, the industrial contingency rules apply to existing sources in all of Oregon's PM–10 nonattainment areas. In actuality, because of the PM–10 source mix in the area, the measures applicable to the Klamath Falls PM–10 nonattainment area include wood waste boilers, wood particle dryers at particleboard plants, hardboard manufacturing plants, air conveying systems, fugitive emission control plans, and the analysis of the impact of emissions from a source outside the area which has the potential to have a significant impact on the nonattainment area (such as the Weyerhaeuser facility).

Also, as previously discussed, in 1995 ODEQ determined through a dispersion modeling study that Weyerhaeuser does not have a significant impact at the monitoring site of reference (Peterson School) during NAAQS exceedance days, and therefore is not subject to the PM–10 industrial contingency measures.

ODEQ estimates that PM–10 emissions would be reduced an additional 108 tons per year by the year 2000 through implementation of the woodstove contingency measures. Industrial emissions would be reduced an additional 132 tons per year through installation of point source controls to meet the industrial contingency measure requirement. Additional reductions which cannot be quantified by the emission inventory would be achieved through the fugitive dust control contingency measures. Total reductions are estimated at a minimum of 240 tons per year (nonattainment area industries only), which is 23% of the total annual emission reduction needed for attainment.

The SIP provides that each of the above contingency measures would have taken effect without further action by the State or EPA had EPA determined that the Klamath Falls nonattainment area has failed to achieve RFP or to attain the PM–10 standard by the statutory attainment date of December 31, 1994.

EPA is proposing to approve the Klamath Falls nonattainment area contingency measures.

III. Implications of This Action

EPA is proposing to approve the 1991 Attainment Plan and the 1995 revision to the Plan as submitted to EPA for the Klamath Falls nonattainment area on November 15, 1991, and September 22, 1995, respectively. Among other things, ODEQ has demonstrated that the Klamath Falls moderate PM–10 nonattainment area will attain the PM–10 NAAQS by December 31, 1994. In fact, the area has not experienced an exceedance of the NAAQS since 1991. Note that EPA's action includes approval of the contingency measures for the Klamath Falls nonattainment area.

IV. Administrative Review

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, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the 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).

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted on by the rule.

EPA has determined that the proposed action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action by the EPA Region 10 Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management

and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, and Particulate matter.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 24, 1996.

Jane S. Moore,

Acting Regional Administrator.

[FR Doc. 96–14120 Filed 6–4–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52 and 81

[WI70–1–7296; FRL–5510–6]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes: Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve the Wisconsin Department of Natural Resources (WDNR) request to redesignate Walworth County to attainment for ozone. In addition, EPA is proposing to approve the associated maintenance plan as a revision to the Wisconsin State Implementation Plan (SIP).

DATES: Comments on this proposed action must be received by July 5, 1996.

ADDRESSES: Written comments should be addressed to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State's submittal and EPA's analysis (Technical Support Document) are available for inspection at the following location: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Randy Robinson at (312) 353–6713 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Randy Robinson at (312) 353–6713.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with requirements of the Clean Air Act Amendments of 1990 (ACT), Walworth County was designated as a marginal ozone nonattainment area on November 6, 1991, (56 FR 56850). The nonattainment designation was based on air quality monitored violations of the ozone National Ambient Air Quality Standards (NAAQS).

Recent air quality data shows that Walworth County is not in violation of the ozone NAAQS. Therefore, the area is eligible for redesignation to attainment based on a minimum of 3 years of ''clean'' air quality data, as required in the Act. On December 15, 1995, the WDNR submitted a request for redesignation to attainment and a maintenance plan for ozone for Walworth County. The remainder of this notice will discuss the regulatory requirements for redesignation to attainment, the details of the Wisconsin submittal, and EPA's rulemaking action.

II. Redesignation Review Criteria

The Act provide the requirements for redesignating a nonattainment area to attainment. Specifically, Section 107(d)(3)(E) provides for redesignation if: (i) The Administrator determines that the area has attained the NAAQS; (ii) The Administrator has fully approved the applicable implementation plan for the area under section 110(k); (iii) The Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (iv) The Administrator has fully approved a maintenance plan for the area as meeting the requirements of Section 175(A); and (v) The State containing such area has met all requirements applicable to the area under Section 110 and Part D.

The EPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (General Preamble), 57 FR 13498 (April 16, 1992), supplemented at 57 FR 18070 (April 28, 1992). Three key memoranda provide further guidance with respect to Section 107(d)(3)(E) of the Act. The first, dated September 4, 1992, was issued by John Calcagni, Director, Air Quality Management Division, Subject: Procedures for Processing Requests to Redesignate Areas to Attainment (Calcagni Memorandum). The second, dated September 17, 1993, was issued by Michael Shapiro, Acting Assistant Administrator for Air and Radiation, Subject: State Implementation Plan (SIP) Requirements for Area Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) NAAQS on or after November 15, 1992, (Shapiro Memorandum). The third, dated October 14, 1994, was issued by Mary Nichols, Assistant Administrator for Air and Radiation, Subject: Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment (Nichols Memorandum).

Analysis of State Submittal

A. The Area must have attained the Ozone National Ambient Air Quality Standard

For ozone, an area may be considered attaining the NAAQS if there are no violations, as determined in accordance with 40 CFR § 50.9, based on 3 complete, consecutive calendar years of quality assured monitoring data. The data that are used should be the product of ambient monitoring that is representative of the area believed to have the highest concentration. A violation of the NAAQS occurs when the annual average number of expected daily exceedances is equal to or greater than 1 at any site under consideration. A daily exceedance occurs when the maximum hourly ozone concentration during a given day exceeds 0.124 parts per million (ppm). The data should be collected and quality-assured in accordance with 40 CFR Part 58, and recorded in the Aerometric Information Retrieval System (AIRS).

Walworth County contains one ozone monitor, located in Lake Geneva, Wisconsin. To demonstrate monitored attainment with the standard, the WDNR submitted ozone monitoring data for the April 15 through October 15 ozone season for 1992, 1993, and 1994.

MONITORED OZONE CONCENTRATIONS

[Parts per billion]

County	Year	1st High	2nd High	3rd High	4th High
Walworth	1992	120	101	97	96
	1993	107	93	91	89

MONITORED OZONE CONCENTRATIONS—Continued

[Parts per billion]

County	Year	1st High	2nd High	3rd High	4th High
	1994	98	94	91	84

The annual average expected exceedance for this 3-year time period is 0.0. No violations were recorded during this 3-year time period. Additionally, no exceedances were recorded during the 1995 ozone monitoring season. This data has been quality assured and is recorded in AIRS.

B. The Area Must Have a Fully Approved State Implementation Plan (SIP) Under Section 110(k); and the Area Must Have Met All Applicable Requirements Under Section 110 and Part D

In November 1991, Walworth County was designated marginal nonattainment for ozone based on monitored ozone violations occurring in 1988. As a result of this designation, the WDNR was required to submit a revised SIP that meets the requirements of the Act and demonstrates attainment with the ozone standards.

Section 110: General Requirements for Implementation Plans. Section 110(a)(2) of the Act lists the elements to be included in each SIP after adoption by the State and reasonable notice and public hearing. The elements include, but are not limited to, provisions for establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor ambient air quality; implementation of a permit program, provisions for Part C Prevention of Significant Deterioration (PSD) and D New Source Review (NSR) permit programs, criteria for stationary source emission control measures, monitoring, and reporting, provisions for modeling, and provisions for public and local agency participation. For purposes of redesignation, the Walworth County SIP was reviewed to ensure that all requirements under the amended Act were satisfied. The EPA has determined that the Walworth County SIP is consistent with the requirements of Section 110 of the Act.

Part D: General Provisions for Nonattainment Areas. Before Walworth County may be redesignated as attainment, it must have fulfilled the applicable requirements of Part D. Under Part D, an area's classification determines the requirements to which it is subject. Subpart 1 of Part D sets forth the basic nonattainment requirements applicable to all nonattainment areas. Subpart 2 of Part D establishes additional requirements for ozone nonattainment areas classified under table 1 of Section 181(a). As described in the General Preamble, specific requirements of Subpart 2 may override Subpart 1's general provisions (57 FR 13501 (April 16, 1992)). Walworth County was classified as a marginal nonattainment area. Therefore, in order to be redesignated, the State must meet the applicable requirements of Subpart 1 of Part D—specifically Sections 172 and 176, as well as the applicable requirements of Subpart 2 of Part D.

Section 172 Requirements. The State redesignation request for Walworth County has satisfied all of the relevant submittal requirements under Section 172 necessary for the area to be redesignated to attainment.

The reasonable further progress (RFP) requirement under Section 172(c)(2) is defined as progress that must be made toward attainment. This requirement is not relevant because Walworth County has already demonstrated monitored attainment of the ozone NAAQS (General Preamble, 57 FR 13564).

Section 172(c)(3) requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions. The requirement was superseded by the inventory requirement in Section 182(a)(1). The WDNR submitted such an inventory on November 15, 1992. It was approved on June 15, 1994 (59 FR 30702).

Section 172(c)(5) requires permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. The WDNR submitted information on nonattainment area new source review rules on November 15, 1992. The rules were approved by EPA on January 18, 1995 (60 FR 3538). The State's Prevention of Significant Deterioration (PSD) program will become effective in Walworth County upon redesignation to attainment. The State was delegated the PSD program on November 4, 1987.

Section 176 Conformity Requirements. Section 176 of the Clean Air Act requires States to revise their SIPs to establish criteria and procedures to ensure that, before they are taken, Federal actions conform to the air quality planning goals in the applicable State SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. or the Federal Transit Act (''transportation conformity''), as well as to all other Federal actions (''general conformity''). Section 176 further provides that the conformity revision to be submitted by the States must be consistent with Federal conformity regulations that the Act required the EPA to promulgate. Congress provided for the State revisions to be submitted 1 year after the date of promulgation of final EPA conformity regulations.

The EPA promulgated final transportation conformity regulations on November 24, 1993, (58 FR 62188) and general conformity regulations on November 30, 1993, (58 FR 63214). Pursuant to Section 51.396 of the transportation conformity rule and Section 51.851 of the general conformity rule, the State of Wisconsin submitted a SIP revision containing transportation and general conformity criteria and procedures on November 23, 1994, and November 30, 1994, respectively. The EPA has not yet approved these rules as part of the SIP.

The EPA believes it is reasonable to interpret the conformity requirements as not being applicable requirements for purposes of evaluating the redesignation request under Section 107(d). The rationale for this is based on a combination of two factors. First, the requirement to submit SIP revisions to comply with the conformity provisions of the Act continues to apply to areas after redesignation to attainment, since such areas would be subject to a Section 175A maintenance plan. Second, EPA's Federal conformity rules require the performance of conformity analyses in the absence of federally approved State rules. Therefore, because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules if State rules are not yet approved, the EPA believes it is reasonable to view these requirements as not being applicable requirements for purposes of evaluation of a redesignation request. Consequently, the ozone redesignation request for the Walworth County area may be approved notwithstanding the lack of fully approved State

transportation and general conformity rules. This policy was also exercised in the Tampa, Florida ozone redesignation finalized on December 7, 1995 (60 FR 62748).

Subpart 2 Section 182 Requirements. Walworth County is classified marginal nonattainment; therefore, Part D, Subpart 2, Section 182(a) requirements apply. In accordance with guidance presented in the Shapiro memorandum, the requirements which came due prior to the submission of the request to redesignate the Walworth County area must be fully approved into the SIP before the request to redesignate the area to attainment can be approved. Those requirements are discussed below:

Section 182(a)(1) 1990 Base Year Inventory. The 1990 base year emission inventory was due on November 15, 1992. It was submitted to EPA on November 15, 1992, and approved by EPA on June 15, 1994, (59 FR 30702).

Section 182(a)(3)(B) Emission Statements. The emission statements SIP was due on November 15, 1992. It was submitted to the EPA on November 15, 1992, and approved by EPA on December 6, 1993 (58 FR 64155).

Section 182(a)(2)(A) RACT Corrections. The WDNR submitted information regarding RACT corrections on November 15, 1992. The EPA approved the RACT corrections on August 15, 1994 (59 FR 41709).

Section 182(a)(4) 1.1 to 1.0 Offset. Section 182(a)(4) requires all major new sources or modifications in a marginal nonattainment area to achieve offsetting reductions of VOCs at a ratio of at least 1.1 to 1.0 as part of New Source Review (NSR). The Mary Nichols memorandum states that areas being redesignated need not comply with the requirement that an NSR program be approved prior to redesignation if the State can demonstrate maintenance of the standard without the NSR restrictions. The State has demonstrated that maintenance can be maintained without NSR offsets in effect. Therefore, this requirement is not applicable. Upon redesignation to attainment, the sources will become subject to PSD requirements and offsets will no longer apply. Emissions will continue to be tracked every 3 years.

Section 182(f) NO_X Requirement. Section 182(f) establishes NO_X requirements for ozone nonattainment areas. However, it provides that these requirements do not apply to an area if the Administrator determines that NO_X reductions would not contribute to attainment. On July 13, 1994, WDNR submitted, along with the other Lake Michigan area states (i.e., Illinois, Indiana, and Michigan), a Section 182(f) NO_X petition to be relieved of the Section 182(f) NO_X requirements based on urban airshed modeling. The modeling demonstrated that NO_X reductions would not contribute to attainment of the NAAQS for ozone in the modeled area, which includes Walworth County. The EPA approved the petition on January 26, 1996 (61 FR 2428).

C. The Improvement in Air Quality Must Be Due to Permanent and Enforceable Reductions in Emissions Resulting From the SIP, Federal Measures and Other Permanent and Enforceable Reductions

The State must be able to reasonably attribute the improvement in air quality to emission reductions which are permanent and enforceable. To satisfy this requirement, the State should estimate the percent reduction from the year that it used to determine the design value for designation and classification, to the attainment year (Calcagni Memorandum). These reductions may be achieved from Federal measures and control measures that have been adopted and implemented by the State. Emission rates, production capacities and other information should be used in the estimation. Sources should be assumed to operate at permitted or historic peak levels unless evidence is presented that such an assumption is unrealistic.

The WDNR submittal documents reductions in VOC and NO_X emissions from 1988 (the design year) to 1993 (the attainment year). Those reductions are shown in the tables below.

Sector	1988	1990	1993
VOC Emissions (Tons per day):			
Point	1.48	1.51	1.55
Area	7.53	7.58	7.63
Mobile	13.87	12.14	9.59
Totals	22.88	21.23	18.77
% Change from 1988 (design year)	.....	−7.17	−17.9

Sector	1988	1990	1993
NO_X Emissions (Tons per day):			
Point	0.53	0.54	0.55
Area	0.77	0.79	0.73
Mobile	12.07	11.89	11.60
Totals	13.37	13.22	12.88
% Change from 1988 (design year)	.....	−1.1	−3.7

The tables show that VOC and NO_X emissions decreased 4.1 and 0.49 tons per day, respectively from 1988 to 1993. The 1988 emissions in the above Tables were back casted from 1990 base year emissions, according to variables such as population growth, economic growth, and vehicle miles traveled. Although Walworth County experienced economic and population growth during the years 1988 to 1993, county-wide VOC and NO_X decreased during that time period. The majority of the reductions are due to lower highway motor vehicle emissions. These reductions are directly attributable to the implementation of the Federal Motor Vehicle Control Program (FMVCP).

D. The Area Must Have a Fully Approved Maintenance Plan Meeting the Requirements of Section 175A

Section 175A of the CAA defines requirements for maintenance plans. The maintenance plan is a SIP revision which provides for maintenance of the relevant NAAQS in the area for at least 10 years after redesignation. There are five core provisions which the maintenance plan should address: the attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. The attainment inventory should identify the level of emissions in the area which is sufficient to attain the ozone NAAQS and should include the emissions during the time period associated with the monitoring data showing attainment. Maintenance is demonstrated by showing that future emissions will not exceed the level of the attainment inventory. The maintenance plan must also provide for continued operation of an appropriate air quality monitoring network to verify attainment status of the area. The plan must indicate how the State will track the progress of the maintenance plan. Finally, the maintenance plan must include contingency measures which would promptly correct any violation of the ozone NAAQS that occurs after redesignation of the area to attainment.

Attainment Inventory. The Walworth County submittal contained inventories of 1990 actual VOC and NO_X emissions from stationary, area, and mobile sources. This is the most accurate, comprehensive emission inventory available for the area. The 1990 emission inventory was projected to 1993 to provide an emissions inventory representative of attainment conditions based upon the lack of a monitored ozone violation for the years 1992–1994.

Maintenance Demonstration. The Walworth County submittal shows projected VOC and NO_X emissions from the 1993 attainment inventory to 2007. The projections show that the level of emissions established for the attainment year inventory will not be exceeded over the 10-year maintenance period. The following tables list the VOC, and NO_X emissions for the base year, interim year and the final year.

Sector	1993 attain	1996 proj.	2007 proj.
Summary of VOC Emissions (tons/day):			
Area	7.62	7.37	7.37
Point	1.55	1.60	1.79
Mobile	9.59	9.39	8.00
Totals	18.77	18.36	17.16
% Change from 1993	.....	−2.18	−8.58
Summary of NO_X Emissions (tons/day):			
Area	0.73	0.73	0.66
Point	0.55	0.57	0.64
Mobile	11.60	11.39	10.19
Totals	12.88	12.68	11.48
% Change from 1993	.....	−1.60	−10.87

Emission Projections. All emission projections were made from emissions calculated for WDNR's 1990 base year inventory. The 1990 base year inventory reflects tons per typical summer day emissions as well as an 80 percent rule effectiveness assumption. Projections were generally based on the following equation: Proj. Emissions = 1990 Emissions*Proj. Factor*(1–(Cont. Efficiency)*(RE)*(RP)) where RE = rule effectiveness (default = 80 percent) and RP = rule penetration.

Projections of stationary source emissions through the year 2007 were developed based primarily on economic growth projection factors. The annual growth factors were derived from this data and those growth factors were used to determine future year inventories. The area source emissions were projected using a variety of growth factors such as population growth, gasoline market, vehicle miles traveled, farmland, etc. To project future year mobile VOC emissions, a VMT growth rate of 2.7 percent was used for the period between 1988 and 1999. The VMT growth rate for 2000 to 2007 drops to 2.2 percent. These estimates were provided by the Southeastern Wisconsin Regional Planning Commission. The MOBILE5a model was run to produce emission factors for the years 1988, 1990, 1993, 1996, and 2007.

Monitoring Network. There is currently one monitor measuring ozone in Walworth County. The WDNR has committed to continue operating and maintaining it—s ozone monitor in Walworth County for the 10 year maintenance period to verify the attainment status of the area.

Contingency Plan. The contingency plan for Walworth County contains three major components: attainment tracking, contingency measures, and a mechanism that triggers the implementation of the contingency measures. In a SIP revision submittal dated April 12, 1996, the State revised the section of the redesignation request pertaining to the triggering and implementation of the contingency plan. As discussed below, the revisions incorporate EPA review and approval, and public review and comment procedures into the contingency plan methodology.

The WDNR will the track the progress of the maintenance plan for Walworth County by generating VOC and NOX emissions inventories for point, area, and mobile sources for the years 1996, 1999, 2002, 2005, and 2007.

The contingency measures to be considered for implementation are Stage II vapor recovery and non-CTG RACT measures. Selection of the contingency measures will take place in the event the ozone NAAQS is violated and if an EPA approved analysis shows that emission sources within Walworth County caused the violation. This analysis is being conducted because the State has maintained that the level of ozone in Walworth County is due to ozone and ozone precursors being transported from upwind urbanized areas such as the greater Chicago area. Both the sudy protocol and the completed analysis will be submitted to EPA for approval. The completed analysis will be subject to public comment. If the analysis shows the violation not to be attributable to

transport from other areas, contingency measures will be implemented according to the following schedule:

Activity	Completion time
Violation of the ozone NAAQS:	
Verify violation and submit plan to analyze violation to EPA for approval	60 days after violation measurement.
Submit completed analysis, public notice and comment material to EPA for approval.	14 months after violation measurement.
Implement Stage II vapor recovery	24 months after violation.
Non-CTG RACT measures	24 months after violation.

The Walworth County submittal adequately addresses the five basic components which comprise a maintenance plan (attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan) and, therefore, satisfies the maintenance plan requirement in Section 107(d)(3)(E)(iv).

E. The Area Must Have Met All Applicable Requirements Under Section 110 and Part D

Section 110 and Part D requirements were discussed under section II B, above.

III. Proposed Action

The EPA is proposing to approve WDNR's December 15, 1995, request for redesignation to attainment for ozone and Section 175A maintenance plan for Walworth County.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. The EPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Ozone SIPs are designed to satisfy the requirements of Part D of the Act and to provide for attainment and maintenance of the ozone NAAQS. This proposed redesignation should not be interpreted as authorizing the State to delete, alter, or rescind any of the VOC or NO_X emission limitations and restrictions contained in the approved ozone SIP. Changes to ozone SIP VOC regulations rendering them less stringent than those contained in the EPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by EPA. Unauthorized relaxations, deletions, and changes could result in both a finding on nonimplementation [Section 173(b) of the Clean Air Act] and in a SIP deficiency call made pursuant to Section 110(a)(2)(H) of the Clean Air Act.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989, (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

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.

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), 2 U.S.C. 1532, requires that the EPA prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Section 203, 2 U.S.C. 1533, requires the EPA to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under Section 205 of the Unfunded Mandates Act, 2 U.S.C. 1535, the EPA must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The EPA must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the EPA explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this proposed rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less then $100 million in any 1 year, the EPA has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the EPA is not required to develop a plan with regard to small governments.

SIP approvals under Section 110 and Subchapter I, Part D, of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *EPA*, 427 U.S. 246, 256–66 (1976).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Motor vehicle pollution, Nitrogen oxides, Ozone, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 13, 1996.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 96–14118 Filed 6–4–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 6000–9000

[WO–340–1220–00–24 1A]

RIN 1004–AC87

Preservation and Conservation Health, Safety, and Enforcement

AGENCY: Bureau of Land Management, Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: In response to President Clinton's Government-wide regulatory reform initiative, the Bureau of Land Management (BLM) has conducted a page-by-page review of its regulations to determine which should be eliminated, revised, or moved to internal guidelines. The purpose of this notice is to share with the public how the BLM plans to restructure Parts 6000–9000 of Title 43 CFR into a more streamlined, user-friendly framework. The notice has no regulatory text.

DATES: Comments must be received by July 5, 1996.

ADDRESSES: Send Comments to the mail address: Regulatory Management Team (420), Bureau of Land Management, 1849 C Street, NW., Room 401LS, Washington, D.C. 20240, OR the Internet address: WOComment@WO0033wp.wo.blm.gov [For Internet, please include ''Attn: AC87'', your name and return address.] You may also hand deliver comments to the BLM Regulatory Management Team, Room 401, 1620 L Street, NW., Washington, D.C.

Comments will be available for public review at the L Street address during regular business hours, from 7:45 a.m. to 4:15 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Frances Watson, Regulatory Management Team, at 202–452–5006.

SUPPLEMENTARY INFORMATION: On March 4, 1996, President Clinton issued a Memorandum to all Federal Departments and Agencies directing them to simplify their regulations. In response to this directive, the BLM reviewed its regulations using the following criteria:

- Is the regulation current?
- Can the regulation be eliminated without negative consequences?
- Is the regulation's subject matter better suited for policy statements or manual/handbook guidance?
- Can the regulation be easily understood?

This Advance Notice of Proposed Rulemaking shows how the BLM plans to reorganize, renumber and retitle 43 CFR Parts 6000–9000; it includes no regulatory text. The text for these parts will be available in the near future when the BLM publishes proposed rulemaking in the Federal Register for public review and comment. Some of the proposed regulations will be revised substantively; some merely will be rewritten in a more readable format; some will be removed. We will provide detailed explanations for our actions when the proposed rulemakings are published in the Federal Register.

Under the Regulatory Reform effort, the BLM has revoked some unnecessary regulations in previous issues of the Federal Register, and will publish reinvention proposals in coming issues in a continuing effort to implement the President's plan.

For convenience, this preamble includes two charts. The first chart shows the new framework for 43 CFR Parts 6000–9000. The second is a conversion chart for these parts, which shows the existing parts and the corresponding new parts. It also indicates the parts that have been deleted and will be deleted, and lists the disposition of those parts that will be moved out of Parts 6000–9000 to other parts of Title 43 of the Code of Federal Regulations.

Framework for 43 CFR Parts 6000–9000

SUBCHAPTER F—PRESERVATION AND CONSERVATION (6000)

Part
6000 [Reserved]
6100 Wildlife Management
6200 Wild Free-Roaming Horses & Burros
6300 Wilderness and Primitive Areas
6400 Wild and Scenic Rivers
6500 Areas of Critical Environmental Concern
6600 Paleontological Resources

SUBCHAPTER G—HEALTH, SAFETY, AND ENFORCEMENT (7000)

7100 Trespass
7200 Law Enforcement, Criminal

SUBCHAPTERS H–I [RESERVED]

7300–9000 [Reserved]

CONVERSION TABLE FOR 43 CFR PARTS 6000–9000

Existing parts	New parts	Comments
6000	6100	
4700, 4710, 4720, 4730, 4740, 4750, 4760, 4770.2, 4770.3.	6200	
8500, 8560.0 (All sections), 8560.1, 8560.1–1, 8560.2, 8560.3, 8560.4 (All sections), 8560.5(b).	6300	
8350, 8351	6400	
1610.7–2	6500	
3622, 8224, 8365.1–5(b).	6600	
9230	7100	
4770.1, 4770.4, 4770.5, 8340.0–7, 8341.1, 8343, 8343.1, 8560.1–2, 8560.5(a), 9000, 9239, 9260, 9261, 9262, 9263, 9264, 9265, 9266, 9267, 9268, 9269.	7200	
6220	.....	Removed 11/30/95, 60 FR 61487.
8000	.....	Removed 04/09/96, 61 FR 15753.
8100	.....	To be removed.
8200, 8223	.....	To be removed.
8300	.....	Removed 04/09/96, 61 FR 15753.
8342.3	.....	Moved to new Part 1500.
8340.0–1, 8340.0–2, 8340.0–3, 8340.0–5, 8340.0–8, 8341.2, 8342.1, 8342.2.	.....	Moved to Part 1600.
8344	.....	Moved to Part 2920.
8360.0 (All sections), 8361, 8362, 8363, 8364, 8365.0, 8365.1, 8365.1–1, 8365.1–2, 8365.1–3, 8365.1–4, 8365.1–5(a), 8365.1–6, 8365.1–7, 8365.2 (All sections).	.....	To be removed.
8370, 8371	.....	To be removed.
8372	.....	Moved to Part 2920.

CONVERSION TABLE FOR 43 CFR PARTS 6000–9000—Continued

Existing parts	New parts	Comments
8400		Removed 04/09/96, 61 FR 15722.
8600		To be removed.
9100, 9180, 9183, 9185.		Moved to Part 2000.
9210		To be removed.

Dated: May 24, 1996.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 96–14095 Filed 6–4–96; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 391

[FHWA Docket No. MC–96–4]

Proposed Research Plan on Vision Standard

AGENCY: Federal Highway Administration (FHWA), Department of Transportation.

ACTION: Notice; request for comments.

SUMMARY: The FHWA is requesting comments on a proposed research plan to explore performance-based alternatives to the existing vision standard for drivers of commercial motor vehicles (CMV). The findings of this research effort may result in the modification of that standard. The FHWA seeks comments on all aspects of the research plan, including its scientific merit, likelihood of achieving its objective, methodological validity, consideration of all relevant research, and other practical issues.

The FHWA is also announcing a public hearing to obtain comments on the proposed research plan. The hearing is designed to obtain public input on the proposed research plan, not to determine the status of individual drivers or participants in the vision waiver program. At the hearing, the FHWA does not intend to discuss the status, results, or recommendations that might result from the vision waiver program.

A review of scientific literature relevant to the vision standard and the proposed research plan have been placed in FHWA Docket MC–96–4. In addition, both documents are accessible electronically through the Federal Highway Administration's World Wide Web (WWW) site.

DATES: The comment period will remain open until further notification in the Federal Register. The public hearing will be held on August 9, 1996, at the Chicago O'Hare Marriot, 8535 West Higgins Road, Chicago, IL, 60631, (312) 693–4444.

ADDRESSES: Submit written, signed comments to FHWA Docket MC–96–4, Room 4232, HCC–10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street., SW., Washington, DC 20590.

The literature review and proposed research plan are on the Federal Highway Administration's World Wide Web site (http://cti1.volpe.dot.gov/ohim/whtnewhd). Users with questions about the operation of the WWW site should call the FHWA Computer Help Desk at (202) 366–1120.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Rombro, Federal Highway Administration, Office of Motor Carriers, 400 Seventh Street SW., room 3104, Washington, DC 20590, telephone (202) 366–5615. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The FHWA is authorized by statute to establish minimum physical qualification requirements for drivers of commercial motor vehicles. 49 USC 31502.

The Congress provided the FHWA with complementary regulatory authority with the enactment of the Motor Carrier Safety Act of 1984, codified in substantial part at 49 U.S.C. 31101–31162. This Act directed the Secretary to establish minimum safety standards to ensure, *inter alia*, that ''the physical condition of operators of commercial motor vehicles is adequate to enable them to operate such vehicles safely * * *.'' 49 U.S.C. 31136(a)(3).

The physical qualification regulations for CMV drivers in interstate commerce are found at 49 CFR 391.41. The qualification standards cover 13 areas which directly relate to the driving function. All but four of the standards adopted by the FHWA permit the individual determination of a driver's qualification. A person's qualification to drive is determined by a medical examiner who is knowledgeable about the on-the-job functions performed by a commercial driver and whether a particular condition would interfere with the driver's ability to operate a CMV safely. In the case of vision, hearing, insulin-using diabetes and epilepsy, the current standards are absolute, providing no discretion to the medical examiner.

The current vision standard specifies that drivers must meet the following three conditions:

1. distant visual acuity in each eye of at least 20/40, and distant binocular acuity of at least 20/40 in both eyes; and

2. field of vision of at least 70 degrees in the horizontal meridian of each eye; and

3. the ability to recognize the colors of traffic signals.

In order to improve protection for the public and provide for individual determinations of fitness to drive wherever possible, the Agency is interested in developing performance-based standards. In a Federal Register notice on the vision waiver program published on November 17, 1994 (59 FR 59386), the FHWA announced its intention to initiate a research plan to ''develop parameters for performance-based visual standards for all commercial drivers.'' 59 FR at 59389. The research plan outlined in this notice is designed to move the Agency towards a performance-based vision standard. This standard would incorporate the measurement of those visual capabilities deemed necessary for the safe operation of commercial vehicles. The research discussed below is designed to relate specific visual functions to specific driving tasks, such as the ability to stay in a lane. The standards would still be prescriptive in that they would establish a minimum score which individuals would be required to meet to be allowed to drive; however, the scoring scheme would be based on detailed research on the visual attributes required to safely operate a CMV.

Research Plan

The FHWA has developed a proposed research plan, an outline of which is provided below.

Background

The FHWA's review of the existing literature on vision and driving research led the FHWA to the following conclusions:

1. The current testing standard lacks criterion, or predictive, validity; that is, it is not clear that central visual acuity by itself is a good predictor of safe driving. This detracts from the perceived fairness of the standard. The principal shortcoming of the current standard is the emphasis on central visual acuity, which is a measure of how well an individual can discern static images in the center of vision under conditions of high luminance. Since many driving situations involve dynamic images under low luminance, other visual capacities may be equally

or more important than central visual acuity.

2. Improving the criterion validity of the vision standard would most likely require testing a broader array of visual capabilities than those included in the current standard.

3. There is no assurance that a standard based on a better understanding of the relationship between different visual capabilities and driving would result in a significant, measurable improvement in safety, in part because vision is a contributor to only a small number of crashes. CMV drivers comprise a small proportion of drivers, and are represented in a small proportion of crashes, not all of which are caused by failures of visual performance as currently measured. However, the weak observed causal relationship between vision and crashes may be a shortcoming with the current measurement of vision. It is therefore possible that the measurement of other visual functions could reveal a more significant and direct connection between vision and driving ability.

The goals of the proposed research are threefold:

1. Establish a list of visual performance parameters that appear to hold promise as a basis for a new standard, and design or adapt performance tests to measure these capabilities.

2. Evaluate the predictive validity of these tests.

3. Based on the results of these tests, establish a trial vision standard, and test that standard to evaluate its validity.

Outline of the Research Plan

The research contains both a long-term and a short-term track. The Agency may decide to conduct either of the two tracks individually, both tracks simultaneously, both tracks consecutively, or neither track. The emphasis of the short-term plan is to build on existing knowledge to develop an improved vision test, with the goal of adding two or three existing vision tests to the battery currently tested. This track does not call for significant new research, but rather seeks to take advantage of already completed work. This track could result in the development of a two-tier standard, with an expanded battery of tests in the first (screening) tier, and various administrative measures proposed for the drivers who do not pass this first tier. Administrative measures may include provisional or restricted licenses, waivers, or in-use monitoring of drivers.

The long-term plan consists of new research and analysis, which may lead to the development of a new standard.

Two phases of the research are already complete. The short-term research consists of six or seven additional stages, as explained below. The long-term research would consist of four additional phases.

The phases of the research are described below.

Research Completed or Underway

1. Development of the research plan. This phase is complete, and the work described below is the output of the planning effort. This phase describes the proposed approaches in some detail; certain elements are necessarily unspecified. For example, the choice of specific visual function tests cannot be made before further research and analysis are complete.

2. Design of testing strategy. This phase involves selecting and developing the form of the candidate tests, as well as the measures that the tests must predict. This phase is currently underway.

Selecting the candidate tests includes a general selection of visual functions to be tested, an inventory of the tests already available, and identification of new tests to be developed and validated. Tests should have broad acceptance and stable underlying population norms. The protocols for testing should be developed and accepted by researchers and testers, and results must be stable regardless of who administers the test. Acceptable population norms are necessary if a test is to be used to classify individuals based on ''normal'' results in the population of CMV drivers.

While some tests, such as the Snellen Letter test of visual acuity, are broadly accepted and have stable and well understood population norms, other tests of potentially important visual functions do not meet these standards. These latter tests would have to be evaluated. The evaluation would consider how important the visual function is in the driving task, the extent to which the test results are stable and reliable, and how readily the tests can be developed for broad usage.

Our review of the literature has led us to focus on the following visual functions as most relevant to the driving task: static acuity, contrast sensitivity, dynamic acuity, working field of view, dark focus, low contrast acuity, glare sensitivity, and vection.

The FHWA, with the assistance of a contractor, is in the process of identifying the behaviors that the tests must predict—the measures of effectiveness. This will be followed by the systematic development of measures to be validated by the visual performance tests. Theoretically, we would prefer to be able to relate a driver's performance on vision tests to an actual driving record, especially the driver's accident record. Because of the infrequency of accidents, however, we would need to test a very large number of drivers over many years to obtain reliable results. In addition, a ''clean'' experiment would require that we allow drivers who we suspect may be deficient in some key visual function to operate CMVs on the road. Allowing potentially hazardous drivers to operate CMVs poses obvious safety problems, and contravenes the FHWA's mandate to protect highway safety.

As a proxy for accidents, we are developing a list of candidate visually-related driving behaviors. This is a reasonable proxy because it is the driver's behavior that connects visual deficiencies and accidents. An example might include the time a driver takes to initiate a braking maneuver. Behaviors will be selected for further testing based on their likely validity and practicality. Since we will not be measuring accidents, it is especially important that the measures are closely related to driving performance.

After choosing behavioral measures, the Agency will develop test procedures and protocols.

Proposed Short-Term Research

3. Define criteria for selection of vision tests. The likely criteria will include: test availability with little or no modification, scientific reliability, construct validity, practicality of use in a testing environment, and acceptability to researchers and testers. While other criteria are possible, the FHWA anticipates that the factors listed above will be used to screen tests for their suitability for further research. Much of the work required to define the criteria has already been completed under tasks 1 and 2.

4. Select candidate tests. The researchers would select 3 to 5 candidate tests for further research. The tests would have to meet the criteria identified above. The researchers would determine which tests meet these criteria through a survey of the scientific community and other interest groups, and through the literature review conducted in task 1.

5. Design demonstration/evaluation project. This task consists of specifying the details of the testing procedures. The researchers would select a site for the tests, choose criteria for obtaining

test subjects, and detail the protocols for administering the vision tests.

6. Conduct empirical evaluation of operational feasibility. This is the actual testing component, in which the drivers will be tested in an operational setting to ensure that the new test battery's facilities requirements are not excessive, its personnel needs are realistic, and that the tests can be administered, scored, and interpreted in a timely fashion by the individuals responsible for administering the tests.

7. Conduct empirical evaluation of validity of pass/fail criteria for those candidate vision tests without sufficiently demonstrated construct validity. The first step in this task would be to define the study sample. The most likely sample would be age-matched 'visually impaired' and 'visually unimpaired' subjects on the candidate tests (all subjects would be required to hold a valid CDL). The researchers would then conduct the vision and performance tests and analyze the differences in performance between the two groups. Differences would be measured relative to alternative cutoff scores, so that the Agency could determine the significance of choosing different levels of stringency.

The FHWA could decide to bypass task 7, the empirical validation phase, if it determines that enough information currently exists to establish a new standard, or that additional research would be unlikely to lead to significant safety improvements. The Agency estimates that skipping task 7 would reduce the time needed to complete the research by one year.

8. Recommend tests and pass/fail criteria. Based on the work completed above, the researchers would propose specific tests to be added to the existing testing battery and cutoff scores for each test.

9. Convene interest groups to develop operational recommendations. These groups would include motor vehicle licensing administrators, researchers, industry associations, and safety advocates.

Proposed Long-Term Research

10. Design of tests and protocols. This includes developing the visual performance and behavioral tests specified in task 2, generating initial data from a pilot test, and designing draft protocols to be used in later stages.

The visual function test would include some combination of existing and new tests. The Agency would arrange the practical testing aspects, including the purchasing and licensing of tests, acquiring any software and documentation required, and developing the test protocols.

Pilot tests would be conducted on a small sample of drivers to verify test reliability and suitability for large scale testing. The Agency would modify procedures and protocols as appropriate. Upon completion of the pilot test, the FHWA would conduct the visual function tests on a medium-sized sample of drivers. The sample would be large enough to allow the Agency to analyze test score characteristics. Use of pilot tests would allow the Agency to ensure that a test would produce useable results. In addition, correlation between tests may be observed, in which case some tests may be eliminated from the final battery as redundant.

For driver behavior measures, the agency would develop simulator materials and closed-course testing procedures. To the extent possible, the FHWA would employ procedures which can be used on multimedia personal computers with a minimum of special equipment. The Agency would develop hardware, software, and testing protocols.

The extent of the work performed in this task will depend on whether the Agency conducts the short-term research. Some of the work outlined above may be conducted in task 2 of the short-term track. If that is the case, we will not repeat the work in this task.

11. Laboratory Simulation. This phase consists of evaluating the candidate tests in a controlled setting, to identify and correct any problems in the testing or protocols. This step is essentially a ''dress rehearsal'' for the full scale test. Because the next phase is the most costly in terms of time and resources, this phase was designed to allow the Agency to make a final decision about whether to continue with the research prior to commencing with the next phase of the plan, the full testing and evaluation.

A limited number of subjects would be given all the proposed visual function and driver behavior tests. The results of these tests would be analyzed extensively, including relationships between and among both sets of tests. The analysis would address the following issues:

a. Are the distributions of scores useable?

b. Is there sufficient variance to discern relationships between visual and driving tests?

c. How well do visual tests predict driving results, by themselves and in combination with other tests? How much of the variance between individuals in driving behavior can the vision tests explain?

The agency would also conduct a preliminary cost-benefit analysis. In addition to projecting the cost of the next phases of the research program, the analysis would estimate the cost of implementing a new vision standard and the possible safety benefits.

12. Validation Testing. This phase consists of two sequential activities, test preparation and data collection, the crux of the proposed research.

Test preparation includes selection and configuration of test sites, plus selection and preparation of subjects. The site (or sites) selected must have, or be able to accommodate, a driving simulator, a closed test course, and a road test course. Site preparation includes configuring the testing equipment for the site, surveying the road test course, and preparing and deploying signs and obstacles for the closed test course. Preparation of the subjects consists of briefing the participants and pre-testing them for the visual measures.

A final closed-course pilot test would then be conducted, using a small number of drivers. This would provide the Agency with a final opportunity to modify the test procedures.

Validation testing would probably include at least two distinct activities, simulation and closed-course testing, and would possibly also include controlled road testing. Variables would be strictly controlled in these simulation tests to ensure the accuracy and reliability of results. The FHWA expects that the simulators used for this phase would be more sophisticated, with higher video resolution than those used in the previous pilot test.

Closed-course testing would be used to test drivers under low visibility conditions. This is difficult to imitate on a simulator and is unsafe to test on the road.

If road testing is conducted, it would consist of non-intrusive instruments to record driver responses, such as eye movement patterns, blink rates, pupil diameter, and fixation points. This information, combined with data on the roadway obstacles, provides a stream of data related to working field of view, detection time, and how drivers react to critical events. The road test would be conducted under normal driving conditions to assure that the results are generalizable to normal CMV operating practices. There are a number of hurdles to using a road test, including the need to perform the test for an impractically long period to obtain sufficient data, and the possibility that drivers would modify their behavior if they are aware

that they are under observation. The FHWA would decide whether to conduct the road test after analyzing the results obtained in the simulation and closed-course tests.

13. Standard Development. The results of the preceding task would be analyzed for validity, reliability, and practicality. If the results of the validation testing justify specification of a new standard, a decision framework for that standard would be constructed.

Specific Questions

The FHWA is specifically interested in comments addressing the following issues:

1. Are there any methodological shortcomings in the research plan outlined above that need to be addressed?
2. Is the plan likely to meet the objective of leading to an improved, performance-based vision standard?
3. Does the plan reflect an understanding of the current literature and consider its implications?
4. Is the plan capable of adequately addressing practical matters, such as the cost of any new testing machinery developed, the level of training required to conduct new tests, and the time needed to take tests?
5. Has this type of research been conducted in other professions? What were the results?
6. Should the FHWA proceed with the short-term plan, the long-term plan, both, or neither?
7. Should the FHWA proceed with an alternative plan? If so, describe that plan.

Current Status of the Research Program

The FHWA is currently in the midst of step 2 of the research plan, which consists of inventorying existing tests and evaluating them against a number of criteria, including their cost, which visual functions they measure, overlap between different tests, and the amount of training required to conduct the tests.

Format of Public Hearing

The FHWA announced in the November 17th notice (59 FR 59386) its intention to hold a public hearing to discuss the research plan. The public hearing will be held on August 9, 1996, at the Chicago O'Hare Marriot, 8535 West Higgins Road, Chicago, IL 60631, (312) 693–4444. The hearing will begin at 8:30 a.m. and conclude at 4:30 p.m.

Individuals wishing to speak at the hearing should contact the FHWA at the address or phone number listed above under the heading ''For Further Information Contact.'' Individuals may submit written comments in addition to, or in place of, oral testimony. All commentors will be limited to ten minutes of oral remarks.

The hearing will commence with an explanation of the proposed research plan, including a brief description of the background to this effort, the goals of the proposed research, and the steps of the proposed plan. The FHWA will then accept questions from audience members, with individuals who have contacted the FHWA given the first opportunity to speak.

(49 U.S.C. 31136(a)(3), 31502)

Issued on: May 20, 1996.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 96–14041 Filed 6–4–96; 8:45 am]

BILLING CODE 4910–22–P

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 91–68; Notice 5]

RIN 2127–AC64

Federal Motor Vehicle Safety Standards; Rollover Prevention

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petitions for reconsideration.

SUMMARY: This notice announces the denial of petitions for reconsideration of the agency's decision to terminate rulemaking to develop a vehicle rollover stability standard.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590:

For non-legal issues: Gayle Dalrymple, Office of Crash Avoidance Standards, telephone (202) 366–5559, facsimile (202) 366–4329.

For legal issues: Steve Wood, Office of the Chief Counsel, NCC–20, telephone (202) 366–2992, facsimile (202) 366–3820.

SUPPLEMENTARY INFORMATION:

I. 1994 Notice Terminating Rulemaking on a Vehicle Rollover Stability Standard

On June 28, 1994, NHTSA published a notice in the Federal Register announcing two agency actions: (1) the termination of rulemaking to develop a Federal Motor Vehicle Safety Standard on vehicle rollover stability; and (2) the proposal of a consumer regulation for labeling vehicles with rollover stability information. (59 FR 33254)

In the portion of the 1994 notice terminating rulemaking, the agency examined the suitability of using a variety of vehicle stability metrics [1] as a basis for a rollover standard. NHTSA concluded that two such metrics, tilt table angle (TTA) [2] and critical sliding velocity (CSV),[3] can each separately account for approximately half of the variability in rollover risk in single vehicle accidents remaining after considering driver, roadway, and environmental factors. NHTSA stated:

> The suitability of a vehicle safety standard based on rollover stability depends on the importance of rollover stability, as represented by a vehicle metric, relative to other rollover influences, such as vehicle handling properties, vehicle condition, the nature of the roadway and shoulder terrain, and driver behavior. The agency sought to determine whether vehicle stability metrics are significant variables in a statistical model of the risk of rollover. If they are, then a standard regulating stability might be justified, depending on the results of a comparison of benefits and costs for such a standard.
>
> After analyzing a number of static and dynamic rollover metrics, the agency concluded that two vehicle metrics, tilt table angle and critical sliding velocity, can account for about 50 percent of the variability in rollover risk in single vehicle accidents, after considering driver, roadway, and environmental factors. (Rollover risk is the number of single vehicle rollovers involving a particular make/model divided by the number of single vehicle crashes of all types involving the same make/model.) This statistical analysis was conducted on all light duty vehicles treated as a group. However, analysis of accident data indicated that certain subgroups of light duty vehicles are more likely to roll over than other subgroups. For example, sport utility vehicles and compact pickup trucks tend to be the most likely vehicles to roll over. Large passenger cars tend to be the least likely to roll over.

59 FR 33254, at 33258.

While NHTSA concluded that the two vehicle stability metrics were of some value in estimating the likelihood that a single vehicle accident involving a particular model of vehicle would result

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[1] A vehicle stability metric is a measured vehicle characteristic that is analyzed to determine whether it is related to a vehicle's likelihood of rollover involvement.

[2] The tilt table test involves placing the vehicle on a platform which is then tilted about an axis parallel to the vehicle's longitudinal axis. TTA is the angle at which the last tire on the upper side of the platform loses contact with the platform and the vehicle begins to fall off the platform. This metric is influenced by changes in a vehicle's mass, center of gravity height, track width, and suspension movement, all of which are physically related to rollover stability.

[3] Critical sliding velocity includes the roll moment of inertia as well as the various static factors included in tilt table angle. CSV is calculated from an equation which can be found in the June 28, 1994 notice, as corrected on July 26, 1994 (59 FR 38038).

in a rollover, the agency emphasized that analyses also ''show that other factors in addition to those analyzed are affecting rollover risk.'' (*Id.*, at 33260) As the agency noted, ''[t]he suitability of a vehicle safety standard based on rollover stability depends on the importance of rollover stability, as represented by a vehicle metric, relative to other rollover influences, such as vehicle handling properties, vehicle condition, the nature of the roadway and shoulder terrain, and driver behavior.'' (*Id.*, at 33258) In other words, the issue was not simply whether there is a statistical relationship, but also whether that relationship is strong enough, considering other influences, so that improvements in the stability metrics, especially relatively small improvements, would generate benefits commensurate with the costs. If the relationship is not sufficiently strong, even significant changes in the stability metrics may be overwhelmed by the other influences and thus fail to cause a significant change in rollover experience.

The agency concluded that while each of the stability metrics has some causal relationship to the potential for rollover and a statistical relationship to real-world rollover frequency, a standard based on either of the metrics would yield measurable benefits only if it required that the metrics be increased to an extent that would impose excessive costs and necessitate radically redesigning one or more types of light trucks.[4] The agency reached this conclusion after examining the merits of establishing a single rollover standard for all light duty vehicles (i.e., passenger cars and light trucks).

With respect to a single standard, the agency stated:

> The agency also determined that, considering the costs and benefits involved, proposing a safety standard specifying a single minimum stability value for both cars and light trucks could not be justified. While light trucks have lower stability measurements than cars do, the greatest number of rollover-related deaths and injuries occur in passenger cars because of their larger population size. Therefore, if the agency wished to set a stability minimum high enough to realize significant reductions in the number of fatalities in all light duty vehicles, it would have to set the minimum above the stability number of most light trucks. The costs of such a standard, in terms of the cost of vehicle redesign and the loss of consumer-desired attributes, were determined to be very high, as entire classes of light trucks would probably need to be substantially redesigned to meet such a standard. This redesign could result in the elimination of some vehicle types, e.g., sport utility vehicles, as they are known today.

Id., at 33258.

To avoid such drastic consequences for light trucks, the agency considered whether it would be appropriate to set one standard for cars and separate standards for various classes of light trucks.[5] NHTSA concluded that it was not appropriate. Since its analysis of the ability of the two vehicle stability metrics to account for the variability in rollover risk in single vehicle accidents was conducted on all light duty vehicles as a group, the agency examined the ability of the metrics to account for variability within individual subgroups of those vehicles. Regarding the results of that examination, NHTSA stated:

> [I]t was necessary to determine whether either of the stability metrics exhibited sufficiently high levels of correlation to assure the agency that a requirement applying to only one class of vehicle would be expected to reduce the incidence of rollovers for vehicles in that class. * * * [T]he agency found that the statistical correlations of the metrics with rollover accident data within a class of vehicles was not so consistent as for all vehicles grouped together. This weakening of the predictive ability of the metric is, to some extent, the result of the smaller range of the metric within any class of vehicles together with the inherent variability in the data. Based on this analysis, and the general analysis of costs and benefits discussed later, the agency determined that proposing a standard specifying one minimum stability value for cars and others for various classes of light trucks could not be justified.

Id., at 33528.

II. Petitions for Reconsideration of Decision To Terminate Rulemaking

In July 1994, the agency received two petitions for reconsideration of its decision to terminate rulemaking on a rollover stability standard. One petition was submitted by Advocates for Highway and Auto Safety and the Insurance Institute for Highway Safety (Advocates/IIHS) and the other by Randall and Sandy Vance, Doug White, and Robert and Glenda Cammack (Vance, *et al.*). Both petitions asked NHTSA to reconsider its decision to terminate rulemaking to establish a minimum standard for vehicle rollover stability. The Vance *et al.* petition expressed general disagreement with that decision, while the Advocates/IIHS petition identified detailed points of disagreement. For this reason, unless otherwise specified, references below to ''the petition'' or ''the petitioners'' are references to the Advocates/IIHS petition.

While the petitioners made numerous contentions, they focused on four general areas: the character of a reasonable rollover standard, the agency's statistical analysis of how a standard could be selected, the agency's benefit calculations, and the agency's statements concerning cost burden to the manufacturing industry. The following is a summary of the more important contentions addressed in this notice and the appendix to this notice:

- NHTSA should have more thoroughly considered establishing separate standards for separate classes of vehicles.
- To achieve a better relationship between costs and benefits, NHTSA should have considered the alternative of setting a standard for the most rollover-prone vehicles within one or more of the following groups: sport utility vehicles (SUVs), vans, and pickup trucks.
- Compact SUVs[6] are the most rollover prone group of light duty vehicles.
- Minor vehicle changes (e.g., suspension changes) could be used to achieve stability improvements at reasonable cost.
- NHTSA did not provide any factual support for its assertion that there are serious safety problems associated with improving vehicle stability metrics through suspension changes.
- NHTSA did not explain the nature and extent of the major design changes that it said were necessary to meet any stability metric, nor how much such changes would cost.
- The level of projected benefits of a rollover standard was understated by the agency because it:
- used average class values in lieu of model specific rollover accident data for the rollover experience of some vehicle models;
- used inappropriate statistical measures; and
- viewed rollover prevention as accident mitigation instead of accident prevention.
- Although Congress did not mandate the issuance of a rollover stability standard, it expected that such a standard would be issued.
- Contrary to NHTSA's position, the statute governing the agency's vehicle

[4] The term ''light trucks'' includes sport utility vehicles, vans, and pickup trucks with a gross vehicle weight rating of 4,536 kilograms (10,000 pounds) or less.

[5] *Id.*, at 33258.

[6] The vehicles considered compact SUVs in NHTSA's analysis were: Ford Explorer, Chevy S10 Blazer, Jeep Cherokee, Jeep Wrangler, Toyota 4–Runner, Nissan Pathfinder, Geo Tracker, GMC S–15 Jimmy (essentially a twin of the Blazer), Isuzu Trooper, Isuzu Rodeo, Suzuki Sidekick (essentially a twin of the Tracker), Mazda Navaho (essentially a twin of the 4WD Explorer), Mitsubishi Montero, Isuzu Amigo, and Suzuki Samurai.

safety rulemaking readily permits the elimination of a class of vehicles widely accepted in the marketplace.

• The agency may not consider the policy concerns underlying the Regulatory Flexibility Act without preparing a regulatory flexibility analysis.

III. Response To Petitions for Reconsideration

In response to the petitions, the agency has reconsidered its decision to terminate rulemaking on a rollover stability standard. As explained below, the agency is, on reconsideration, reaffirming that decision.

The petitions raise several points that are not disputed by NHTSA; however, they do not compel the conclusion that NHTSA should establish a rollover standard based on vehicle stability metrics. For example, the agency agrees that single vehicle rollover is a significant safety problem. NHTSA also agrees that the two vehicle stability metrics are useful in estimating the likelihood that a single vehicle accident involving a particular model of vehicle will result in a rollover.

Finally, the agency agrees that it is appropriate in determining the desirability of a rollover standard to consider a rollover standard regulating vehicles in the most rollover-prone groups. While the 1994 notice focused primarily on the approach of a single standard for all light duty vehicles, the agency did analyze separate standards for separate classes of vehicles. The notice explained that the predictive ability of the vehicle stability metrics decreased as the vehicle population was divided into smaller groups. As noted above, the agency concluded that ''a standard specifying one minimum stability value for cars and others for various classes of light trucks could not be justified.'' (*Id.*, at 33257). Since the petitioners suggest issuing a rollover standard regulating the most rollover-prone vehicles, NHTSA has focused on such an approach in responding to the petitions for reconsideration. The agency agrees with the petitioners that, in theory, the comparatively high rollover rate of compact SUVs makes a standard regulating that group of vehicles appear more likely to generate benefits commensurate with its costs than would a standard regulating any other group of vehicles.

These areas of agreement are insufficient, however, to lead the agency to the conclusion reached by petitioners. To the contrary, the agency's detailed analysis below of a rollover stability standard based on TTA or CSV demonstrates that the costs and other impacts of such a standard manifestly outweigh the estimated but uncertain benefits.

A general response to the petitioners' arguments appears below. Certain issues are covered in greater detail in the Appendix to this notice.

IV. Rationale for Reaffirming Decision To Terminate

A. Summary

Following its examination of the arguments raised by the petitioners, the agency has revisited and, in some respects expanded, its rationale for terminating rulemaking on a vehicle stability standard. The agency again concludes that it is not appropriate to establish a vehicle rollover stability standard based on a vehicle stability metric.

If a stability standard were set at a level that would require only minor vehicle changes in order for the affected models to achieve compliance, the standard would not produce any safety benefits. Minor vehicle changes, which consist predominately of suspension changes, would not produce significant improvements in the vehicle stability metrics and would not be likely to result in any reductions in fatalities and injuries.[7] Moreover, there is reason to conclude that such suspension changes would, in fact, produce negative safety side effects.

If a stability standard were set high enough to require significant improvements in the vehicle stability metrics, it would necessitate full vehicle redesigns and major vehicle changes. However, the safety benefits of such changes would nevertheless be relatively modest. Moreover, the overall costs and loss of consumer choice resulting from full vehicle redesigns involving major vehicle changes would be substantial and excessive. On balance, the potential for improved vehicle safety associated with such improvements in the vehicle stability metrics is not sufficiently large to justify such redesigns.

B. Vehicle Changes To Increase Vehicle Stability Metrics

There are two general categories of vehicle changes that would increase the vehicle stability metrics (TTA and CSV). One consists of relatively minor vehicle changes (i.e., suspension changes); the other, of major vehicle changes (i.e., widening the vehicle track and lowering the center of gravity) that could only be achieved through full redesign of the vehicle. The petitioners appear to believe that a vehicle can be redesigned so it will be significantly less likely to roll over, that the means for accomplishing this will be ''invisible'' to the consumer, and that the vehicle will look and function as it did before the redesign. As discussed below, redesigning a vehicle to significantly reduce its likelihood of rolling over necessarily involves making fundamental changes in the vehicle's dimensions (making it wider, longer, lower, heavier) and compromising its utility to consumers (e.g., by reducing its fuel efficiency, ground clearance, load-carrying capacity, off-road capability, or driveability on snowy roads).

1. Minor Vehicle Changes To Increase Vehicle Stability Metrics

Minor vehicle changes have very little effect on the vehicle stability metrics. Moreover, they do not result in net safety improvements.

As the petitioners correctly point out, the Preliminary Regulatory Evaluation (PRE) for the 1992 Advance Notice of Proposed Rulemaking (ANPRM) suggested that there were grounds for optimism about the ability of minor vehicle changes, such as suspension tuning, to affect stability metrics and improve rollover stability. (57 FR 242; January 3, 1992) However, after reviewing the comments on the 1992 ANPRM, the agency concluded in the 1994 notice that minor vehicle changes could not, in fact, significantly affect the vehicle stability metrics. Comments from Advocates itself,[8] as well as Ford and General Motors, on the ANPRM indicate that suspension changes result in very little improvement in rollover stability.

Moreover, vehicle rollover stability is not the same as vehicle handling and control. Some measures that improve

[7] As noted above, the agency stated in the 1994 notice that a standard limited in its application to a vehicle subgroup (e.g., sport utility vehicles) is particularly unlikely to reduce fatalities and injuries given the weaker statistical relationships between the stability metrics and the rollover involvement for vehicle subgroups. (*Id.*, at 33528)

[8] In commenting on the ANPRM, Advocates indicated that it did not share the agency's optimism at that time about the desirability of relying on suspension changes to improve rollover stability metrics. Advocates commented that the selection of TTR as the parameter to be regulated would ''permit a manufacturer to attempt manipulation of other stability-related elements of the vehicle's design, such as its suspension, in order to secure a barely passing tilt- table score.'' It also expressed concern that the agency ''may be already tending towards selection of TTRs [see footnote 12] that will not move the industry towards safer overall vehicle designs, particularly with regard to wheelbase, width, length, and center of gravity height, but rather will encourage the perpetuation of the *status quo* designs especially with regard to very small cars, small pickups, and SUVs that will continue to show high rollover propensities.''

TTA or CSV do not necessarily result in improved directional control and stability. Available information suggests that directional control and stability would be adversely affected as a result of relying upon suspension changes to make small increases in the vehicle stability metrics. This information was supplied in comments from Advocates, Ford, and General Motors on the ANPRM expressing concern with the side effects of suspension changes to improve TTA.

For example, Ford used a computer simulation of a compact pickup truck to evaluate the effect of a series of suspension changes on directional stability and side-to-side load transfer in cornering. (Docket 91–68–N01–21) Ford evaluated substantial suspension changes, including a 30 percent increase in spring rates, removal of stabilizer bars, and a change in the front suspension roll center by 1.5 inches. It also examined a ride height change that would lower the center of gravity by 0.5 inch. Ford noted that, in general, tuning a suspension system such that both the front and rear tires lift from the tilt table simultaneously would maximize the TTA. However, this optimization requires either decreasing the front roll stiffness (by removing the front stabilizer bar), or increasing the rear roll stiffness (by using a 30 percent greater rear spring rate). The simulation showed that, among the suspension changes examined by Ford, these two changes made the greatest improvements in TTA (an increase of 0.62 and 0.55 degrees, respectively). However, these changes were also shown to alter directional stability toward oversteer (i.e., these changes tend to make a vehicle turn more sharply than a driver intends). Ford's simulation showed that other suspension changes, such as an increase in front spring rate or a decrease in front roll center height, could increase TTA (to a lesser degree than those mentioned above), while altering directional stability toward understeer (i.e., these changes tend to make a vehicle turn less sharply that a driver intends). The only minor change mentioned by Ford in its comment which improved TTA without influencing directional stability was lowering the vehicle c.g. height by 0.5 inch, resulting in only a 0.17 degree increase in TTA.

Based on its consideration of such comments, the agency concludes that suspension changes would not produce significant improvements in rollover stability and would have the potential to cause undesirable changes in directional stability and handling, which in turn could lead to an increase in crashes. In view of this conclusion, the agency has not examined whether those changes could be made at a reasonable cost, since they are unlikely to yield net safety benefits.

2. Major Vehicle Changes To Increase Vehicle Stability Metrics

Thus, significant improvements to the vehicle stability metrics could be achieved only through making major changes to the vehicle chassis and body to increase the track width and/or lower the center of gravity. These major changes would require full vehicle redesigns that substantially change the parameters affecting vehicle stability metrics. The necessary extent of such redesigns is illustrated in the following example. Given that the center of gravity height for a typical compact SUV [9] is 27 inches, to raise its TTA (42.9 degrees) to that of the typical full- size SUV (46.4 degrees), it would be necessary to increase the track width (i.e., the distance between the left and right tires on an axle) more than 6 inches. Further, such a track width increase would require a corresponding wheelbase (i.e., the distance between the front and rear axles) lengthening of 10 inches to retain the braking stability of the smaller SUV. As noted later in the sections regarding cost and impact on consumer choice, such modifications would eliminate most of the compact SUVs as they currently exist, converting the typical compact SUV into a full-size SUV.

Citing the example of the GMC Jimmy, which was redesigned for 1995, petitioners argued that vehicle manufacturers can gradually redesign their compact SUVs so as to increase their vehicle stability. The petitioners presented an article from Automotive News stating that the new Jimmy is longer, lower, and wider than its predecessor.[10] The petitioners further attributed to the new Jimmy ''a chassis modification that can result in better stability metrics and in lower rollover crash rates.'' [11]

NHTSA draws a very different lesson than do petitioners from the example of the Jimmy. In the agency's view, the petitioners underestimate the extent to which the parameters affecting a vehicle's stability metrics must be changed to significantly improve those metrics. As explained below, the overall lessons of the new Jimmy are that even a significant partial redesign of a vehicle will change its vehicle stability metrics little in the absence of major changes to the vehicle's c.g. height and track width, and that even minor changes in those parameters may come at the cost of adversely affecting other attributes desired by consumers. For example, the new Jimmy is heavier and more costly than the prior model.

The agency agrees that the vehicle stability metrics of the new Jimmy are likely to be somewhat better than those of the old Jimmy. Although the agency has no TTA or CSV data on the new design, its lower body height and wider track suggest that it has a slightly better TTA than its predecessor and its longer, wider, and heavier body suggests that it may have a greater roll moment of inertia and, therefore, a slightly greater CSV.

However, the increases in the Jimmy's vehicle stability metrics are likely to be very small. The reason is that the changes made to the parameters affecting those metrics were relatively minor. Although the changes increased the size and weight of the Jimmy, the magnitude of those changes fell short of the levels needed to make a significant improvement in its TTA or CSV. The body height of the 2WD model was reduced by 1.6 inches, but the associated reduction in center of gravity height is likely to be much less, since the location of the engine, drive train, suspension, and passenger accommodation component masses remained unchanged. The height reduction of the 4WD model was only 0.8 inches. Likewise, the body width was increased by 2.4 inches, but the front and rear track widths of the 4WD model were increased less: 1.6 and 1.0 inches, respectively. The 2WD model track width increases were even less: 0.9 inch at the front and 0.5 inch at the rear.

Taken together, these changes to the Jimmy's parameters affecting the rollover stability metrics are very minor compared to the ones described above as being necessary for a typical compact SUV to achieve a TTA of 46.4 degrees. Thus, these changes predict at best a very small improvement in TTA or CSV.

The impact of such small improvements in vehicle stability metrics on rollover risk is unknown. Since this is a new model for 1995, neither NHTSA nor the petitioners have data on the rollover experience of the new Jimmy. There is no way to know at this time if the changes will actually lead to a reduced risk of rollover.

C. Benefits of Improvements in Vehicle Stability Metrics

NHTSA's 1994 notice estimated that the benefits of a rollover standard requiring a TTA of 46.4 degrees for all light duty vehicles included a modest

[9] A ''typical compact SUV'' and a ''typical full-size SUV'' are hypothetical vehicles with the average TTA and dimensions of all the vehicles in their class.

[10] Advocates/IIHS petition, attachment 2.

[11] Advocates/IIHS petition, page 18.

amount of benefits for compact SUVs. The agency's estimate that 63 fatalities and 61 serious injuries might be prevented for all light duty vehicles included the prevention of 31 fatalities and 22 serious injuries for compact SUVs. The potential compact SUV benefits were predominately attributable to those particular compact SUV models that would require significant changes in track width and/or center of gravity height to achieve the required TTA.

As part of its review of the petitions, the agency recomputed its estimate of the benefits of making significant design changes in order to raise the TTR [12] of compact SUVs to 1.05,[13] using data that were not available for some makes and models when the analysis was done for the 1994 notice.[14] The agency estimates that, using the more current data and certain optimistic assumptions (discussed below), 22 serious injuries and 32 fatalities might be prevented annually if all new compact SUVs were redesigned to the extent necessary so that each vehicle in that class had a TTR of 1.05 and if all existing compact SUVs with a lower TTR were retired from the vehicles-in-use fleet. The potential benefits for a rollover stability standard are computed by considering:

(1) The reduction of rollovers per single vehicle accident (RO/SVA) predicted for increases in TTR;

(2) The number of single vehicle accidents experienced by vehicles that would need to be altered in order to comply with the standard; and

(3) The degree of harm mitigation (in the number of fatalities and serious injuries) as a result of rollover prevention given that a single vehicle accident has occurred.

The following table, corresponding to Table 1 of the document ''Potential Reductions in Fatalities and Injuries in Single Vehicle Rollover Crashes as a Result of a Minimum Rollover Stability Standard,'' contains the results of this latest computation. For an explanation of the headings and entries in the table, see that document.

Compact SUV make model	Drive	MY 1991 production	TTR	1986–88 5 state SVA/RV	1986–90 Michigan RO/SVA	Est % of compact SUV ROs	Est AIS3 + injuries	Est fatalities	Projected RO/SVA @ min TTR 1.05	AIS3 + reduction @ min TTR 1.05	Fatality reduction @ min TTR 1.05
Vehicle A	2 WD*[15]	65,515	0.88	**[16]0.0068	**0.359	6	39	28	0.270	9.6	6.9
	4 WD	184,554	0.88	**0.0068	**0.359	16	110	79	0.270	27.2	19.5
Vehicle B	2 WD	29,480	0.95	0.0103	0.342	4	25	18	0.280	4.6	3.3
	4 WD	93,866	0.99	**0.0102	0.27	9	63	45	0.244	6.1	4.4
Vehicle C	2 WD*	19,920	1.08	0.0091	0.317	2	14	10			
	4 WD	101,541	1.08	0.0091	0.317	11	71	51			
Vehicle D	2 WD	0									
	4 WD	46,478	1.03	0.0163	0.273	8	50	36	0.263	1.8	1.3
Vehicle E	2 WD*	4,892	1.01	0.0211	0.362	1	9	7	0.338	0.6	0.4
	4 WD	39,989	1.01	0.0211	0.362	11	74	53	0.338	4.9	3.5
Vehicle F	2 WD*	3,555	0.93	**0.0215	**0.315	1	6	4	0.258	1.1	0.8
	4 WD	35,945	0.93	**0.0215	**0.315	9	59	42	0.258	10.8	7.7
Vehicle G	2 WD	0									
	4 WD	30,702	0.978		0.394	5	31	22	0.348	3.6	2.6
Vehicle H	2 WD	6,479	0.95	0.0114	0.259	1	5	3	0.219	0.7	0.5
	4 WD	23,515	0.99	**0.0123	0.252	3	18	13	0.228	1.7	1.2
Vehicle I	2 WD	0									
	4 WD	26,776	0.98		**0.481	5	33	24	0.427	3.7	2.7
Vehicle J	2 WD*	740	0.947			0	1	0	0.281	0.1	0.1
	4 WD	23,870	0.947			3	20	15	0.281	3.3	2.1
Vehicle K	2 WD*	1,257	0.978		0.407	0	2	1	0.360	0.2	0.1
	4 WD	10,492	0.978		0.407	2	13	10	0.360	1.6	1.1
Vehicle L	2 WD	0									
	4 WD	11,404	0.88	**0.0068	**0.359	1	7	5	0.270	1.7	1.2
Vehicle M	2 WD	0									
	4 WD	10,616	0.93			1	9	7	0.274	1.7	1.2
Vehicle N	2 WD*	5,011	1.016			1	4	3	0.315	0.2	0.2
	4 WD	2,818	1.016			0	2	2	0.315	0.1	0.1
Vehicle O	2 WD*	832	1.04			0	1	1	0.329	0.0	0.0
	4 WD	3,546	1.04			0	3	2	0.329	0.1	0.0

[12] TTR is the tangent of TTA. In its analysis prior to the 1994 notice, the agency used TTR. Because TTA is an easier concept to depict on labels for the general public, the agency proposed the use of TTA rather than TTR for the vehicle label under a consumer information regulation that was proposed in the 1994 notice. NHTSA used TTA throughout the 1994 notice for that reason. However, NHTSA has not converted the TTR values to TTA values when discussing its statistical and benefits analyses in this document.

[13] A TTR of 1.05 is the equivalent of a TTA of 46.4 degrees. On page 33261 of the 1994 notice, the agency explained that, if the agency were to adopt a rollover stability standard applicable to all vehicles, a TTA of 46.4 degrees was the highest practicable standard. The agency explained that a TTA of 46.4 degrees is representative of the average full-size SUV. Since the design changes to increase TTA to that level would cause a compact SUV to approach the size of full-size SUVs, establishing any higher standard, whether for all vehicles or for compact SUVs alone, would lead to the virtual elimination of compact SUVs as that class currently exists.

[14] The recomputation was performed using the same procedures used for the 1994 estimates and explained in detail in the document ''Potential Reductions in Fatalities and Injuries in Single Vehicle Rollover Crashes as a Result of a Minimum Rollover Stability Standard.'' That document is in Docket 91–68; Notice 3. However, while the procedures were the same, an expanded set of data (the number of rollover accidents and single vehicle accidents) were used in the recomputation to increase its accuracy. The use of the new data adequately addresses the petitioners' concerns about the agency's use in the 1994 notice of weighted averages for models for which there was insufficient data to determine the actual rollover rate.

Compact SUV make model	Drive	MY 1991 production	TTR	1986–88 5 state SVA/RV	1986–90 Michigan RO/SVA	Est % of compact SUV ROs	Est AIS3 + injuries	Est fatalities	Projected RO/SVA @ min TTR 1.05	AIS3 + reduction @ min TTR 1.05	Fatality reduction @ min TTR 1.05
Weighted Averge				0.01049	0.335						
Total [17]		783,783				100	669	480		85.0	61.0
Total [18]										22.0	32

[15] An "*" in this column indicates that the agency lacked sufficient data for the 2WD version of the model. For these models, the agency assumed that the 2WD version had the same TTR and the same rollover rate as the 4WD version.

[16] An "**" in this column and in the next one indicates that 1988–91 Michigan accident data were used instead of the data indicated by the column heading.

[17] The serious injury and fatality reduction figures in this row are the benefits that might result if the standard prevented not only a rollover, but also an accident of any type.

[18] The serious injury and fatality reduction figures in this row are the benefits that might result if the standard prevented a rollover, but still allowed an injury-causing accident of some type to occur after the vehicle left the road. The injury and fatality figures in this row were derived by multiplying the figures in the row immediately above by a mitigation factor of 26 percent for injuries and 52 percent for fatalities. For further details on these factors, see section 3 of the Appendix to this notice.

There are two optimistic assumptions incorporated in the computation process for both the original and new estimates: [19]

- The number of rollover injuries and fatalities prevented will be proportional to the number of rollovers prevented; and
- The fatality and injury rates of the late 1980's will be representative of future rates.

The effect of these optimistic assumptions is that these new estimates, like the 1994 estimates based on the same assumptions, may in fact overstate the actual benefits, i.e., the number of fatalities and injuries likely to be prevented by improving the TTR of compact SUVs to 1.05.

The first assumption assumes that the rollover accidents that would be prevented as a result of requiring an increase in TTR would have the same fatality and injury rates as rollover accidents in general. There is reason to believe that this would not be the case. The likelihood of fatalities and serious injuries in rollover accidents is heavily skewed toward crashes involving more than one quarter turn. Data show that light truck rollover crashes involving only a single quarter turn have about one-third the fatality rate of the average rollover. This difference in likelihood of harm is significant if moderately improving TTR would not be equally likely to prevent a multiple quarter-turn rollover as a single quarter-turn rollover. NHTSA believes that it is more likely that the prevented rollovers would tend to be the lowest energy rollovers, i.e., the single quarter-turn rollovers. At best, improving TTR would only slightly mitigate the more severe rollovers. Thus, by assuming that rollovers prevented by an improvement in TTR would be average rollovers instead of the least severe rollovers, the agency is overstating the benefits obtainable from such an improvement. Had the agency based its benefit estimates on the fatality rate of rollovers involving a single quarter turn, the estimated number of prevented fatalities would have been about 11 instead of 32.

The second assumption, that the fatality and injury rate in rollovers will remain constant, is likely to overstate the benefits of a vehicle stability standard since, if recent trends continue, future increases in safety belt use, as a result of Federal, state, and local efforts, can reasonably be expected to reduce the overall harm from rollover accidents. As belt use increases, rollover casualties decrease, even if the number of rollover crashes remains constant.

Consequently, even with liberal assumptions and using the most current and complete database available, NHTSA estimates that a rollover stability standard requiring compact SUVs to achieve the same TTR (1.05) as the typical full-size SUV would prevent 22 serious injuries and 32 fatalities annually. While precise quantification is impossible, the agency believes, for the reasons stated above, that the actual level of safety benefits would be significantly lower.

D. Costs of Improvements in Vehicle Stability Metrics

The substantial vehicle redesigns necessary to enable many existing compact SUVs to achieve a TTR of 1.05 and produce the estimated reductions in fatalities and injuries discussed above would have substantial negative impacts, both in terms of reduced consumer choice and unmet preferences and in terms of increases in manufacturer and consumer costs.[20] As noted above, the only way to achieve significant increases in TTR is to increase the track width and/or lower the center of gravity. Increasing track width or lowering the center of gravity, using conventional, commonly used designs and production methods, would necessarily, and significantly, increase vehicle size and weight. For NHTSA, in effect, to require compact SUVs to approach the size and weight of full-size SUVs would run counter to consumer preferences that have led to the existing fleet of compact SUVs. The strength of those preferences is demonstrated by the fact that compact SUVs outsold full-size SUVs by a margin of six to one in 1994, the latest year for which the agency has sales data.[21] The Ford Explorer, the compact SUV model with the lowest TTR and therefore the compact SUV which would be most affected by any minimum standard, is the best-selling SUV and is the ninth most popular make/model of all car and truck models combined.

Upsizing compact SUVs so as to eliminate much of the size and weight difference between those vehicles and full-size SUVs also might have a significant adverse affect on the

[19] The agency made these assumptions because limitations in available data made it impossible to use more precise values. When making these assumptions, the agency took an optimistic approach so as to present the prospects of a vehicle stability standard in the best possible light.

[20] As explained in the Appendix, NHTSA made two cost estimates. The first was based on the assumption that compact SUVs needing a TTR increase of more than 0.06 would require a full vehicle redesign. The second was based on the assumption that only compact SUVs needing a TTR increase of more than 0.04 would require such a redesign.

[21] Model year 1994 sales data from *Automotive News 1995 Market Data Book*, Crain Communications, Detroit, Michigan, May 24, 1995.

All light trucks—6,097,787 vehicles.

Compact SUVs—21.9% of light trucks, or 1,335,415 vehicles.

Full-size SUVs—3.6% of light trucks, or 219,520 vehicles.

production and sales of SUVs. The body of the average full-size SUV is currently about 10 inches wider than that of the average compact SUV, and the track width is about 9 inches greater. The 6-inch increase in track width necessary to bring the TTR of compact SUVs up to that of full-size SUVs (assuming no increase in c.g. height) would remove much of those differences between compact SUVs and full-size SUVs. Given the admonition in the legislative history of the National Traffic and Motor Vehicle Safety Act against eliminating vehicle types (see the discussion in section D of the Appendix to this notice), such a dramatic potential impact on the design of compact SUVs and on the market for those vehicles must be carefully weighed.

In addition to impacts on consumer choice and sales, there are substantial monetary costs associated with redesigning those compact SUVs that would need significant increases in TTR to meet a standard of 1.05.[22] The agency estimated those costs using confidential cost data submitted by domestic automobile manufacturers during the course of several agency rulemaking proceedings to establish light truck Corporate Average Fuel Economy (CAFE) standards. The estimated consumer cost of bringing all such new compact SUVs into compliance with such a standard is between $310 million and $335 million, depending on which of two assumptions is made about the vehicles that would require a full vehicle redesign. A detailed discussion of the method used to estimate these costs is included in the Appendix to this notice.

The agency believes that the foregoing estimate of the costs of a rollover standard requiring compact SUVs to achieve a minimum TTR of 1.05 is understated. Those estimates do not include the incremental costs of material and labor involved in the manufacture of a larger vehicle. In addition, the estimates do not include any costs for vehicles that would only need minor changes, instead of a full vehicle redesign, to comply with the standard. NHTSA has not attempted to calculate those costs because the benefits of the standard are already outweighed by the initial cost estimate.

The agency recognizes that providing a lengthy leadtime period would reduce the costs of compliance to the extent that manufacturers were able to make their compliance efforts coincide with their normal model changeover timetable. However, providing additional leadtime would do nothing to reduce the adverse impacts on consumer preferences. Further, an extended lead time would not affect the costs of additional labor or materials.

VI. Conclusion

The discussion above and in the Appendix demonstrates that even a standard applicable only to compact SUVs, the vehicle type that the petitioners characterize as one of the two ''most rollover-prone vehicle types,''[23] would generate substantial adverse impacts on manufacturers and consumers, both in terms of monetary costs and in loss of consumer choice, that would outweigh the benefits of such a standard. There is no reason to believe that a standard that would mandate significant increases in TTR/TTA or CSV for any other vehicle type or group of vehicle types would be any more cost beneficial.

Accordingly, NHTSA reaffirms its decision to terminate this rulemaking without proposing a rollover stability performance standard.

Issued on May 31, 1996.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

Appendix

The Advocates/IIHS petition contained many detailed technical arguments. Responses to the more significant ones are provided in this appendix.

A. The Benefits Estimate

1. Replacing Weighted Averages With Actual Rollover Data Now Available Makes No Appreciable Change in the Estimate

The petitioners criticized the benefit estimates made by the agency in connection with the 1994 notice because, for those vehicle models for which the agency lacked sufficient rollover accident data, it used the average of the rollover per single vehicle accident rate (RO/SVA) of the class of vehicles to which that make and model belonged, weighted by the 1991 production of each make and model for which the agency had RO/SVA. The benefits were calculated using the TTRs of 1991 makes and models and the accident records of 1991 makes and models (and identical vehicles from prior model years) to represent a hypothetical future fleet.[1]

The petitioners pointed out that the average TTR for vehicles for which the agency did not have adequate RO/SVA data was lower than the average TTR of vehicles for which it had RO/SVA data, and therefore claimed that use of weighted averages was inappropriate. The petitioners' criticism concerning the use of weighted averages as substitutes for missing data was focused particularly on the use of those averages for the large number of vehicles in the hypothetical future fleet that were represented by the Ford Explorer. The agency had no RO/SVA or single vehicle accident involvement rate (SVA/RV) data for the Ford Explorer and certain other vehicles at the time of the notice because they were either recently introduced or comparatively low production volume models. The petitioners argued that a higher rollover rate should have been used for vehicles like the Explorer which have a lower TTA than the vehicles from which the weighted average was derived.

It is not appropriate to assume that a higher than average rollover rate is appropriate for the Explorer or the other vehicles simply based on their having a lower than average TTA. The data demonstrate that the order of vehicle models ranked according to TTA is not the same as the order of models ranked according to rollover rate. See Table 1 in the accompanying notice of denial of petitions for reconsideration. Thus, although two different vehicle models may have the same TTA, they may not necessarily have the same rollover rate. Likewise, a vehicle model with a TTA lower than that of another model may nevertheless have a lower rollover rate, and vice versa.

Accordingly, the agency has not assumed a higher rollover rate for those models for which sufficient rollover data are lacking. However, the agency has responded to the petitioners' concern about the use of weighted averages in connection with the 1994 notice by replacing those averages, where possible, with rates based on actual rollover accident data that became available after that notice was prepared.

Where sufficient, the 1988—1991 Michigan accident data were used to calculate the rollover rate figures for models for which data were previously missing. Following the practice of previous analyses, the agency used the accident data to calculate rollover rates only for makes and models which had at least 25 single vehicle accidents. Actual rollover rates (RO/SVA) from Michigan were added for the 4WD Ford Explorer, Nissan Pathfinder, and Isuzu Trooper, and actual single vehicle accident rates (SVA/RV) were added for the 4WD Ford Explorer, the 4WD S10 Blazer, the Nissan Pathfinder, and the 4WD GMC S15 Jimmy. The 4WD Explorer data were used for the nearly identical, but low production volume, Mazda Navajo.

There were still some models for which the agency lacked sufficient actual make and model accident data. For most of these models, while the agency lacked sufficient data for the 2WD versions of those models, it had sufficient data for the more numerous 4WD versions. In these instances, the agency assumed that the rates for the 2WD versions were identical to the rates for the 4WD versions of the same make and model, instead of calculating rates based on weighted averages. New weighted averages

[22] As demonstrated by Table 1, the vast majority of the measurable benefits from such a standard would come from improvements to these fully redesigned vehicles, instead of those vehicles that would need only lesser changes to comply with the standard.

[23] Advocates/IIHS petition, page 12.

[1] A detailed discussion of the method can be found in ''Potential Reductions in Fatalities and Injuries in Single Vehicle Rollover Crashes as a Result of a Minimum Rollover Stability Standard'' in Docket 91–68, Notice 3.

were computed on the basis of the expanded data and were used only where sufficient specific data remained unavailable for a particular model. The instances in which the agency computed new weighted averages were limited. Weighted averages of RO/SVA and SVA/RV were used for less than 10 percent and 19 percent, respectively, of the example population of compact SUVs. See Table 1.

Using actual rollover data wherever available, the agency recomputed the benefit estimates for compact SUVs. Substitution of the new rollover rates produced very little change in the estimate of the numbers of fatalities and serious injuries that might be prevented if a rollover stability standard were adopted for compact SUVs. Replacing the weighted averages used in the 1994 notice with rates based on accident data for particular makes and models changed the result of the analysis very little, i.e., by less than four percent. This may be seen by comparing the estimates of the benefits that would be obtained if preventing a rollover meant preventing an accident altogether. Those benefits were estimated to be 83 serious injuries and 59 fatalities in the 1994 notice. They have been recomputed to be 85 serious injuries and 61 fatalities, based on the new accident data and less reliance on weighted averages. See Table 1.

2. Accident Mitigation, Not Accident Prevention, Is the Proper Measure of Benefits

Since an accident would still occur in the vast majority of instances in which a rollover is prevented, the agency reduced those figures accordingly using an accident mitigation factor. The resulting new benefit estimate is 22 serious injuries and 32 fatalities.

The petitioners criticized the agency for making the same adjustment to the benefits in the 1994 notice. Then, as now, NHTSA assumed that the benefits would come from accident mitigation instead of accident prevention. It was appropriate for the agency to assume that the benefits would be in terms of accident mitigation since over 90 percent of all single vehicle rollovers are off-road, tripped rollovers, i.e., rollovers that occur when a vehicle leaves the roadway sideways, encounters a tripping mechanism, and rolls. Since a vehicle is running off the road in a tripped rollover situation, such a vehicle will still likely crash into some off-road object even if the vehicle is prevented from rolling over after it leaves the road. If a rollover can be prevented in that situation, then the resulting accident will most likely be one of lower severity than if a rollover had occurred because rollovers tend to be more severe than non-rollover accidents. The primary benefits from a rollover stability standard would result from preventing the more severe form of off-road accident.

3. A Single Accident Mitigation Factor, Not Separate Factors for Individual Vehicle Types, Is the Proper Basis for Measuring Benefits

The petitioners also criticized the agency for using a single accident mitigation factor (52 percent) for fatalities across the board instead of computing separate factors for different types of vehicles. In support of their argument for the use of different factors, they noted that rollover accidents account for 80 percent of the fatalities of the occupants of compact SUVs in single vehicle accidents. Based on this, the petitioners concluded that rollovers in compact SUVs are four times as deadly as non-rollover accidents, and therefore the agency should have used a mitigation factor of 75 percent for compact SUVs.

The agency rejects the petitioners' argument. A mitigation factor based on ratios of absolute numbers of fatalities, instead of on fatality rates, is incorrect unless the same number of occupants were exposed to rollover accidents and non-rollover accidents. If the exposure is not the same, then it is impossible to determine the extent to which the ratio reflects the difference in accident exposure versus a difference in accident severity. Further, the issue of a difference in accident severity is not just a matter of the difference in severity of a rollover accident and a non-rollover accident at the same speed. It is also a matter of possible differences in speed. For example, it is necessary to determine whether the consequences of 60 mph rollovers are being compared to those of 30 mph non-rollover accidents. Finally, it is also necessary to examine whether apparent differences between vehicle groups are a result of differences in crashworthiness, or just a consequence of smaller sample sizes.

The agency's use of a single mitigation factor for fatalities takes these considerations into account. NHTSA considered the number of occupants exposed to rollover and non-rollover single vehicle accidents as well as the number of fatalities for each accident type. It also considered the speed limit of the road as a rough indication of the severity of the accident.

As a first step in determining the mitigation factor, NHTSA compared the overall fatality rate of rollover accidents to the overall fatality rate of non-rollover accidents, based on single vehicle accidents of all cars and light trucks without consideration of accident severity. The fatality rate of rollover accidents was slightly more than twice that of non-rollovers, suggesting a 52 percent mitigation factor.

Next, the agency computed a series of relative fatality rates (with and without rollover), comparing only accidents occurring on roads with the same range of posted speed limits (25 mph or less; 30–35 mph; 40–50 mph; 55–65 mph). While the accident data do not indicate the actual accident speed, grouping by speed limit acts as a rough control on accident severity, because it restricts accident groups to the same kinds of roads, even though the actual range of crash speeds may significantly exceed the range of posted speed limits for a particular group of accidents. The relative fatality rate for each road speed limit group were added and then averaged. The result was the same 52 percent mitigation factor for fatalities. Using the same process led to a mitigation factor of 26 percent for serious injuries.

In addition, even if the agency were to use different mitigation factors for different vehicle types, their use would not result in dramatic changes in benefit estimates. For compact SUVs, the 75 percent mitigation factor suggested by the petitioners would result in a fatality reduction of 46 rather than the 32 calculated by the agency. This difference is 0.15 percent of the 9,000 annual rollover fatalities. Using the estimates prepared for the 1994 notice, for the entire light duty vehicle fleet, the use of different mitigation factors resulted in predicting 71, instead of the agency's 63, lives saved from requiring a TTR of 1.05. This is a difference of 0.089 percent.

B. The Cost Estimate

The petitioners criticized the agency for failing to provide any costs for the vehicle changes that would be necessary to meet a minimum rollover stability standard. The agency concluded in the 1994 notice that a large number of vehicles would require fundamental full redesigns to meet a minimum stability standard. Because the agency was aware of the magnitude of costs involved in vehicle redesigns, it was apparent that the costs and other impacts would substantially exceed the benefits. NHTSA did not, however, provide a quantification of those costs and other impacts.

To demonstrate the validity of its conclusion about the costs and other impacts, the agency has conducted a rough cost analysis for this notice as set forth below.[2] To estimate the compliance costs for those vehicles which would have to be fully redesigned to make the substantial changes necessary to comply with a minimum stability standard, the agency used confidential cost data submitted by domestic automobile manufacturers during the course of several agency rulemaking proceedings for light truck Corporate Average Fuel Economy (CAFE) standards. These data are manufacturer estimates of the costs of full redesigns of compact SUVs that would have been necessary if the CAFE standards had been set at certain levels. These submissions include estimates of investment costs for a redesigned vehicle model, but do not include material and labor costs for the manufacture of the vehicle. NHTSA believes a full vehicle redesign for rollover stability purposes would necessitate similar investment costs. Accordingly, it is appropriate to use the investment cost figures from the CAFE program to estimate the investment costs for vehicles which would require a full redesign to comply with a rollover stability standard.

The CAFE submissions include investment cost data for five models of compact SUVs. Since the specific raw data are confidential, they cannot be set forth here or otherwise publicly released. To convert those data into a form in which the original data can not be determined, the agency divided the per model data by the applicable manufacturer's estimated average annual production capacity and then divided by the number of

[2] As explained below, the agency did not calculate all costs of a standard because it determined that one category of those costs, the investment costs for vehicles requiring major changes, would by itself exceed the benefits of a standard.

years of the vehicle's design cycle life.[3] The per-vehicle cost estimates for these five vehicle design cycle lives were then averaged to arrive at the estimate used in this analysis. The individual per-vehicle cost estimates range from $317.37 to $532.37 and the average is $416.77. Since these costs are costs to the manufacturer, they were adjusted to represent costs to the consumer by dividing them by 0.75, a standard factor used by the agency in its vehicle rulemaking in estimating consumer costs from manufacturer's wholesale costs. The resulting estimated average consumer cost per vehicle resulting from the redesign of a compact SUV is $555.69.

The agency then determined the number of vehicles that would need vehicle redesigns to comply with a vehicle rollover stability standard requiring a minimum TTR of 1.05. Based on available data, the agency believes at least some models would have to be fully redesigned to achieve TTR increases of more than 0.04, and that almost all models would have to be fully redesigned to achieve at TTR increase of 0.06. The agency determined next that 558,756 vehicles would need to be fully redesigned if the threshold for having to make a full redesign were 0.06 and 603,637 vehicles would need to be fully redesigned if the threshold were 0.04. Multiplying these numbers of vehicles by the $555.69 per vehicle investment cost estimate, the agency estimated that the total investment costs of a standard requiring a TTR of 1.05 would be $310,495,121 to $335,435,044.

The agency believes that this range of estimated costs of a rollover standard requiring compact SUVs to achieve a minimum TTR of 1.05 is understated. As noted earlier, these cost estimates do not include estimates of the incremental costs of material and labor involved in the manufacture of the vehicle. Since vehicles would need significant increases in track width, and attendant increases in wheelbase, they would be generally larger and heavier. As a result, the agency concludes that there would be significant increases in the costs of material and labor involved in the manufacture of such vehicles. In addition, these cost estimates do not include any costs for vehicles which could comply with the standard by changes that are less than a full vehicle redesign.

C. Objections to the Statistical Tools Used by the Agency in Reaching Its Decision

The petitioners asserted that the agency did not use the ''typical'' statistical measure, the deviance statistic, to judge the adequacy of the logistic regression models used by the agency in its analyses of the relationship of TTA to RO/SVA, and the importance of the vehicle stability metrics. The petitioners also objected to the agency's use of two statistical measures, R^2 and the C-statistic. Finally, the petitioners questioned the agency's reliance on data from the State of Michigan.

Although the agency did not use the deviance statistic to judge the adequacy of the logistic regression models, the agency did use a mathematically equivalent measure, the likelihood statistic (-2*ln(likelihood)). Using that measure permitted the agency to compare the effect of adding variables (specifically the vehicle stability metrics) to the hypothesized models. Detailed discussions of the agency's analyses are found in the Technical Assessment Paper (TAP) (Docket 91–68–N01–03) and the Addendum to the Technical Assessment Paper (Docket 91–68–N03–02) which were placed in NHTSA's docket. The TAP and the Addendum present analyses using five measures: the C-statistic, R^2, the percentage change in R^2, the likelihood statistic, and the variables' chi-square. It is true that the deviance statistic was not reported because the computer software the agency used to conduct this analysis, SAS Institute's PROC LOGIST, does not include the deviance statistic as one of the model diagnostics. However, the agency does not believe that this affects the general conclusions regarding the importance of the vehicle stability metrics.

NHTSA believes that it may help to explain this issue in non-statistical terms. The petitioners' argument amounts to a complaint that the agency described various glasses of water in terms of how much water is in the glass, instead of in terms of how much water could be added to the glass. In either case, the capacity of the glass is the same. If the capacity is known, and if either the amount of water or the amount of unused capacity is known, the other amount can be derived.

Similarly, the deviance statistic preferred by the petitioners describes how much of the variability[4] in the regression model is left to be explained. The likelihood statistic, which the agency used, describes how much of the variability in the model is explained. In either case, the total variability to be explained is the same. If, as the agency's analysis showed, the addition of TTR to the model decreased the value of the likelihood statistic, the deviance statistic would have increased by the same amount. Using either measure would lead to the same conclusion about the value of TTR.

The petitioners also assert that the use of R^2 was inappropriate because it is not weighted, i.e., it does not reflect the number of single vehicle accidents for each vehicle make and model. The petitioners also state that R^2 is sensitive to extreme values. The agency's use of R^2 was described fully on page 5–66 of the TAP. The agency agrees, as explained in the TAP, that there are limitations to the use of R^2. As also explained in the TAP, R^2 was used as an approach to providing the types of descriptive statistics of model fit with which more people are familiar, and not to provide a mathematically rigorous assessment of model fit. The agency's use of R^2 was an attempt to make the explanation of the analysis understandable to a wider audience, and was not the sole basis of the agency's decision.

The petitioners' assertions of problems with the use of the C-statistic are not applicable to the C-statistic as used by the agency. In an attempt to support their assertions, the petitioners pointed to an example of how the C-statistic can ''misbehave'' presented on page 146 of Hosmer and Lemeshow.[5] The agency's use of the C-statistic is not the same as that in Hosmer and Lemeshow's example. That example simply uses a classification table with an arbitrary cut point to determine, e.g., whether an actual rollover was predicted to be a rollover. The C-statistic employed by NHTSA measured the concordance between all possible pairs of observations, taking one from the actual rollover population and one from the actual non-rollover population. The C-statistic represents the percentage of those pairs (which number literally in the millions) for which the actual rollover had a higher predicted probability than the actual non-rollover's predicted probability (of rolling over), minus one-half the number of ties. There is no arbitrary cutoff point. In addition, the agency's decision was not based on a single statistical measure. The agency analyzed the data with a number of statistical measures, all of which pointed to the same conclusions. Accordingly, the agency remains confident in its results.

Finally, the petitioners' objection to the agency's reliance on Michigan data for performing the statistical regressions instead of using the data from the other four states was based on their concern that the agency did not examine the extent to which the state is anomalous because of its generally flat topography. The petitioners stated that this could lead to a lower proportion of rollovers per single vehicle accident than the other states in the data base. The agency relied on Michigan data because they included a large number of available observations, and were based on a low reporting threshold and more refined accident reporting variables. The agency did examine whether the rollover rate in this state was anomalous, and as stated on page 13 of the Addendum, discovered that ''(t)he rollover rate in Michigan is near the midpoint of the range for all five states studied.'' The examination of the relative rollover rates of the five different states was fully explained in the TAP on pages 59–65.

D. Legal Arguments

The petitioners also addressed the implications of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (P.L. 102–240), the National Traffic and Motor Vehicle Safety Act of 1966 (the Safety Act) (P.L. 89–563),[6] and the Regulatory Flexibility Act (P.L. 96–354) for rulemaking concerning a vehicle stability standard. The petitioners also argue that the decision not to issue a rollover standard is judicially reviewable.[7]

[3] Since the submissions were made in 1986, 1989, 1993, and 1994, submissions for years prior to 1994 were adjusted to 1994 dollars using the implicit gross domestic product deflator as calculated by the Bureau of Economic Analysis.

[4] Variability is the difference between what the statistical model predicts and actual accident records.

[5] D.W. Hosmer and S. Lemeshow, *Applied Logistic Regression*, Wiley Interscience, New York, 1989.

[6] After the publication of the termination notice, the Safety Act was codified in volume 49 of the United States Code. Any cites to provisions of the Safety Act have been updated to reflect the codification.

[7] The agency agrees with the petitioners that this termination is ''final agency action'' for the purposes of judicial review.

The petitioners begin by citing the provision in ISTEA that required NHTSA to initiate rulemaking concerning a rollover standard. The petitioners acknowledge that Congress did not mandate the issuance of a final rule in this area.

Although the petitioners make this concession, it bears emphasizing how clearly ISTEA and its legislative history demonstrate that in each instance in which Congress mandated that the agency initiate vehicle safety rulemaking, it clearly specified whether the agency had the discretion to decide not to issue a final rule. In sections 2502–3 of ISTEA, Congress specified that the agency was to initiate rulemaking regarding five different areas of vehicle safety performance. With respect to one area, upper interior head impact protection, Congress specified that rulemaking would be considered completed only when a final rule was issued. However, with respect to the other four areas, including rollover, Congress did not mandate the issuance of a final rule. It expressly provided that rulemaking on rollover and the other three areas would be considered completed either when the agency issued a final rule or when the agency decided, after considering public comments, not to issue a final rule. The Conference Report on ISTEA emphasized the discretion which it had reserved to the agency. The conferees said, with reference to the mandated rulemaking on rollover, ''the conferees do not predetermine the outcome of [this rulemaking]. The [NHTSA] is free to conclude the rulemaking in any manner consistent with the APA and the 1966 Act'' (H. Conf. Rep. 404, 102d Cong., 1st Sess., at 397 (1991)). Thus, Congress made no judgment in ISTEA about the ultimate merits of issuing a final rule on rollover. Instead, Congress provided NHTSA with the latitude to decide that a rollover standard should not be issued if, in the agency's judgment, the facts did not warrant such issuance. The agency's conclusion that such a regulation would not have sufficient benefits to justify its cost is an ample and proper basis for a decision not to issue a final rule.

Although the petitioners concede that Congress did not require the agency to issue a final rule on rollover, they assert that Congress ''expected the agency to set some form of stability-enhancing regulation.'' [8] As authority for that assertion, they cite the legislative history of the Department of Transportation and Related Agencies Appropriations Act of 1995. (P.L. 104–59) The Senate committee report on that Act contended that NHTSA had ''effectively abandoned efforts at developing a performance standard for improved rollover protection.''

The 1995 Appropriation Act legislative history is inapposite here and lacks any possible binding effect. Since that history pertains to a different statute, it carries no weight in the interpretation of NHTSA's duties under ISTEA. NHTSA notes further that the language cited by the petitioners is part of a discussion expressing concern about the agency's delay in publishing some of the ISTEA rulemakings. The discussion does not express any expectation about the substantive outcome of agency rulemaking on rollover, but does express an expectation that NHTSA will complete the remaining ISTEA rulemakings expeditiously. Finally, even if the Senate committee had specifically expressed an expectation concerning the outcome of the rollover rulemaking, that expectation would not impose a binding obligation on NHTSA unless Congress coupled that expectation with a mandate to issue a final rule on rollover and enacted that mandate into law. See *Center for Auto Safety* v. *Peck*, 751 F.2d 1336, at 1351 (D.C. Cir. 1985). Congress did not do so. Instead, it expressly decided not to mandate the issuance of a final rule on that subject.

The petitioners argued that neither the Safety Act nor the Regulatory Flexibility Act provide any legal grounds for terminating rulemaking on a vehicle stability standard. The petitioners quoted statements in the 1994 notice that 49 U.S.C. § 30111(b)(3) would preclude NHTSA from mandating any stability requirement that is ''incompatible with certain types of vehicles,'' and that a stability requirement ''could raise concerns'' under the Regulatory Flexibility Act. (59 FR 33254, 33263) They interpreted these statements as implying that the agency believed it was prohibited from issuing any standard that might require ''the radical redesign of the characteristics [of] many, and in some cases all, vehicles of certain classes * * * and possibly even the elimination of certain classes of vehicles as they are known today.'' The petitioners countered with alternative propositions, arguing that NHTSA has authority to eliminate whole classes of vehicles, and that, even if NHTSA does not have such authority, it failed to consider a less demanding regulatory approach such as setting different standards for separate vehicle types which would not require all vehicles in a class to be altered. The petitioners argued also that NHTSA cannot rely on the Regulatory Flexibility Act when the agency did not prepare any analysis of the impacts of a standard on small entities.

The primary bases for the agency's decision to terminate rulemaking on a vehicle stability standard are the limited safety benefits, and the excessive costs and market disruption of such a standard, regardless of whether that standard applies to all light duty vehicles or to particular class such as compact SUVs. The 1994 notice discussed the high costs of a standard that specifies a single performance level which was applicable to all light duty vehicles and was high enough to require the full redesign of at least some passenger cars. As explained previously, the agency concluded that such a standard would have costs and other impacts which outweighed its benefits. NHTSA similarly concludes that the costs and other impacts of a standard applicable to compact SUVs would far outweigh its benefits. Logically, if a standard for the most rollover-prone light duty vehicles would fail this basis test, it follows that a standard for other groups of light duty vehicles would not be justified.

It should be noted that neither 49 U.S.C. 30111(b)(3) nor the Regulatory Flexibility Act impose an absolute legal bar to a minimum stability standard. The agency is not foreclosing any possibility of further rulemaking. As stated above, NHTSA might reinitiate rulemaking in this area if information becomes available demonstrating the cost effectiveness of a minimum stability standard.

However, the Safety Act does place limits on the agency's rulemaking authority. The agency lacks authority to eliminate entire classes of vehicles. This interpretation reflects the language of 49 U.S.C. 30111(b)(3) and its legislative history. 49 U.S.C. 30111(b)(3) states:

When prescribing a motor vehicle safety standard under this chapter, the Secretary shall * * * consider whether a proposed standard is reasonable, practicable, and appropriate for the particular type of motor vehicle or item of motor vehicle equipment for which it is prescribed.

The Senate Report accompanying the 1966 Safety Act explained this provision as follows:

In determining whether any proposed standard is ''appropriate'' for the particular type of motor vehicle or item of motor vehicle equipment for which it is prescribed, the committee intends that the [NHTSA] will consider the desirability of affording consumers continued wide range of choices in the selection of motor vehicles. Thus it is not intended that standards will be set which will eliminate or necessarily be the same for small cars or such widely accepted models as convertibles and sports cars, so long as all motor vehicles meet basic minimum standards.

(S. Rep. 1301, 89th Cong., 2d Sess., at 6 (1966))

Given this legislative history, NHTSA cannot mandate a stability requirement so incompatible with the most fundamental characteristics which define a class of vehicles that implementing the requirement would cause the elimination of that class. As an example, the agency noted in the 1994 notice that sport utility vehicles have features (high ground clearance and narrow track width) to facilitate off-road use and use on snowy roads. The agency would not have the authority to set a performance level so stringent that no vehicles could have these features. This is neither a radical, nor a new interpretation of the agency's authority. NHTSA is not suggesting, as the petitioners suggest, that the agency lacks any authority to issue a standard that requires significant change to all vehicles in a class. In fact, there are many examples of the agency using its authority to require changes to all vehicles in a particular class. Those changes did not, however, eliminate as a practical matter any recognized classes of vehicles.

Petitioners incorrectly suggested that the agency had a duty under the Regulatory Flexibility Act to prepare a regulatory flexibility analysis in connection with either the 1994 notice or the ANPRM which preceded it. NHTSA did not ''fail'' to prepare any required report. That Act mandates the preparation of analyses in connection with notices of proposed rulemaking and final rules only.

NHTSA believes that the Regulatory Flexibility Act was a relevant concern in

[8] Advocates/IIHS petition, page 41.

considering the possibility of proposing a stability standard applicable to all light duty vehicles because multistage manufacturers, especially van converters, which are often small business entities, could be affected by such a standard. NHTSA is not suggesting that that Act would prevent the issuance of such a standard or that the concerns about impacts on small manufacturers were insurmountable regardless of what approach is taken by the agency in setting the standard. In fact, a standard limited to compact SUVs would essentially eliminate those impacts because few, if any, of those vehicles are produced by multistage or other small manufacturers.

F. NHTSA's Alleged Lack of a Comprehensive Rollover Program

The petitioners characterized NHTSA's identification of seven separate measures as part of a comprehensive agency plan to address rollovers as simply ''a chronicle of ongoing or prospective crash reduction programs that are not aimed uniquely at mitigating rollover losses.'' The petition went on to complain that some of the measures ''may never come to fruition,'' and that others have not been specifically tailored by the agency to address the rollover problem. The petitioners concluded by stating their belief that NHTSA's comprehensive program for rollover is really an attempt to try to persuade the public that the agency is taking action on rollover safety, notwithstanding the termination of the vehicle stability rulemaking.

The agency believes that the question of whether the activities comprising its comprehensive rollover program uniquely address rollover safety is irrelevant if those activities effectively address that issue. If NHTSA can take actions, such as issuing a standard, that significantly reduces the deaths and injuries that occur in rollover crashes, it should make no difference whether that reduction is achieved by means that also reduce deaths and injuries in other types of crashes. The agency agrees that there is a possibility that some of the regulatory initiatives announced by the agency as part of its rollover program involve proposals that may never become final rules. However, this possibility exists with any regulatory initiative. The agency cannot foretell the nature of the public comments that it will receive or prejudge the outcome of its analyses of comments and other information obtained during the rulemaking process. NHTSA included those initiatives in its rollover program because preliminary evaluations of those initiatives indicate that they are promising avenues for addressing rollovers. The agency will pursue these initiatives expeditiously and conscientiously. For example, since the 1994 notice was published, NHTSA has published a final rule to extend the current requirements for side door latches to rear door latches. (60 FR 50124) This rule is an attempt to reduce the number of ejections from the rear door of vehicles, thus reducing injuries and fatalities. Based on data for years 1988–1992, NHTSA estimates that 147 occupants were fatally ejected from the rear door of vehicles. Forty two percent of those fatalities occurred in rollover accidents.

One of the specific initiatives singled out for criticism by petitioners was the upgrade of Standard 201 to reduce head impact injuries. The petitioners objected to its inclusion in NHTSA's comprehensive rollover plan because the proposed compliance impact speeds ''are often less than those [speeds] responsible for the very high rate of severe head trauma that is suffered by occupants in rollover crashes.'' The final rule upgrading Standard No. 201 was published on August 16, 1995. (60 FR 43031) Even if the petitioners were correct, the essential fact remains that the final rule will make substantial reductions in rollover fatalities and injuries. The agency estimated that 244–334 fatalities and 189–273 serious injuries would be averted in rollovers as a result of that rule.

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50 and 501.8.

[FR Doc. 96–14145 Filed 5–31–96; 4:38 pm]

BILLING CODE 4910–59–P

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 91–68; Notice 06]

RIN 2127–AC54

Consumer Information Regulations; Vehicle Rollover Stability Label

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: This notice reopens the comment period for a notice of proposed rulemaking published June 28, 1994, regarding a rollover stability label for light vehicles. The comment period for this proposed rulemaking action closed on October 21, 1994. Since that time, the National Academy of Sciences (NAS) has published a study of consumer needs for automotive safety information. NHTSA would like public comments on the NAS study and how that study should be reflected in NHTSA's rulemaking decisions on requirements for rollover stability labeling. Accordingly, the agency is reopening the comment period for an additional 60 days.

DATES: Comments must be received by August 5, 1996.

ADDRESSES: Comments should refer to Docket No. 91–68; Notice 5 and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: *For labeling issues:* Stephen R. Kratzke, Office of Safety Performance Standards, NPS–31, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Mr. Kratzke can be reached by telephone at (202) 366–5203 or by fax at (202) 366–4329.

For general rollover issues: Gayle Dalrymple, Office of Safety Performance Standards, NPS–20, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Dalrymple can be reached by telephone at (202) 366–5559 or by fax at (202) 366–4329.

For legal issues: Stephen P. Wood, Assistant Chief Counsel for Rulemaking, NCC–20, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Mr. Wood can be reached by telephone at (202) 366–2992 or by fax at (202) 366–3820.

SUPPLEMENTARY INFORMATION: NHTSA currently requires that sport utility vehicles with a wheelbase of 110 inches or less have a prominent label advising drivers that these vehicles are less stable than passenger cars and more likely to roll over during abrupt maneuvers. 49 CFR 575.105. On June 28, 1994 (59 FR 33254), NHTSA published a notice proposing to supplement the existing requirement for a rollover label with another label. This proposed additional rollover stability label would be required on all passenger cars, trucks, and multipurpose passenger vehicles with a Gross Vehicle Weight Rating of 10,000 pounds or less. The comment period for this proposal was scheduled to close on August 29, 1994. However, NHTSA extended the comment period so that it closed October 21, 1994; 59 FR 44121, August 26, 1994. NHTSA received 70 comments to its docket for the proposed additional labeling requirements.

During this comment period, Congress enacted the Department of Transportation and Related Agencies Appropriations Act, 1995 (P.L. 103–331; September 30, 1994). In that Act, Congress gave NHTSA funds ''for a study to be conducted by the National Academy of Sciences (NAS) of motor vehicle safety consumer information needs and the most cost effective methods of communicating this information.'' The Act directed NAS to complete its study by March 31, 1996. The Act also included the following language: ''In order to ensure that the results of the study are considered in the rulemaking process, the conferees agree that NHTSA shall not issue a final regulation concerning motor vehicle safety labeling requirements until after the NAS study is completed.'' As a result of this language, NHTSA deferred

action on its proposed expanded vehicle rollover stability labeling until the NAS study was done.

The NAS study was completed and released to the public on March 26, 1996. It is titled ''Shopping for Safety—Providing Consumer Automotive Safety Information,'' TRB Special Report 248. Copies of this study are available in NHTSA Docket No. 91–68; Notice 4. NHTSA's Docket Section can be reached by telephone at (202)366–4949.

NHTSA is reviewing its proposal for rollover stability labeling in light of this NAS report. To aid the agency in this effort, NHTSA would like public comments on the NAS study and how that study should be reflected in NHTSA's rulemaking decisions on requirements for rollover stability labeling. The agency would also like up-to-date comments on the issues raised in its 1994 proposal. In light of the NAS study, NHTSA is also considering improvements to the existing sport utility vehicle label to enhance the effectiveness of that label. NHTSA welcomes any views and suggestions commenters may have on this issue. NHTSA is also interested in comments on whether the agency should extend its existing label to cover vehicle groups in addition to sport utility vehicles. It would also be helpful to learn if important additional information has become available since the original comment period closed. To obtain comments on these subjects, NHTSA is reopening the comment period for this rulemaking action for an additional 60 days.

In this reopened comment period, it is not necessary for commenters to resubmit views and information that have been expressed in previous comments. NHTSA will consider all of the comments it has already received.

Authority: 49 U.S.C. 30117; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on May 31, 1996.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 96–14144 Filed 5–31–96; 4:38 pm]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 61, No. 109
Wednesday, June 5, 1996

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

Food Safety and Inspection Service

[Docket No. 96–026N]

National Advisory Committee on Microbiological Criteria for Foods; Renewal

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of Reestablishment of Committee.

This notice announces the renewal of the National Advisory Committee on Microbiological Criteria for Foods. The Committee is being renewed in cooperation with the Department of Health and Human Services (HHS), and was recommended by a 1985 report of the National Academy of Sciences Committee on Food Protection, Subcommittee on Microbiological Criteria, ''An Evaluation of the Role of Microbiological Criteria for Foods.''

USDA is charged with the enforcement of the Federal Meat Inspection Act (FMIA), the Poultry Products Inspection Act (PPIA), and the Egg Products Inspection Act (EPIA). Under these Acts, USDA is responsible for the wholesomeness and safety of meat, poultry, egg products and products thereof intended for human consumption. Similarly, the Secretary of HHS is charged with the enforcement of the Federal Food, Drug and Cosmetic Act (FFDCA). Under this Act, HHS is responsible for ensuring the safety of human foods and animal feeds.

In order to continue to meet the responsibilities of the FMIA, PPIA, EPIA and the FFDCA, the National Advisory Committee on Microbiological Criteria for Foods is being renewed. The Committee will be tasked with advising and providing recommendations to the Secretaries on the development of microbiological criteria by which the safety and wholesomeness of food can be assessed, including criteria for microorganisms that indicate whether foods have been processed using good manufacturing practices.

Renewal of this Committee is necessary and in the public interest because the development of a sound public policy in this area can best be accomplished by a free and open exchange of information and ideas among Federal, State, and local agencies, the industry, the scientific community, consumer organizations, and other interested parties. The complexity of the issues to be addressed assures that more than one meeting will be required to accomplish the Committee's tasks.

Members will be appointed by the Secretary of USDA after consultation with the Secretary of HHS. Because of their interest in the matters to be addressed by this Committee, advice on membership appointments will be requested from the Department of Commerce's National Marine Fisheries Services and the Department of Defense's Veterinary Service Activity.

For additional information, please contact: Mr. Craig Fedchock, Advisory Committee Specialist, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 311, 1255 22nd Street, NW., Washington, DC 20250–3700. Background materials are available for inspection by contacting Mr. Fedchock on (202)254–2517.

Done at Washington, DC, on: May 23, 1996.

Wardell Townsend, Jr.,

Assistant Secretary for Administration.

[FR Doc. 96–14013 Filed 6–4–96; 8:45 am]

BILLING CODE 3410–DM–P

Forest Service

Appalachian Power Company Transmission Line Construction-Cloverdale, Virginia, to Oceana, West Virginia. George Washington and Jefferson National Forests, Appalachian National Scenic Trail, the New River, and R.D. Bailey Lake Flowage Land. Virginia Counties of Botetourt, Roanoke, Craig, Montgomery, Pulaski, Bland, and Giles and the West Virginia Counties of Monroe, Summers, Mercer, and Wyoming

AGENCY: Forest Service, USDA.

ACTION: Revised Notice—Revises the publication date for the Draft Environmental Impact Statements; and identifies the dates and locations for seven public information meetings on the Draft Environmental Impact Statement.

SUMMARY: The Forest Service will prepare a draft and final environmental impact statement on a proposed action to authorize the Appalachian Power Company (name recently changed to American Electric Power) to construct a 765,000-volt transmission line across approximately twelve miles of the George Washington and Jefferson National Forests, as well as portions of the Appalachian National Scenic Trail, the New River (at Bluestone Lake) and R.D. Bailey Lake Flowage Easement Land (at Buyandotte River).

The federal agencies identified a study area in which alternatives to the proposed action were developed. The study area includes land located in the Virginia counties of Botetourt, Roanoke, Craig, Montgomery, Pulaski, Bland and Giles and the West Virginia counties of Monroe, Summers, Mercer and Wyoming.

The Applachian Power Company (APCo) proposal involves federal land under the administrative jurisdiction of the USDA Forest Service (George Washington and Jefferson National Forests), the USDI National Park Service (Appalachian National Scenic Trail) and the US Army Corps of Engineers (New River and R.D. Bailey Lake Flowage Easement Land).

The Forest Service is the lead agency and is responsible for the preparation of the environmental impact statement. The National Park Service and the US Army Corps of Engineers are cooperating agencies in accordance with 40 CFR 1501.6.

In initiating and conducting the analysis the federal agencies are responding to the requirements of their respective permitting processes and the need for the APCo to cross federal lands with the proposed transmission line.

The Forest Service additionally will assess how the proposed transmission line conforms to the direction contained in the Jefferson National Forest's Land and Resource Management Plan (LRMP). Changes in the LRMP could be required if the transmission line is authorized across the George Washington and Jefferson National Forests.

The total length of the electric transmission line proposed by the APCo is approximately 115 miles.

The Notice of Intent for the proposed action was published in the Federal Register on November 21, 1991 (56 FR 58677–58679). The Notice was revised on March 13, 1992 (57 FR 8859), April 24, 1992 (57 FR 15049), June 16, 1993 (58 FR 33248–33250), June 21, 1994 (59 FR 31975–31978), June 9, 1995 (60 FR 30511–30514) and October 3, 1995 (60 FR 51770–51773).

FOR FURTHER INFORMATION CONTACT: Frank Bergmann, Forest Service Project Coordinator, George Washington and Jefferson National Forests, 5162 Valleypointe Parkway, Roanoke, Virginia, 24019/ (540) 265–6005.

TO PROVIDE COMMENTS TO THE FEDERAL AGENCIES: Write to the George Washington and Jefferson National Forests, Attn: Transmission Line Analysis, 5162 Valleypointe Parkway, Roanoke, Virginia, 24019.

SUPPLEMENTARY INFORMATION: APCo submitted an application to the Jefferson National Forest (name changed to George Washington and Jefferson National Forest in 1995) for authorization to construct a 765,000-volt electric transmission line across approximately twelve miles of the National Forest. Portions of the Appalachian National Scenic Trail, the New River (at Bluestone Lake), and R.D. Bailey Lake Flowage Easement Land (at Guyandotte River) would also be crossed by the proposed transmission line.

Studies conducted by APCo and submitted to the Virginia State Corporation Commission, as part of its application and approval process, indicate a need to reinforce its extra high voltage transmission system by the mid-to-late 1990s in order to maintain a reliable power supply for projected demands within its service territory in central and western Virginia and southern West Virginia.

A study to evaluate potential route locations for the proposed transmission line was prepared for APCo through a contract with Virginia Polytechnic Institute and State University (VPI) and West Virginia University (WVU). The information gathered by VPI and WVU, along with other information collected during the analysis process, will be utilized in the preparation of the environmental impact statement. Information about the transmission line proposal is available from the George Washington and Jefferson National Forests.

The decisions to be made following the Federal agencies' analysis are whether the Forest Service, the National Park Service, and the U.S. Army Corps of Engineers will authorize APCO to cross the George Washington and Jefferson National Forests, the Appalachian National Scenic Trail, and the New River and R.D. Bailey Lake Flowage Easement Land, respectively, with the proposed 765,000-volt transmission line and, if so, under what conditions a crossing would be authorized.

In preparing the draft environmental impact statement, a range of routing alternatives was considered to meet the purpose and need for the proposed action. A no action alternative was also analyzed. Under the no action alternative APCO would not be authorized to cross the George Washington and Jefferson National Forests, the Appalachian National Scenic Trail, the New River or R.D. Bailey Lake Flowage Easement Land. The alternatives developed by VPI and WVU will also be considered.

In July of 1994, the Federal agencies identified a number of alternatives to the proposed action in the Virginia counties of Botetourt, Roanoke, Craig, Montgomery, Pulaski, Bland, and Giles and the West Virginia counties of Monroe, Summers, and Mercer. These alternative corridors were modified by the Federal agencies in May 1995. A public comment period was afforded by the Federal agencies on these alternative corridor modifications between May 25 and Jun3 30, 1995.

The Federal analysis includes an analysis of the effects of the proposed transmission line along the entire proposed route as well as all alternative routes which were considered in detail.

The significant issues identified for the Federal analysis are listed below:

—The construction and maintenance of the 765kV transmission line and the associated access roads and right-of-way may (1) affect soil productivity by increasing soil compaction and erosion; (2) affect geologic resources (karst areas, Peters, Lewis, Potts Mountains, Arnolds Knob) and unique geologic features like caves through blasting, earthmoving or construction machinery operations; and (3) result in unstable structural conditions due to the placement of the towers.

—The construction and maintenance of the 765kV transmission line and the associated access roads and right-of-way may (1) degrade surface and ground water quality due to the application of herbicides; (2) degrade surface and ground water quality because of sedimentation resulting from soil disturbance and vegetation removal; (3) reduce the quantity of ground and spring water due to the disturbance of aquifers resulting from blasting, earthmoving or construction machinery operation; and (4) adversely affect the commercial use of ground and surface waters due to herbicide contamination and sedimentation.

—The construction and maintenance of the 765kV transmission line and the associated access roads and right-of-way may affect existing cultural resources, and historic structures and districts through the direct effects of the construction and maintenance activities and by changing the existing resource setting.

—The operation and maintenance of the 765kV transmission line and the associated access roads and right-of-way may adversely affect human health through (1) direct and indirect exposure to herbicides; and (2) exposure to electromagnetic fields and induced voltage.

—The construction of the 765kV transmission line may adversely affect the safety of those operating aircraft at low altitudes or from airports located near the transmission line.

—The operation of the 765kV transmission line may (1) adversely affect communications by introducing a source of interference; (2) increase noise levels for those in close proximity to the line.

—The construction, operation, and maintenance of the 765kV transmission line and the associated access roads and right-of-way may (1) adversely affect trails (including the Appalachian Trail) and trail facilities by facilitating vehicle access through new road construction and the upgrading of existing roads; and (2) reduce hiker safety by facilitating vehicle access to remote trail locations.

—The construction, operation, and maintenance of the 765kV transmission line and the associated access roads and right-of-way may affect hunting, fishing, hiking, camping, boating, and birding opportunities and experiences because (1) the setting in which these pursuits take place may be altered; and (2) the noise associated with the operation of the line may detract from the backcountry or recreation experience.

—The construction and operation of the 765kV transmission line and the associated access roads and right-of-way may affect local communities by (1) reducing the value of private lands adjacent to the line; (2) decreasing tax

revenues due to the reductions in land value; and (3) influencing economic growth, industry siting, and employment.

—The construction, operation, and maintenance of the 765kV transmission line and the associated access roads and right-of-way may (1) conflict with management direction contained in resource management plans and designations; (2) affect the uses that presently occur on and adjacent to the proposed right-of-way; (3) affect the wild, scenic, and/or recreational qualities of the New River; (4) affect sensitive land uses like schools, churches, and community facilities; (5) affect the cultural attachment residents feel toward Peters Mountain; (6) affect the scenic and/or recreational qualities of the Appalachian National Scenic Trail (Appalachian Trail); and (7) result in family displacement.

—The construction, operation, and maintenance of the 765kV transmission line and the associated access roads and right-of-way may adversely affect the visual attributes of the area because the line, the associated right-of-way, and access roads may (1) alter the existing landscape; and (2) conflict with the standards established for scenic designations.

—The construction, operation, and maintenance of the 765kV transmission line and the associated access roads and right-of-way may affect wildlife, plant and aquatic populations, habitat, and livestock because (1) habitats are created, changed, or eliminated; (2) herbicides are used and herbicides may be toxic; (3) the transmission line presents a flight hazard to birds; (4) electromagnetic fields and induced voltage may be injurious.

—The construction of the 765kV transmission line and the associated access roads and right-of-way may have a disproportionately high and adverse human health or environmental effects on minority and low income populations as indicated in Executive Order 12898.

—The construction and operation of the 765kV transmission line may adversely affect astronomical observation activities at the Martin Observatory (VPI) due to the introduction of obstructions to the sky (lines and towers), the introduction of light from coronal discharge, and the disruption of sensitive electronic equipment by electromagnetic fields.

—The construction and operation of the 765kV transmission line may adversely affect seismological observation activities at the VPI seismic stations located near Forest Hill and Potts Mountain.

—The construction and maintenance of the 765kV transmission line and the associated access roads and right-of-way may affect the cultural attachment that residents have for the valley between Blacksburg and Catawba, Craig County, Giles County, Mercer County and portions of Montgomery County.

The following permits and/or licenses would be required to implement the proposed action:

—Certificate of Public Convenience and Necessity (Virginia State Corporation Commission)

—Certificate of Public Convenience and Necessity (West Virginia Public Service Commission)

—Special use Authorization (Forest Service)

—Right-of-Way Authorization (National Park Service)

—Section 10 Permit (U.S. Army Corps of Engineers)

—Right-of-Way Easement (U.S. Army Corps of Engineers)

—Consent to Easement (U.S. Army Corps of Engineers)

Other authorizations may be required from a variety of Federal and State agencies.

Public participation will occur at several points during the federal analysis process. The first point in the analysis was the scoping process (40 CFR 1501.7). The Forest Service obtained information, comments, and assistance from Federal, State and local agencies, the proponent of the action, and other individuals or organizations who are interested in or affected by the electric transmission line proposal. This input will be utilized in the preparation of the draft environmental impact statement. The scoping process included, (1) identifying potential issues, (2) identifying issues to be analyzed in depth, (3) eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.

Public participation was solicited through contacts with known interested and/or affected groups, and individuals; news releases; direct mailings; and/or newspaper advertisements. Public meetings were also held to hear comments concerning the APCo proposal and to develop the significant issues to be considered in the analysis.

A similar process of public involvement was implemented by the federal agencies for the Preliminary Alternative Corridors announced in July of 1995.

Other public participation opportunities will be provided throughout the federal analysis process.

The draft environmental impact statement will be filed with the Environmental Protection Agency (EPA) and available for public review by June 28, 1996. This revises the April 12, 1996 date previously announced. At that time, EPA will publish a notice of availability of the draft environmental impact statement in the Federal Register.

The federal agencies have established the following public meeting schedule to explain the analysis documented in the draft environmental impact statement and to hear comments related to the analysis. The public meetings will begin at 4:00 p.m. and end at 8:00 p.m. on the date and at the locations indicated:

July 31, 1996

McCleary Elementary School, Highway 615, New Castle, VA

August 2, 1996

Concord College, Vermillian Street, Athens, WV

August 6, 1996

Blacksburg High School, 520 Patrick Henry Drive, Blacksburg, VA

August 8, 1996

Twin Falls Resort State Park, Route 10, Mullens, WV

August 1, 1996

James Monroe High School, Weikel Road, Lindside, WV

August 5, 1996

Lord Botetourt High School, 755 Roanoke, Road (Highway 220), Daleville, VA

August 7, 1996

Giles County High School, Route 460 (Business), Pearisburg, VA.

Reviewers need to be aware of several court rulings related to public participation in the environmental impact statement review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City*

of Angoon v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 90-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

After the comment period ends on the draft environmental impact statement, the comments will be analyzed, considered, and responded to by the three federal agencies in preparing the final environmental impact statement. The federal agencies have decided to await the decisions of the Virginia State Corporation Commission and the West Virginia Public Service Commission on the APCo proposal before publishing the final environmental impact statement. It is not known when the two Commission's will issue their decisions. When these decisions are made the federal agencies will announce the publication date of the final environmental impact statement.

The responsible officials will consider the comments, responses, environmental consequences discussed in the final environmental impact statement, and applicable laws, regulations, and policies in making a decision regarding the proposal to cross federal lands with a 765,000-volt transmission line. The responsible officials will document their decisions and reasons for their decisions in a Record of Decision.

The responsible official for the Forest Service is William E. Damon, Jr., Forest Supervisor, George Washington and Jefferson National Forests, 5162 Valleypointe Parkway, Roanoke, Virginia, 24019. The responsible official for the National Park Service is Pamela Underhill, Park Manager, Appalachian National Scenic Trail, National Park Service, Harpers Ferry Center, Harpers Ferry, West Virginia 25425. The responsible official for the US Army Corps of Engineers in West Virginia is Colonel Richard Jemiola, US Army Corps of Engineers, Huntington District, 508 8th Street, Huntington, West Virginia 25701–2070. The responsible official for the US Army Corps of Engineers in Virginia is Colonel Andrew M. Perkins, Jr., US Army Corps of Engineers, Norfolk District, 803 Front Street, Norfolk, Virginia 23510.

Dated: May 28, 1996.

William E. Damon, Jr.,

Forest Supervisor, George Washington and Jefferson National Forests.

[FR Doc. 96–14007 Filed 6–4–96; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of the Census

1997 Economic Census Covering Manufacturing

ACTION: Proposed Agency Information Collection Activity; Comment Request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 5, 1996.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Michael Zampogna for Food, Textiles, Apparel, Wood and Chemical Products, Bureau of the Census, Room 2212, Building 4, Washington, DC 20233 on (301) 457-4810 and to Kenneth Hansen for Electrical, Transportation, Metals and Industrial Machinery, Bureau of the Census, Room 2207, Building 4, Washington, DC 20233 on (301) 457–4755.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau is the preeminent collector and provider of timely, relevant and quality data about the people and economy of the United States. Economic data are the Census Bureau's primary program commitment during nondecennial census years. The economic census, conducted under authority of Title 13 U.S.C., is the primary source of facts about the structure and functioning of the Nation's economy and features unique industry and geographic detail. Economic census statistics serve as part of the framework for the national accounts and provide essential information for government, business and the general public. The 1997 Economic Census will cover virtually every sector of the U.S. economy including more than 400,000 manufacturing establishments.

The information collected from companies in the manufacturing sector of the economic census will produce basic statistics by industry for number of establishments, payroll, employment, value of shipments, value added, capital expenditures, depreciation, materials consumed, selected purchased services, electric energy used and inventories held. Primary strategies for reducing burden in Census Bureau economic data collections are to increase electronic reporting through broader use of computerized self-administered census questionnaires, electronic data interchange, and other electronic data collection methods.

II. Method of Collection

Establishments included in this collection will be selected from a frame given by the Census Bureau's Standard Statistical Establishment List. To be eligible for selection, an establishment will be required to satisfy the following conditions: (i) It must be classified in the manufacturing sector; (ii) it must be an active operating establishment of a multi-establishment company, or it must be an operating single-establishment company with payroll; and (iii) it must be located in one of the 50 states or the District of Columbia. Most establishments will be included in the mail protion of the collection. Forms tailored for the particular kind of business will be mailed to the establishment to be filled out and returned. Establishments not meeting certain cutoffs for payroll will be included in the non-mail portion of the collection. We will use administrative data in lieu collecting data directly from these establishments.

Mail selection procedures will distinguish several groups of establishments. Establishment selection to a particular group is based on a number of factors. The more important considerations are the size of the company and whether it is included in the intercensal annual survey of manufactures (ASM) sample panel. The ASM panel is representative of both large and small establishments from the mail component of the manufacturing census. The ASM sample panel includes appoximately 60,000 establishments. The various groups of establishments that will constitute the 1997 Census of Manufactures are outlined below.

A. Establishments of Multi-Establishment Companies Engaged in Manufacturing Activity

Selection procedures will assign eligible establishments of multi-establishment companies to the mail component of the potential respondent universe.

We estimate that the census mail canvass for 1997 will include the following:

1. ASM sample establishments: 35,000
2. Non-ASM: 50,000

B. Single-Establishment Companies Engaged in Manufacturing Activity with Payroll

As an initial step in the selection process, we will conduct a study of the potential respondent universe for manufacturing. The study of potential respondents will produce a set of industry-specific payroll cutoffs that we will use to distinguish large versus small single-establishment companies within each industry. This payroll size distinction will affect selection as follows:

1. Large Single-Establishment Companies

Single-establishment companies having annualized payroll (from Federal administrative records) that equals or exceeds the cutoff for their industry will be assigned to the mail component of the potential respondent universe.

We estimate that the census mail canvass for 1997 will include the following:

a. ASM sample establishments: 25,000
b. Non-ASM: 96,000

2. Small Single-Establishment Companies

In selected industries, small single-establishment companies that satisfy a particular criteria (administrative record payroll cutoff) will receive a manufacturing short form, which will collect a reduced amount of basic statistics and other essential information that is not available from administrative records.

We estimate that the census mail canvass for 1997 will include approximately 54,000 companies in this category. This category does not contain ASM establishments.

3. All remaining single-establishment companies with payroll will be represented in the census by data estimated from Federal administrative records. Generally, we do not include these small employers in the census mail canvass.

We estimate that this category for 1997 will include approximately 140,000 manufacturing companies.

III. Data

OMB Number: Not Available.

Form Number: The forms used to collect information from businesses in these sectors of the economic census are tailored to specific business practices and are too numerous to list separately in this notice. You can obtain information on the proposed content of the forms by calling Michael Zampogna on (301) 457–4810 or Kenneth Hansen on (301) 457–4755.

Type of Review: Regular Review.

Affected Public: Businesses or Other for Profit, Non-profit Institutions, Small Businesses or Organizations, and State or Local Governments

Estimated Number of Respondents:	
ASM	60,000
Non-ASM (Long Form)	146,000
Non-ASM (Short Form)	54,000
Total	260,000
Estimated Time Per Response:	
ASM	5.6 hrs
Non-ASM (Long Form)	3.4 hrs
Non-ASM (Short Form)	2.2 hrs
Estimated Total Annual Burden Hours:	
ASM	336,000
Non-ASM (Long Form)	496,400
Non-ASM (Short Form)	118,800
Total	951,200

Estimated Total Annual Cost: The cost to the government for this work is included in the total cost of the 1997 Economic Census, estimated to be $218 million.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 30, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–14065 Filed 6–4–96; 8:45 am]

BILLING CODE 3510–07–P

1997 Economic Census Covering Mining Sector

ACTION: Proposed agency information collection activity; comment rquest.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 5, 1996.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Patricia L. Horning, Bureau of the Census, Room 2125, Building 4, Washington, DC 20233 on (301) 457–4680.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau is the preeminent collector and provider of timely, relevant and quality data about the people and economy of the United States. Economic data are the Census Bureau's primary program commitment during nondecennial census years. The

economic census, conducted under authority of Title 13 U.S.C., is the primary source of facts about the structure and functioning of the Nation's economy and features unique industry and geographic detail. Economic census statistics serve as part of the framework for the national accounts and provide essential information for government, business and the general public. The 1997 Economic Census will cover virtually every sector of the U.S. economy including approximately 30,000 mineral establishments.

The information collected from establishments in this sector of the economic census will produce basic statistics for number of establishments, shipments, payroll, employment, detailed supplies and fuels consumed, depreciable assets, and capital expenditures. It also will yield a variety of subject statistics, including shipments by product line, type of operation, and other industry-specific measures.

II. Method of Collection

We will select establishments in the mining sector of the economic census for inclusion in the mail canvass from a frame given by the Census Bureau's Standard Statistical Establishment List. To be eligible for selection, an establishment will be required to satisfy the following conditions: (i) It must be classified in the mining sector; (ii) it must be an active operating establishment of a multi-establishment firm (including operations under exploration and development), or it must be a single-establishment firm with payroll; and (iii) it must be located in one of the 50 states or the District of Columbia. Mail selection procedures will distinguish the following groups of establishments:

A. Establishments of Multi-Establishment Firms

Selection procedures will assign all active mineral operating establishments of multi-establishment firms to the mail component of the potential respondent universe. We estimate that the census mail canvass for 1997 will include approximately 8,000 establishments of multi-establishment firms.

B. Single-Establishment Firms With Payroll

As an initial step in the selection process, we will conduct a study of the potential respondent universe for mining. The study of potential respondents will produce a set of industry-specific payroll cutoffs that we will use to distinguish large versus small single-establishment firms within each industry. This payroll size distinction will affect selection as follows:

1. Large Single-Establishment Firms

Selection procedures will assign large single-establishment firms having annualized payroll (from Federal administrative records) that equals or exceeds the cutoff for their industry to the mail component of the potential respondent universe. We estimate that the census mail canvass for 1997 will include approximately 7,100 firms in this category. These firms will receive a standard form.

2. Small Single-Establishment Firms

Small single-establishment firms in the crushed stone, sand and gravel, and crude petroleum and natural gas industries where application of the cutoff for nonmail establishments results in a large number of small establishments included in the mail canvass will receive a short form. The short form will collect basic statistics and other essential information that is not available from administrative records.

The short form will be mailed to approximately 2,900 single-establishment firms in these industries which are larger than the nonmail cutoff for their industry, but which have an annual payroll under a certain criteria. In terms of employment, this criteria will identify establishments with approximately 5 to 19 employees.

All remaining single-establishment firms with payroll will be represented in the census by data from Federal administrative records. We will not include approximately 12,000 of these small employers in the census mail canvass.

III. Data

OMB Number: Not Available.

Form Number: The forms used to collect information from establishments in this sector of the economic census are tailored to specific mining operations and are too numerous to list separately in this notice. You can obtain information on the proposed content of the forms by calling Patricia L. Horning on (301) 457–4680.

Type of Review: Regular Review.

Affected Public: Businesses or Other for Profit, Non-profit Institutions, Small Businesses or Organizations, and State or Local Governments.

Estimated Number of Respondents:

Standard Form	15,100
Short Form	2,900
Total	18,000

Estimated Time Per Response:

Standard Form	4.2 hrs
Short Form	2.1 hrs

Estimated Total Annual Burden Hours:

Standard Form	63,420
Short Form	6,090
Total	69,510

Estimated Total Annual Cost: The cost to the government for this work is included in the total cost of the 1997 Economic Census, estimated to be $218 million.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 30, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–14066 Filed 6–4–96; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF DEFENSE

Corps of Engineers

Notice of Availability of Surplus Land and Buildings in Accordance With Public Law 103–421 Located at Letterkenny Army Depot, Chambersburg, Pennsylvania

AGENCY: Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: This notice identifies the surplus real property located at the Letterkenny Army Depot, Chambersburg, PA, approximately 25 miles north of Hagerstown, MD.

FOR FURTHER INFORMATION CONTACT:

For more information regarding the particular property identified in this Notice (i.e., acreage, floor plans, existing sanitary facilities, exact location), contact Mr. Gerry Bresee, Real Estate Division, Army Corps of Engineers, P.O. Box 1715, Baltimore, MD 21203 (telephone 410–962–5173, fax 410–962–0866).

SUPPLEMENTARY INFORMATION: This surplus is available under the provisions of the Federal Property and Administrative Services Act of 1945 and the Base Closure Community Redevelopment and Homeless Assistance Act of 1994. Notices of interest should be forwarded to Mr. David G. Sciamanna, Executive Director, Franklin County Reuse Committee, 75 South Second Street, Chambersburg, PA 17201, telephone (717) 264–7101, fax (717) 267–0399.

The surplus real property totals approximately 1980 acres and contains 339 buildings totaling 4,374,717 square feet of space. Current range of uses include administrative, residential, storage, open recreation and special purpose space. Future uses may include generally the same type of uses.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–14078 Filed 6–4–96; 8:45 am]

BILLING CODE 3710–41–M

Availability of Surplus Land and Buildings Located at Red River Army Depot, Texas

AGENCY: Army Corps of Engineers, DOD.

ACTION: Notice of availability.

SUMMARY: This notice identifies the surplus real property located at Red River Army Depot, Texas (RRAD). RRAD is located on U.S. Highway 82, in sight of Interstate 30, and U.S. 59, 71, and 67 intersect at Texarkana as will the new I–49. Internal rail networks connect with three trunk lines at Texarkana. A heliport is located on the installation. A commercial airport is within 30 miles of the installation.

FOR FURTHER INFORMATION CONTACT: For more information regarding particular properties identified in this notice (i.e., acreage floor plans, existing sanitary facilities, exact street address), contact Ms. June Ahrens, U.S. Army Engineer District, Fort Worth, Attn: CESWF–RE–MD, P.O. Box 17300, Fort Worth, TX 76102–0300, (telephone (817) 334–4051); or Judge Carlow at the below address.

SUPPLEMENTARY INFORMATION: This surplus property is available under the provisions of the Federal Property and Administrative Services Act of 1949 and the Base Closure Community Redevelopment and Homeless Assistance Act of 1994. Notices of interest should be forwarded to Local Redevelopment Authority, Judge James M. Carlow, Bowie County Courthouse, P.O. Box 248, New Boston, TX 75570–0248, (telephone (903) 628–2571). The surplus real property totals 578.8 acres and includes 8 office buildings, 13 storage buildings, and 57 other buildings. The current range of uses include industrial, storage, administration, housing and recreation. Future uses may be limited to those described above.

Hyla J. Head,

Chief, Real Estate Division.

[FR Doc. 96–14079 Filed 6–4–96; 8:45 am]

BILLING CODE 3710–FR–M

Intent To Prepare a Draft Supplemental Environmental Impact Statement for the Green Brook Flood Control Project Located in the Green Brook Sub-Basin of the Raritan River Basin, Middlesex, Somerset and Union Counties, NJ

AGENCY: Army Corps of Engineers, New York District, DOD.

ACTION: Notice.

SUMMARY: A final impact statement was completed for this project and filed in 1981. This supplemental is being prepared to update environmental information and present new potentially significant impacts for review and comment.

FOR FURTHER INFORMATION CONTACT: Mr. William Richardson, New York District, Army Corps of Engineers, Att: CENAN–PL–ES, 26 Federal Plaza, New York, N.Y. 10278–0090 (212) 264–1275.

SUMMARY INFORMATION: The Green Brook Flood Control Project was created in response to resolutions of the United States Senate Public Works Committee resolutions adopted September 14, 1955 and July 10, 1972 published as H.D. No. 53, 71st Congress. The original notice of intent to prepare an environmental impact statement was published on April 6, 1979 and notice of the final statement was published on June 12, 1981.

The project will provide flood protection to the Green Brook sub-basin to the Raritan River basin. The project area is located in the Counties of Middlesex, Somerset and Union, New Jersey. The protection will consist of a combination of levees, flood walls, channel modification, ponding areas (both excavated and natural) dry detention basins and non-structural flood proofing measures.

The supplemental impact statement will assess potential impacts from the implementation of the New York District Corps of Engineers recommended flood control plan. The District will develop a Draft General Re-evaluation Report for the project that will be available in June 1996.

This notice initiates scoping for this final study stage of this project. Information is requested for environmental concerns which may now exist in the project area and were not discussed in the original NEPA documentation. It is anticipated that public meetings will be on going throughout the re-evaluation process. There will be additional information presented to the public through the Green Brook Flood Control Commission. Agencies and the public are invited to present their environmental concerns to the New York District, Army Corps of Engineers directly.

This supplemental impact statement will discuss the impacts of the recommended plan on wildlife habitat, aquatic resources and wetlands, mitigation for wetland impacts, cultural resource information, the impact of HTRW studies on the project, as well as any new issues which may arise as a result of this process.

The need for scoping meetings specifically related to this process will be evaluated based on agency/public response to this notice and follow-up mailings.

Estimated date of statement availability: June 1996.

Dated: May 9, 1996.

Stuart Piken,

Chief, Planning Division.

[FR Doc. 96–14080 Filed 6–4–96; 8:45 am]

BILLING CODE 3710–06–M

Department of the Navy

Notice of Record of Decision (ROD) for Land Use and Development Plan Final Environmental Impact Statement (FEIS) for Bellows Air Force Station (AFS), Waimanalo, Hawaii

SUMMARY: Pursuant to Section 102(2) of the National Environmental Policy Act (NEPA) of 1969 and Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508), the U.S. Pacific Command (USPACOM) announces its decision to implement the Land Use and Development Plan FEIS for Bellows AFS, Waimanalo, Hawaii.

1.0 Introduction

In the National Defense Authorization Act for Fiscal Year 1993 (Pub. L. 102–484, section 2853), Congress directed

the Secretary of Defense, the Secretary of the Air Force, and the Secretary of the Navy to prepare a report on the continued military need for Bellows AFS. Specifically, the report was to cover Air Force communications operations and Marine Corps training. The communications operations have since been relocated from Bellows AFS, but the Marine Corps mission remains. The report was submitted to Congress by the Secretary of Defense on April 19, 1993; however, the Congress appropriated $1,000,000 for the ''conduct of an Environmental Impact Study at Bellows Air Force Base'' in the Department of Defense Appropriations Act, 1993 (Pub. L. 102–396, Title 2).

The National Environmental Policy Act of 1969 and its implementing regulations were used as the framework for preparing the study.

The Department of Navy, on behalf of the Commander in Chief, U.S. Pacific Command (USCINCPAC), prepared a Final Environmental Impact Statement (FEIS) for proposed actions at Bellows AFS. The FEIS has been prepared in accordance with CEQ regulations referred to above, Department of Defense (DOD) Directive 6050.1 entitled, Environmental Effects in the United States of Department of Defense Actions, and NEPA. This ROD identifies my decisions on this proposal. These decisions have been made in consideration of the information contained in the FEIS which was filed with the Environmental Protection Agency (EPA) and made available to the public by the Federal Register announcement on December 15, 1995, and in consideration of the public comments made on the Draft and Final Environmental Impact Statements.

1.1 Proposed Actions: The action evaluated in the FEIS was a proposed Land Use and Development Plan for Bellows AFS that consisted of the following:

- Land use change to provide contiguous land, beach, and water areas of sufficient size and configuration to meet Marine Corps and other military training requirements
- Development of up to 500 units of military family housing units
- Construction of improvements to existing recreational resources
- Excessing of land not essential for military purposes

The FEIS analyzed reasonable alternatives to meet these objectives and assessed their separate and cumulative impacts.

1.2 Alternatives Considered:

Alternative Land Use Changes in the Communications Area

- Expansion of military training
- Expansion of military training and additional helicopter and landing craft, air-cushioned vehicle areas
- Expansion of military training as well as construction of permanent Hawaii Army National Guard Facilities
- Siting of up to 500 military family housing units
- No action

Alternative Recreation and Support Area Improvements

- Completion of proposed recreational area improvements as noted in the long-range recreation facilities development plan for Bellows AFS: Motor pool enclosure, recreation courts, recreational facilities upgrade, water distribution system upgrade, power distribution system upgrade, replacement of three beach cabins, sentry gate area upgrade, campground and restroom improvements, pavilion, and paved road/parking at picnic area 6
- Reduction in the scale of improvements in the long-range development plan; or postponement; Changes in land use
- No action

Preferred Alternative

The FEIS identifies a subset of all the possible alternatives which appear to best achieve the stated purpose and need with due respect for the environmental consequences. This subset is referred to as the Preferred Alternative for the purpose of analysis. However, it is Section 3.0 of this ROD, and not the preferred alternative outlined in the FEIS, that determines which actions are selected for implementation.

The preferred alternative was selected after consideration of the combined effect of all alternatives on achievement of the stated purpose and need. Purposes and needs include land of sufficient size and configuration to meet military training requirements, and improvement of existing recreational resources. Consideration of environmental and socio-economic effects of the alternatives was a key component in the selection process.

- The preferred alternative converts 387 acres of former communications area to training use to help alleviate the critical state-wide shortage of training lands, provides an inland maneuver area for Marine Corps amphibious exercises, and provides adequate land in proximity to Marine Corps Base Hawaii (MCBH), Kaneohe Bay, to meet day-to-day small unit tactical training needs.
- The preferred alternative is not to construct additional military family housing units at Bellows AFS.
- The preferred alternative implements the Bellows AFS long-range development plan for repair and improvement of the Air Force recreation and support facilities. These valuable facilities serve not only Oahu military residents, but DOD identification card holders worldwide. Bellows AFS recreation facilities improvements address an important ''quality of life infrastructure'' requirement for military personnel and their families.
- The preferred alternative identifies approximately 170 acres as excess to DOD needs conditional upon construction of replacement facilities, relocation of activities necessary to vacate the land, clean-up of potential environmental impairments, and imposition of use restrictions on the excess parcels.

The preferred alternative is also the environmentally preferred alternative.

1.3 Public Involvement: During the EIS process, the Department of the Navy solicited input from the local community on several occasions.

Copies of the Draft EIS, and copies of the FEIS were sent to federal, state and local government representatives, individuals, and community groups. Notices of Intent (NOI) and Notices of Availability (NOA) were published in local newspapers as well as the Federal Register. A chronology follows:

A NOI to prepare an Environmental Impact Statement (EIS) for actions at Bellows AFS was published and sent out during the second week of March 1994. Public scoping meetings were held at the Waimanalo Elementary and Intermediate School on March 30, 1994 and again at Washington Intermediate School on March 31, 1994. The NOA and announcement of public hearings for the Draft EIS (DEIS) were published and distributed on March 13, 1995, and public comments were accepted through May 31, 1995. A public hearing to present the DEIS was conducted at Waimanalo Elementary and Intermediate School on May 9, 1995. NOA of the FEIS was published on December 15, 1995, and public comments were accepted through January 15, 1996.

A synopsis of issues raised during the DEIS public review process, and efforts made to address these issues in the FEIS, follow:

- *Comment:* The U.S. Government's ownership of and right to use Bellows AFS were questioned on the basis of claims that nearly all of the land now comprising Bellows AFS consists of so-called ceded lands (govrnment lands of

the former Hawaiian kingdom and lands reserved during the monarchy for the support of the Crown) and that the ceded lands were all wrongfully taken from, and should be returned to, Native Hawaiians, generally referring to all persons of Hawaiian ancestry.

Response: The FEIS included a review of the title of the United States to Bellows AFS and a legal analysis of the claims asserted against it. These showed that the United States has clear title to all the lands, including the ceded lands at Bellows AFS, and that the claims made on behalf of Native Hawaiians, as a group, to the ceded lands have no legal or historical validity. Although approximately 170 acres of land have been found to be excess to DOD needs, these will be disposed of according to the laws and regulations generally applicable to these excess lands.

• *Comment:* DEIS was inadequate. Cultural and archaeological impacts are inadequately examined.

Response: The FEIS included a literature review of the cultural resources of Bellows AFS conducted by H. David Tuggle, Ph.D., of the International Archaeological Research Institute. The report summarized archaeological work conducted to date at Bellows AFS, including identification of known human burial sites. Based on the literature search and consultation with the State Historic Preservation Officer, a plan was developed to avoid adverse impacts on cultural resources of significance. Each known site at Bellows AFS is described in the FEIS.

• *Comment:* Bellows AFS is not necessary to support military training or recreation.

Response: Bellows AFS is required to help alleviate the critical statewide shortage of training lands, to provide an inland maneuver area for Marine Corps amphibious exercises, and to provide adequate land in proximity to MCBH, Kaneohe Bay, to meet day-to-day small unit tactical training needs. Military recreation facilities are necessary to provide quality of life for military personnel and their families. Affordable facilities are a key consideration for military personnel who are typically paid less than their civilian counterparts. For junior enlisted personnel, the military recreational facilities represent an essential and affordable resource.

1.4 Summary of Environmental Impacts: Below is a summary of the significant impacts and proposed actions to minimize impacts:

• The most significant impacts of the proposed actions and alternatives that cannot be acceptably mitigated would result from the housing land use alternative. Foremost among off-station impacts is the effect on peak hour traffic in Waimanalo from the addition of up to 500 military family housing units. Kalanianaole Highway would be saturated during peak hours with the additional growth. A four-lane road would be required through Waimanalo Town. Apart from impacts to traffic, existing wastewater treatment facilities do not have sufficient capacity to treat sewage flows from the proposed development. Population growth in Waimanalo would increase by up to 18 percent and could not be mitigated directly.

• Potential impacts of training activities include stream bank erosion from vehicle stream crossings, wildlife disturbance, noise, exposure of training participants to hazardous substances, and damage to cultural resources. Marine Forces Pacific, along with any other Service components who conduct training at Bellows AFS, will develop a constraints map identifying training area restrictions and adhere to these constraints.

• Recreational facilities upgrades and release of excess land may impact cultural resources. The Air Force will conduct surveys on excess land before release, and on recreational land before the start of long-range development plan improvements. These surveys will determine the extent and nature of the subsurface archaeological deposits in the areas of potential effect. Should these surveys reveal the presence of cultural resources, appropriate action will be taken to comply with pertinent law.

• No cultural resources would be adversely affected by the permanent relocation of the Hawaii National Guard facilities to the southwest corner of the station.

• Training has the potential to affect wetlands and stream banks, where training operations require crossing Waimanalo Stream. All practicable means will be taken to avoid or mitigate any such impacts; these include, but are not limited to, provisions that crossing will be permitted only at designated locations, and vehicles will be required to use existing or tactical bridges or fords placed at these designated locations.

• Noise from future training operations will not extend off-station at levels exceeding community noise standards. Nevertheless, to avoid future conflicts between community expectations and operational requirements, noise easements will be imposed as appropriate on lands declared excess to prevent incompatible civilian land use of these lands.

2.0 Consideration for Decision

The Land Use and Development Plan FEIS for Bellows AFS takes place in the broader context of military land use on Oahu. Sufficient land is required for the military to carry out its defense obligations in Hawaii and, specifically, to meet the need for adequate training areas. The FEIS supports USCINCPAC's Hawaii Military Land Use Master Plan (HMLUMP). The HMLUMP includes land requirements to meet mission tasks.

The FEIS identifies environmental impacts associated with the choice of alternatives. It further identifies some of the actions possible to mitigate the impacts and provides a more reasonable approach to land use. In addition, the scoping meetings, public hearings, and the comments received from the local community and agencies helped formulate a comprehensive approach to addressing important issues for decision making.

In addition to environmental considerations identified in the FEIS, there are other factors considered in the ROD. Strong public support for returning excess military land resulted in the proposal to construct new facilities in order to relocate activities out of approximately 170 acres of proposed excess land.

3.0 Decision

The FEIS analyzed possible alternatives, considered public comments made during open meetings and submitted by correspondence, potential environmental impacts, mitigative requirements and military need for training lands. In consideration of the FEIS, and comments received on the FEIS (January 1996), the following land use and development actions will take place at Bellows AFS:

• Convert 387 acres of land in the former communications area to training use.

• Implement Bellows AFS long-range recreation facilities development plan.

• Do not construct new military family housing units on Bellows AFS.

• Declare approximately 170 acres of land along the southern boundary of Bellows AFS excess to military requirements after construction of replacement facilities, relocation of activities necessary to vacate the land (to include relocation of the Hawaii National Guard) and cleanup of potential environmental impairments subject to appropriate use limitations to avoid incompatibility between future civilian uses and military activities on the retained areas.

4.0 Record of Decision

The military will continue to be a good steward of the environment on Bellows AFS. All practicable means to avoid or minimize environmental harm have been adopted. Efforts will be made to preserve sensitive cultural resources. Further subsurface investigations will be done prior to any new excavations or significant soil disturbance. Mitigative actions will be accomplished prior to, during, and after training activities.

Signed May 7, 1996 by J.W. Prueher, Admiral, U.S. Navy

FOR FURTHER INFORMATION: Questions regarding the FEIS and this Record of Decision may be directed to Major Matthew Gogan (J446), U.S. Pacific Command, Camp H.M. Smith, HI 96851–4020, phone (808) 477–6401, facsimile (808) 477–0876.

Dated: May 22, 1996.

M.A. Waters,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 96–14067 Filed 5–31–96; 2:17 pm]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

[FE Docket No. EA–114]

Application to Export Electricity MidCon Power Services Corp.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: MidCon Power Services Corp. (MPS) has requested authorization to export electric energy to Canada. MPS is a marketer of electric energy. It does not own or control any electric generation or transmission facilities.

DATES: Comments, protests, or requests to intervene must be submitted on or before July 5, 1996.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE–52), Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0350.

FOR FURTHER INFORMATION CONTACT: William H. Freeman (Program Office) 202–586- 5883 or Michael T. Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On May 21, 1996, MPS filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE) for authorization to export electric energy to Canada pursuant to section 202(e) of the FPA. MPS neither owns nor controls any facilities for the transmission or distribution of electricity, nor does it have a franchised retail service area. Rather, MPS is a power marketer authorized by the Federal Energy Regulatory Commission (FERC) to engage in the wholesale sale of electricity in interstate commerce at negotiated rates pursuant to its filed rate schedules.

In its application, MPS proposes to sell electric energy to Canada. The electric energy MPS proposes to transmit to Canada would be purchased from electric utilities and other generators. MPS asserts that such energy would be surplus to the requirements of the selling utility or generator. MPS would arrange for the exported energy to be wheeled from the selling entities, over existing domestic transmission facilities, and delivered to the foreign purchaser over one or more of the following international transmission lines for which Presidential permits (PP) have been previously issued: New York Power Authority's (NYPA) 230-kilovolt (kV), lines at Massena, New York (PP–25), and Devil's Hole, New York (PP–30); NYPA 765 kV line at Fort Covington, New York (PP–56); the NYPA 345-kV lines at Niagara Falls, New York (PP–74); Niagara Mohawk Power Corporation's (NIMO) 4.8-kV Hogansburg, New York line (PP–13); and NIMO's 13.2-kV line at Covington, New York, 230-kV(3 Phase) and 2–69-kV lines at Devil's Hole, New York, 38-kV Buffalo, New York lines, 69-kV lines at Queenstown, New York, and 12-kV(3/cables) Rainbow Br., New York lines (PP–31).

Any determination by the DOE to grant the request by MPS for export authorization will be conditioned to require MPS to comply with all reliability criteria, standards, and guidelines of the North American Electric Reliability Council and Regional Councils.

PROCEDURAL MATTERS: Any persons desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the rules of practice and procedure (18 CFR 385.211, 385.214). Fifteen copies of such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies are to be filed directly with: Mr. Dennis Lawler, Vice President, MidCon Power Services Corp., 701 East 22nd Street, Lombard, Illinois 60148 AND Mr. Peter Y. Connor, Esq., 801 15th Street, Wilmette, Illinois 60091.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC, on May 31, 1996.

Anthony J. Como.

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 96–14054 Filed 6–4–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. RP94–294–007]

Panhandle Eastern Pipe Line Company; Notice of Compliance Filing

May 30, 1996.

Take notice that on May 22, 1996, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to its filing, to become effective on the dates shown on Appendix A. Panhandle asserts that the purpose of this filing is to comply with the Commission's order issued April 1, 1996 in Docket No. RP94–294–000.

Panhandle states that in accordance with the Commission's April 1, 1996 Order, it is reflecting the attribution methodology that was utilized to allocate revenues from its discounted firm and interruptible transportation contracts prior to the effective date of the Natural attribution policy. Accordingly, Panhandle is submitting revised tariff sheets to reflect Panhandle's prior attribution methodology from July 1, 1994, the date the tariffs sheets herein originally became effective, and the prospective application of the Natural attribution policy.

Panhandle states that a copy of this filing are being served on all affected customers, applicable state regulatory agencies, and parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC

20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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. 96–14020 Filed 6–4–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT96–14–001]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

May 30, 1996.

Take notice that on May 24, 1996 Texas Eastern Transmission Corporation (Texas Eastern) submitted for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following revised tariff sheet:

Substitute Second Revised Sheet No. 647

Texas Eastern states that the above listed tariff sheet is being filed to make the language in Texas Eastern's tariff consistent with recently proposed changes in Texas Eastern's Statement of Standards of Conduct. On May 17, 1996, Texas Eastern made a filing in Docket No. MT96–14 which reflected a recent change in the name of an affiliated marketing company and made a filing in Docket No. MG88–26 which proposed changes in Texas Eastern's Statement of Standards of Conduct. Second Revised Sheet No. 647, which was filed with the May 17, 1996 Docket No. MT96–14 filing, did not include certain language changes proposed in the Statement of Standards of Conduct filing. Substitute Second Revised Sheet No. 647 is being filed to include the necessary language changes.

The proposed effective date of this tariff sheet is June 17, 1996.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers, interested state commissions, and all current interruptible customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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. 96–14021 Filed 6–4–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG96–12–000]

Texas Eastern Transmission Corporation; Notice of Filing

May 30, 1996.

Take notice that on May 17, 1995, Texas Eastern Transmission Corporation (Texas Eastern) submitted revised standards of conduct under Order No. 497 *et seq.*[1] and Order No. 566–A.[2] Texas Eastern states that it is revising its standards of conduct to reflect that it has two marketing affiliates, PanEnergy Gas Services, Inc. and PanEnergy LNG Sales, Inc (LNG Sales). In addition, Texas Eastern states that it shares office space in the same building with LNG Sales.

Texas Eastern states that copies of this filing have been mailed to all parties on the official service list compiled by the Secretary in this proceeding.

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, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before June 14, 1996. 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. 96–14022 Filed 6–4–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP90–1777–008]

TransColorado Gas Transmission Company; Notice of Technical Conference

May 30, 1996.

Take notice that a technical conference will be convened in the above-docketed proceeding on Wednesday, June 12, 1996, at 10:00 A.M., in Room 3–M–3 at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426. This technical conference is being convened to discuss issues and matters of concern raised by TransColorado Gas Transmission Company's application. Any party, as defined in 18 CFR 385.102(c), and any participant, as defined in 18 CFR 385.102(b) is invited to participate.

For additional information, please contact William L. Zoller, (202) 208–1203 at the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 96–14025 Filed 6–4–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–63–000]

Transcontinental Gas Pipe Line Corporation; Notice of Refund Report

May 30, 1996.

Take notice that on May 17, 1996, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing with the Federal Energy Regulatory Commission (Commission) a refund report in accordance with Section 4 of Transco's Rate Schedule

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[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. ¶ 30,820 (1988) (Regulations Preambles 1986–1990); Order No. 497–A, *order on rehearing,* 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 30,868 (1989) (Regulations Preambles 1986–1990); Order No. 497–B, *order extending sunset date,,* 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. ¶ 30,908 (1990) (Regulations Preambles 1986–1990); Order No. 497–C, *order extending sunset date,* 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date,* III FERC Stats. & Regs. ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, *order on rehearing and extending sunset date,* 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification,* 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date,* 59 FR 32884 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing,* 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing,* 59 FR 65707 (December 21, 1994); 69 FERC ¶ 61,334 (December 14, 1994); *appeal docketed, Conoco, Inc. v. FERC,* D.C. Cir. Docket No. 94–1745 (December 14, 1994).

LSS and Section 3 of Transco's Rate Schedule GSS.

Transco states that on May 13, 1996, it refunded $290,545.53 to its LSS and GSS customers. The refund was due Transco's customers from a CNG Transmission Corporation refund in Docket Nos. RP94–96 and RP94–213 (consolidated) for the period July 1, 1994 through December 31, 1995.

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, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before June 6, 1996. 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. 96–14023 Filed 6–4–96; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2482–021]

Niagara Mohawk Power Corporation; Notice of Availability of Draft Environmental Assessment

May 30, 1996.

A draft environmental assessment (DEA) is available for public review. The DEA was prepared for an application filed by Niagara Mohawk Power Corporation (licensee) to remove polychlorinated biphenyls (PCBs) from lands within the boundary of the Hudson River Hydroelectric Project. The licensee proposes to remove PCBs at the Queensbury site in accordance with a record of decision issued March 1995 by the New York State Department of Environmental Conservation. In summary, the licensee proposes to excavate and remove all surface soil (1 foot from surface) on the upland portion of the site with total PCB concentrations in excess of 1 ppm and subsurface soil with concentrations in excess of 10 ppm. Further, the licensee proposes to excavate and remove to a depth of 2 feet near-shore sediments. the Queensbury site is located on Corinth Road, Town of Queensbury, Warren County, New York, on the north bank of the Hudson River, about 5 miles west of Glens Falls, New York.

The DEA finds that the licensee's remediation plan is not a major federal action significantly affecting the quality of the human environment. The DEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the DEA can be obtained by calling the Commission's Public Reference Room at (202) 208–1371.

Comments on the DEA must be filed with the Commission within 30 days from the date of this notice. Comments should be addressed to: Ms. Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, D.C. 20426. Please include the project number (2482–021) on any comments filed.

Lois D. Cashell,

Secretary.

[FR Doc. 96–14019 Filed 6–4–96; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 459–081 Missouri]

Union Electric Company; Notice of Availability of Environmental Assessment

May 30, 1996.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) reviewed an application requesting approval of the dredging management plan. Approval of the plan would give the licensee permission to issue permits for small excavation activities at the Osage Project, without obtaining prior Commission approval for each specific activity. Specifically, the dredging management plan would allow permits to be issued for non-project dredging activities involving up to 500 cubic yards (cy) of material. All proposals to remove more than 500 cy would be outside the scope of the plan and would require individual Commission approval. The intent of the plan is to allow the licensee to issue permits for minor activities requiring dredging, including the installation and repair of seawalls and construction of boat docks and similar minor facilities. Permits would not be issued without prior authorization from the U.S. Army Corps of Engineers. The excavation activities associated with the dredging management plan will occur on project lands in Benton, Camden, Miller, and Morgan Counties, Missouri. The Lake of the Ozarks is the reservoir for the Osage Project and is located on the Osage River. The staff prepared an Environmental Assessment (EA) for the action. In the EA, staff concludes that approval of the dredging management plan would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, Room 2A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–14018 Filed 6–4–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–541–000]

Southern Natural Gas Company, Notice of Application

May 30, 1996.

Take notice that on May 24, 1996, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP96–541–000 an application, pursuant to Section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity for authorization to construct, install, modify, and operate certain pipeline loops, compressors, and appurtenant facilities to permit increased firm transportation services in Southern's Zone 3 market area, and for permission to roll in the costs attributable to those facilities, all as more fully set forth in the application, which is on file with the Commission and open for public inspection.

Southern states that it has undertaken an intensive effort to serve new markets that can be attached economically to its system and to develop markets already attached to its system. It is indicated that, as part of this effort, and in response to inquiries received by Southern concerning the availability of capacity in its Zone 3 market area (Georgia, South Carolina and Tennessee), Southern conducted an open season in mid-1995 to determine whether there was sufficient demand for transportation service to support an expansion of its system. It is also indicated that, as a result of this open season and discussions with interested customers, Southern received requests for long-term transportation service from the following Zone 3 customers:

Customer	Mcf/day
Engelhard Corporation	2,250
Kemira Pigments, Inc.	18,000
Power Silicates Corporation	600
Savannah Energy Corporation	200
Domtar Gypsum	3,090

Customer	Mcf/day
City of Wrens, Georgia	2,200
Armstrong World Industries, Inc.	3,500
Southeast Paper Manufacturing Co.	9,540
Calsilite Manufacturing Corporation	500
Knoxville Utilities Board	5,000
Riverwood International Corporation	1,000
	45,880

Southern states that each of the above shippers has executed a service agreement under Rate Schedule FT with a primary term of 10 years.

To provide the requested service, Southern proposes to construct, install, modify and operate pipeline and compression facilities. More specifically, Southern proposes to construct (1) approximately 4.6 miles of 30-inch South Main 2nd Loop Line in Crawford and Monroe Counties, Georgia; (2) approximately 5.1 miles of 16-inch Brunswick Loop Line in Jones and Twiggs County, Georgia; (3) approximately 5.9 miles of 30-inch South Main 3rd Loop Line in Lee County, Alabama; (4) approximately 7.3 miles of 24-inch 2nd North Main Loop Line in Pickens and Tuscaloosa Counties, Alabama; and (5) approximately 4.6 miles of 30-inch Franklinton-Gwinville 2nd Loop Line in Walthall, Lawrence, and Marion Counties, Mississippi. Southern also proposes to place back into operation and commence depreciating a 104.6-mile section of the 20-inch Wrens-Savannah Line in Jefferson, Burke, Jenkins, Screven, Effingham, and Chatham Counties, Georgia.

Southern also proposes to uprate a total of four turbine compressor engines at the Selma Compressor Station in Dallas County, Alabama and the Bay Springs Compressor Station, Jasper County, Mississippi. Southern proposes to rewheel the four Dresser-Rand compressors and to increase the 6,500 rated horsepower at an 80 degree ambient temperature at each of the four engines to 9,160 rated horsepower. Southern claims that this uprate would allow Southern to take advantage of the current physical capabilities of the engines at minimal cost.

Southern estimates a facilities cost of $36,043,000, which would be financed initially through the use of short term financing, available cash from operations or use of both alternatives and ultimately from permanent financing.

Southern also requests that the Commission issue a predetermination that rolled-in rates are appropriate for the proposed facilities. In support of that request, Southern states that the proposed facilities will be physically and operationally integrated with existing facilities that serve Southern's current customers and that the new facilities will be used for the benefit of all shippers on Southern's system. Southern states that the estimated revenues generated from the proposed facilities will exceed the estimated cost of service from the facilities by $440,000 during the first year of operation and $13,500,000 during the 10-year primary term of the related service agreements.

Southern also claims that the facilities will provide system enhancements at seven distinct locations. Southern indicates that the looping and increased compression horsepower will improve system reliability for all shippers in the market area, most particularly on the South Main Line where the majority of the expansion facilities and load are located.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 20, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Southern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–14024 Filed 6–4–96; 8:45 am]

BILLING CODE 6717–01–M

Western Area Power Administration

General Eligibility Criteria for the Proposed Allocation Procedures and Call for Applications, Post-2000 Resource Pool—Pick-Sloan Missouri Basin Program, Eastern Division

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of clarification, response to comments and Call for additional applications.

SUMMARY: The purpose of this notice is to respond to comments regarding Section III, General Allocation Criteria, Paragraph E and to clarify the Post 2000 Resource Pool Allocation Procedures in order to more fully fulfill the intent of the Energy Planning and Management Program (Program). All of the comments received concerning the use of Mid-Continent Area Power Pool (MAPP) data trends to adjust applicant load data in applying Post 1985 Marketing Criteria suggested that the Western Area Power Administration (Western) not do so. Therefore, Western is proposing to not use MAPP data trends to adjust the 1994–1995 load data in determining allocations for utility and nonutility applicants. These clarifications are intended to ensure all entities are provided an opportunity to apply for an allocation of the resource pool created by the Program. Any new applications, consisting of a letter of interest and Applicant Profile Data (APD), will be considered in accordance with the January 29, 1996, Federal Register Notice (61 FR 2817), as amended herein.

DATES: All written comments must be sent to the Upper Great Plains Acting Regional Manager so that they are received 30 days from date of publication. A letter of interest and APD must be sent by certified or return receipt requested U.S. mail to the Upper Great Plains Acting Regional Manager so that it is received 30 days from date of publication

SUPPLEMENTARY INFORMATION: Western, a Federal power marketing agency of the Department of Energy, published on January 29, 1996, in the Federal Register (61 FR 2817), a notice of

proposed procedures to implement subpart C–Power Marketing Initiative of the Energy Planning and Management Program Final Rule, 10 CFR part 905 (60 FR 54151). The Program, which was developed in part to implement section 114 of the Energy Policy Act of 1992, became effective on November 20, 1995.

Subpart C of the Program provides for the establishment of project-specific resource pools and the allocation of power from these pools to new preference customers. These proposed procedures, in conjunction with the Pick-Sloan Missouri Basin Program Eastern Division (PSMBP—ED) Program Final Post-1985 Marketing Plan (Post-1985 Marketing Plan) (45 FR 71860) will establish the framework for allocating power from the resource pool to be established for the PSMBP—ED. The comment period on the proposed procedures and call for applications was extended to April 8, 1996, by a notice published in the Federal Register on March 8, 1996 (61 FR 9449).

Before developing final allocation procedures, Western has determined that it is appropriate to address certain comments and clarify features in the initial Federal Register notice. Western has determined that these proposed clarifications are in the best interest of the public and that they will not have the effect of excluding current applicants. Based on these clarifications, Western is providing another opportunity for comment and call for applications to entities which did not apply based upon the earlier notice. Those entities that have previously commented or applied for firm power need not resubmit or reapply.

I. Responses and Clarification of Terms

As a result of comments received during the comment period and need for clarification of terms, the proposed Post 2000 Resource Pool Allocation Procedures and Call for Applications, Post-2000 Resource Pool—PSMBP—ED in Federal Register 61 FR 2817 has been amended as follows:

1. Section II, General Eligibility Criteria, Paragraph A should read ''All qualified applicants must be preference entities in accordance with section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), as amended and supplemented.''

2. Section II, General Eligibility Criteria, Paragraph B should read ''All qualified applicants must be located within the currently established PSMBP—ED marketing area.''

3. Section II, General Eligibility Criteria, Paragraph C should read ''All qualified applicants must not be currently receiving benefits, directly or indirectly, from a current PSMBP—ED firm power allocation. Qualified Native American applicants are not subject to this requirement.''

4. Section II, General Eligibility Criteria, Paragraph D should read ''Qualified utility and nonutility applicants must be able to use the firm power directly or be able to sell it directly to retail customers.''

5. Section II, General Eligibility Criteria, Paragraph E should read ''Qualified utility applicants that desire to purchase power from Western for resale to consumers, including municipalities, cooperatives, public utility districts, and public power districts, must have utility status by December 31, 1996. Utility status means the entity has responsibility to meet load growth, has a distribution system, and is ready, willing, and able to purchase Federal power from Western on a wholesale basis.''

6. Section III, General Allocation Criteria, Paragraph E should read ''Allocations made to qualified utility and nonutility applicants will be based on the loads experienced in the 1994 summer season and the 1994–95 winter season. Western will apply the Post-1985 Marketing Plan criteria to these loads.''

7. Section III, General Allocation Criteria, Paragraph J should read ''The maximum allocation for qualified utility and nonutility applicants shall be 5,000 kilowatts (kW).''

8. Section V, Applications for Firm Power, Paragraph B.1.b.i. should read ''Utility and nonutility applicants:''

9. Section V, Applications for Firm Power, Paragraph B.1.b.i.(1) should read ''If applicable, number and type of customers served; i.e., residential, commercial, industrial, military base, agricultural.''

ADDRESSES: All written comments and Applicant Profile Data should be directed to the following address: Mr. Gerald C. Wegner, Acting Regional Manager, Upper Great Plains Customer Service Region, Western Area Power Administration, Post Office Box 35800, Billings, MT 59107–5800.

FOR FURTHER INFORMATION CONTACT: Robert J. Harris, Power Marketing Manager, Upper Great Plains Customer Service Region, Western Area Power Administration, Post Office Box 35800, Billings, MT 59107–5800, (406) 247–7394.

Issued at Golden, Colorado, May 22, 1996.

J. M. Shafer,

Administrator.

[FR Doc. 96–14055 Filed 6–4–96; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5514–9]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Vehicle Emission Control Defect Survey Questionnaire

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 following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Vehicle Emission Control Defect Survey Questionnaire (OMB Control No. 2060–0047, approved through 5/31/96). The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 5, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 0184.05.

SUPPLEMENTARY INFORMATION:

Title: Vehicle Emission Control Defect Survey Questionnaire (OMB Control No. 2060–0047; EPA ICR No. 0184.05) expiring 5/31/96. This ICR is requesting an extension of a currently approved collection activity.

Abstract: The Vehicle Compliance Programs Group (VCPG) of the Vehicle Programs and Compliance Division (VPCD) and the Engine Compliance Programs Group (ECPG) of the Engine Programs and Compliance Division (EPCD), Office of Mobile Sources (OMS), Office of Air and Radiation (OAR), uses this information collection to gather additional data to supplement in-use testing programs as well as provide possible evidence in support of EPA's position during an administrative hearing. When EPA orders a manufacturer to recall a certain class of motor vehicles (in accordance with CAA section 207(c)) but the manufacturer disagrees with EPA's findings, the manufacturer may request an administrative hearing. During such a hearing, EPA must make a detailed presentation of facts showing that the class of vehicles in question should indeed be recalled. Facts to be included in such a presentation consist of information on the maintenance and

performance history of vehicles belonging to the class. Dealerships, fleets, or individual owners of motor vehicles or engines may be asked to provide information on the vehicles or engines at issue. The information is obtained through a questionnaire administered by telephone interviews with individual vehicle owners, and by telephone or in-person interviews with dealerships or fleets.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Ch. 15. The Federal Register Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 3/4/96 (61 FR 8273); no comments were received.

Burden Statement: EPA may perform two surveys annually, one of manufacturers of on-highway light-duty motor vehicles or light-duty trucks, and the other of heavy-duty engines or large nonroad compression ignition engines, which will require either telephone or in-person interviews with one hundred (100) individual vehicle owners or dealerships or fleets per survey. A burden estimate of twenty (20) minutes per individual vehicle owner is based on agency experience with similar questions asked of individuals as part of the in-use recall testing program. A burden estimate of thirty (30) minutes per dealership or fleet is based on contact with dealerships and fleets made as part of the in-use recall testing program. The burden estimate is calculated from an average of the two different burdens assuming that one-half of the respondents are individual vehicle owners and the other half are dealerships or fleets. Therefore, the total respondent burden will be 2,500 minutes for each survey. Individuals, dealerships, or fleets will be asked to respond to only one survey in any given year. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjusting the existing ways to comply with any previously applicable instructions and requirements; training personnel to be able to respond to a collection of information; searching data sources; completing and reviewing the collection of information; and transmitting or otherwise disclosing the information.

Respondents/Affected Entities: Owners, dealerships, fleets.

Estimated Number of Respondents: 200.

Frequency of Response: 1/yr.

Estimated Total Annual Hour Burden: 166.6 hours.

Estimated Total Annualized Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 0184.05 and OMB Control No. 2060–0047 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street SW., Washington, DC 20460; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Office for EPA, 725 17th Street, NW., Washington, DC 20503.

Dated: May 29, 1996.

Richard Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 96–14110 Filed 6–4–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5514–8]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Emission Defect Information and Voluntary Emissions Recall Reports

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3507(a)(1)(D)), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Emission Recall Audit Programs Owner Questionnaire (OMB Control No. 2060–0046, approved through 5/31/96). The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 5, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 2060–0046.

SUPPLEMENTARY INFORMATION:

Title: Emission Recall Audit Program Owner Questionnaire (OMB Control No. 2060–0046; EPA ICR No. 180.05) expiring 5/31/96. This ICR is requesting an extension of a currently approved collection activity.

Abstract: The Vehicle Compliance Programs Group (VCPG), Vehicle Programs and Compliance Division (VPCD), Office of Mobile Sources (OMS), Office of Air and Radiation (OAR), uses this information collection to enforce the Recall and Defect Reporting Regulations of 40 CFR part 85, subparts S and T. Individual owners of on-highway light-duty motor vehicles and light-duty trucks may be asked to provide information on vehicles that have been recalled. The Vehicles Compliance Programs Group (VCPG) uses such information to evaluate the effectiveness of various aspects of a recall campaign, to determine whether manufacturers are in compliance with recall procedural regulations, and to determine the cause of ineffective recall campaigns. The information is obtained from individuals through a questionnaire administered by telephone interviews or in written format.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Ch. 15. The Federal Register Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 3/4/96 (61 FR 8273); no comments were received.

EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of the appropriate automated

electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average .25 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjusting the existing ways to comply with any previously applicable instructions and requirements; training personnel to be able to respond to a collection of information; searching data sources; completing and reviewing the collection of information; and transmitting or otherwise disclosing the information.

Respondents/Affected Entitles: 300.

Estimated Number of Respondents: 300;

Frequency of Response: Once per respondent per year.

Estimated Total Annual Hour Burden: 75 Hours.

Estimate Total Annualized Cost Burden: $900.00.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 180.05 and OMB Control No. 2060–0046 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW., Washington, DC 20460, and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

Dated: May 28, 1996.

Richard Westlund,

Acting Director Regulatory Information Division.

[FR Doc. 96–14111 Filed 6–4–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL 5515–9]

Environmental Radiation Ambient Monitoring System (ERAMS)

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 following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Environmental Radiation Ambient Monitoring System (ERAMS); OMB Control Number 2060–0015; expires July 31, 1996. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 5, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 877.05.

SUPPLEMENTARY INFORMATION: Environmental Radiation Ambient Monitoring System (OMB Control No. 2060–0015; EP ICR No. 877.05) expiring July 31, 1996. This is a request for extension of a currently approved collection.

Abstract: The Environmental Radiation Ambient Monitoring System (ERAMS) is a national network of stations collecting sampling media that include air, precipitation, drinking water, surface water, and milk. Samples are sent to EPA's National Air and Radiation Environmental Laboratory (NAREL) in Montgomery, AL, where they are analyzed for radioactivity. ERAMS provides emergency response and ambient monitoring information regarding levels of environmental radiation across the nation. All stations, usually manned by state and local personnel, participate in ERAMS voluntarily. Station operators complete information forms that accompany the samples. The forms request descriptive information related to sample collection, e.g., sample type, sample location, length of sampling period, and volume represented.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.37 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verify information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Sample collectors, who are usually employed by state or, in a few cases, local government.

Estimated Number of Respondents: 313.

Frequency of Response: From twice weekly to four times annually, depending upon type of media being sampled.

Estimated Total Annual Hour Burden: 9201.8 hours.

Estimated Total Annualized Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to the EPA ICR No. 877.05 and OMB Control No. 2060–0015 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2136), 401 M Street SW., Washington, DC 20460, and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

Dated: May 30, 1996.

Richard Wilson,

Acting Director, Regulatory Information Division.

[FR Doc. 96–14121 Filed 6–4–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5513–7]

Risk Assessment and Risk Management Commission; Meeting Dates: June 13, 1996 in Washington, DC, and July 23, 1996 in Boston, MA

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Commission on Risk Assessment and Risk Management, established as an Advisory Committee under Section 303

of the Clean Air Act Amendments of 1990, will release of its draft report on June 13 from 11:00 a.m. until 1:00 p.m. at the J. W. Marriott, 1331 Pennsylvania Avenue, NW., Washington, DC 20004. Earlier it was reported that the meeting would take place at 1:00 p.m. at the National Press Building; however, that has been changed to the earlier time and new location.

There will be a briefing and the draft report will be available to the public at that time. If you are unable to attend, but wish to receive a copy of the draft report, either fax your request to 202–233–9540, mail your request to the Commission on Risk Assessment and Risk Management, 529 14th Street, NW., Room 452, Washington, DC 20045, or obtain via the Internet at http://www.riskworld.com. Be sure to indicate your complete mailing address and a phone number where you can be reached. If you have already requested a copy of the draft report, it is not necessary to send another request.

Comments on the draft report are welcomed by July 18, 1996. Those comments will be considered for discussion at a public meeting in Boston, MA on July 23 from 1 p.m. until 5 p.m. at the John F. Kennedy Federal Building, One Congress Street, Boston, MA 02203–0001 in conference room 11 A & B on the 11th floor. Comments not received by July 18 must be received no later than August 9, 1996 for consideration prior to the completion of the final report. Please send your comments to the Commission on Risk Assessment and Risk Management address listed above.

If you need additional information, please call 202–233–9537. The report will not be available prior to June 13th.

Dated: May 23, 1996.

Gail Charnley,

Executive Director, Commission on Risk Assessment and Risk Management.

[FR Doc. 96–13984 Filed 6–4–96; 8:45 am]

BILLING CODE 6560–50–M

[OPPTS–00187; FRL–5375–8]

Forum on State and Tribal Toxics Action (FOSTTA) Projects; Open Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meetings.

SUMMARY: The four Projects of the Forum on State and Tribal Toxics Action (FOSTTA) will hold meetings open to the public at the time and place listed below in this notice. The public is encouraged to attend the proceedings as observers. However, in the interest of time and efficiency, the meeting is structured to provide maximum opportunity for state, tribal, and EPA invited participants to discuss items on the predetermined agenda. At the discretion of the chair of the project, an effort will be made to accommodate participation by observers attending the proceedings.

DATES: The four Projects will meet June 24, 1996, from 8 a.m. to 5 p.m., with a plenary session including a brief update on the ''State Access to Confidential Business Information Data Project'' and ISO 14001 from 8 a.m. to 9:30 a.m., and on June 25, 1996, from 8 a.m. to noon. Any observer wishing to speak should advise the Designated Federal Official, Darlene Harrod, at the telephone number or e-mail address listed below no later than 4 p.m. on June 17, 1996.

ADDRESSES: The meetings will be held at The Holiday Inn, 480 King St., Alexandria, VA.

FOR FURTHER INFORMATION CONTACT: Darlene Harrod, Office of Pollution Prevention and Toxics (7408), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 260-6904, e-mail: harrod.darlene@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: FOSTTA, a group of state and tribal toxics environmental managers, is intended to foster the exchange of toxics-related program and enforcement information among the states/tribes and between the states/tribes and EPA's Office of Prevention, Pesticides and Toxic Substances (OPPTS) and Office of Enforcement and Compliance Assurance (OECA). FOSTTA currently consists of the Coordinating Committee and four issue-specific Projects. The Projects are: (1) The Toxics Release Inventory Project; (2) The State and Tribal Enhancement Project; (3) The Chemical Management Project; and (4) The Lead (Pb) Project.

List of Subjects

Environmental protection.

Dated: May 29, 1996.

Susan B. Hazen,

Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics.

[FR Doc. 96–14081 Filed 6–4–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–300427; FRL–5374–8]

Iprodione; Request for Comment on Petition to Revoke Food Additive Regulations for Raisins and Dried Ginseng

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt and availability of petition.

SUMMARY: This document announces the receipt of and solicits comments on a petition proposing the revocation of the section 409 food additive regulation established under the Federal Food, Drug and Cosmetic Act (FFDCA), for iprodione in or on raisins and dried ginseng. This notice sets forth the basis for the petitioner's proposal and provides opportunity for comment by the public.

DATES: Written comments, identified by the docket number [OPP–300427] must be received on or before July 5, 1996.

ADDRESSES: By mail, requests for copies of the petition and comments should be forwarded to Public Response and Program Resources Branch, Field Operations Division (7506C), Office of pesticide Programs, 401 M St., SW., Washington, DC 20460. Copies of the petition will be available for public inspection in the public docket from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays, in Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA. The telephone number of the docket is 703–305–5805. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection at the address and hours given above.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number

[OPP–300427]. No CBI should be submitted through e-mail. Electronic comments on this document may be filed online at any Federal Depository Library. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Niloufar Nazmi, Special Review and Reregistration Division (7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. WF32C5, Crystal Station #1, 2800 Crystal Drive, Arlington, VA, Telephone: 703–308–8028, e-mail: nazmi.niloufar@epamil.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 et seq., authorizes the establishment by regulation of maximum permissible levels of pesticides in foods. Such regulations are commonly referred to as ''tolerances.'' Without such a tolerance or an exemption from the requirement of a tolerance, a food containing a pesticide residue is ''adulterated'' under section 402 of the FFDCA and may not be legally moved in interstate commerce. 21 U.S.C. 331, 342. EPA was authorized to establish pesticide tolerances under Reorganization Plan No. 3 of 1970. 5 U.S.C. App. at 1343 (1988). Monitoring and enforcement of pesticide tolerances are carried out by the U.S. Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA). EPA can establish a tolerance in response to a petition (FFDCA section 408(d)(1), 409(b)(1)), or on its own initiative (FFDCA sections 408(e), 409(d)).

The FFDCA has separate provisions for tolerances for pesticide residues on raw agricultural commodities (RACs) and tolerances on processed food. For pesticide residues in or on RACs, EPA establishes tolerances, or exemptions from tolerances when appropriate, under FFDCA section 408. 21 U.S.C. 346a. EPA regulates pesticide residues in processed foods under FFDCA section 409, which pertains to ''food additives.'' 21 U.S.C. 348. Maximum residue regulations established under section 409 are commonly referred to as food additive regulations (hereafter referred to as ''FARs''). Section 409 FARs are needed, however, only for certain pesticide residues in processed food. Under section 402(a)(2) of the FFDCA, a pesticide residue in processed food generally will not render the food adulterated if the residue results from application of the pesticide to a RAC and the residue in the processed food when ready to eat is below the RAC tolerance. This exemption in section 402(a)(2) is commonly referred to as the ''flow-through'' provision because it allows the section 408 raw food tolerance to flow through to the processed food forms. Thus, a section 409 FAR is only necessary to prevent foods from being deemed adulterated when the level of the pesticide residue in a processed food when ready to eat is greater than the tolerance prescribed for the RAC, or if the processed food itself is treated or comes in contact with a pesticide. If a FAR must be established, section 409 of the FFDCA requires that the use of the pesticide will be ''safe'' (21 U.S.C. 348(c)(3)). Relevant factors in this safety determination include (1) the probable consumption of the pesticide or its metabolites; (2) the cumulative effect of the pesticide in the diet of man or animals, taking into account any related substances in the diet; and (3) appropriate safety factors to relate the animal data to the human risk evaluation. Section 409 also contains the Delaney clause, which specifically provides that ''no additive shall be deemed safe if it has been found, after tests which are appropriate for the evaluation of the safety of food additives, to induce cancer when ingested by man or animal.''

FARs are currently established in 40 CFR 185.3750 for iprodione in or on dried ginseng and raisin.

II. Petition

A. Raisins

Rhone-Poulenc is proposing labeling restrictions which would prohibit the use of iprodione products on grapes used to produce raisins. The Petitioner believes that enforcement of the label restriction is possible because: (1) Early in the growing season, several cultural practices differentiate grapes grown for raisin production from those grown for table or wine grape; and 2) raisins are the only commodity produced from raisin grapes and introduced into commerce. Rhone-Poulenc contends that a less elaborate trellis system is used for raisin grapes than for table grapes. In addition, raisin grapes are not irrigated after early August whereas the table and wine grapes require irrigation late into the season. Furthermore, producers growing grapes for table use tend to use gibberellin early in the season to increase size which makes those grapes undesirable as raisins. Rhone-Poulenc also claims that all raisins are sold under a contract with a buyer, prior to the beginning of the growing season. Therefore, grapes intended to be grown for table use or wine production would never be sold as raisins.

To ensure compliance with the proposed label restriction, Rhone-Poulenc commits to conducting an industry educational program. This effort would be in California which is the only state where raisins are commercially produced. The program would target the Licensed Pest Control Advisors (PCA), reseller, County Agricultural Commissioner, and raisin buyers to inform them of the label restriction.

Rhone-Poulenc proposes to:

(1) Develop a direct mail notice to the PCAs in the predominant raisin growing counties of Fresno, Tulare, and Madera, in California.

(2) Develop a product bulletin for Rhone-Poulenc's sales associates to distribute to resellers and County Agricultural Commissioners.

(3) Place the label restriction in the Crop Data Management System (CDMS). The Petitioner claims that 80 to 90 percent of the recommendations written by a PCA are generated by computer through CDMS.

(4) Communicate in person with the management of raisin buying companies such as SunMaid. Rhone-Poulenc will attempt to have these companies put in writing, that they will not accept any raisins treated with iprodione products.

B. Dried Ginseng

The petitioner claims that ginseng is not a ready-to-eat commodity because of the significant amount of dilution of dried ginseng in preparation of a ready-to-eat food. According to Rhone-Poulenc, once dried ginseng is in its ready-to-eat form, residues are unlikely to exceed the RAC tolerance.

EPA isvites comment on the petition to withdraw the food additive regulation for raisins and dried ginseng.

It should be noted that on January 18, 1995, EPA published a proposed rule in the Federal Register to revoke the section 409 FAR for iprodione in or on dried ginseng and raisins. That proposal was based on a determination that iprodione induces cancer in animals, and thus, the regulation violates the Delaney clause in section 409 of the FFDCA. However, the Agency could finalize revocation of the dried ginseng and raisin regulation on the grounds requested in the petition announced in this notice.

Pursuant to 40 CFR 177.125 and 177.130, EPA may issue an order ruling on the petition or may issue a proposal in response to the petition and seek further comment. If EPA issues an order

in response to the petition, any person adversely affected by the order may file written objections and a request for a hearing on those objections with EPA on or before the 30th day after date of the publication of the order, (40 CFR 178.20).

A record has been established for this document under docket number [OPP–300427] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

OPP-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. The official record for this document, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ADDRESSES at the beginning of this document.

Dated: May 23, 1996.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 96–13823 Filed 6–4–96; 8:45 am]

BILLING CODE 6560–50–F

[PP 5E4477 and 5E4478/T689; FRL 5371–2]

EarthGro Inc.; Establishment of Exemptions From Requirement of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established exemptions from the requirement of tolerances for *Flavobacterium balustinum* strain 299 (ATCC 53198) and *Trichoderma hamatum* isolate 382 (ATCC 20765) in or on certain raw agricultural commodities.

DATES: These temporary exemptions from the requirement of tolerances expire March 1, 1998.

FOR FURTHER INFORMATION CONTACT: By mail: Diana Horne, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm., Crystal Station, 5th Fl., 2800 Crystal Drive, Arlington, VA (703) 308–8367; e-mail: horne.diana@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Earthgro, Inc., Route 207, P.O. Box 143, Lebanon, CT 06249, has requested in pesticide petitions (PP) 5E4477 and 5E4478 the establishment of exemptions from the requirement of tolerances for use on selected ornamentals and vegetable bedding plants in or on certain raw agricultural commodities as follows:

1. Pesticide petition (PP) 5E4477 has established an exemption from the requirement of a tolerance for *Flavobacterium balustinum* strain 299 (ATCC 53198) for use on selected ornamentals and vegetable bedding plants in or on the raw agricultural commodities broccoli, cabbage, cauliflower, cucumber, eggplant, lettuce, cantaloupe, pepper, tomato and watermelon.

2. Pesticide petition (PP) 5E4478 has established an exemption from the requirement of a tolerance for *Trichoderma hamatum* isolate 382 (ATCC 20765) for use on selected ornamentals and vegetable bedding plants in or on the raw agricultural commodities broccoli, cabbage, cauliflower, cucumber, eggplant, lettuce, cantaloupe, pepper, tomato and watermelon.

These temporary exemptions from the requirement of tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of experimental use permit 69006–EUP–1, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that exemptions from the requirement of tolerances will protect the public health. Therefore, the temporary exemptions from the requirement of tolerances have been established on the condition that the pesticides be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredients to be use must not exceed the quantity authorized by the experimental use permit.

2. Earthgro, Inc., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These temporary exemptions from the requirement of tolerances expire March 1, 1998. Residues remaining in or on all raw agricultural commodities after this expiration date will not be considered actionable if the pesticides are legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary exemptions from the requirement of tolerances. These temporary exemptions from the requirement of tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

List of Subjects

Environmental protection, Administative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 20, 1996.

Janet L. Andersen,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 96–13822 Filed 6–4–96; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5515–8]

U.S.-Mexico Border Environmental Plan

AGENCY: Environmental Protection Agency.

ACTION: Notice of the availability of the Draft Framework Document for the U.S.-Mexico Border XXI Program.

SUMMARY: The Border XXI Program is a binational environmental planning program for the border area and is the second phase of the Integrated Border Environmental Plan (IBEP), released in February 1992. The goal of the Border XXI Program is to protect human health and the environment and promote sustainable development in the border area (the area extending 100 Km on either side of the boundary between the U.S. and Mexico). It broadens the scope of issues beyond those addressed under the IBEP and, through binational workgroups, deals with the following concerns: natural resources; environmental health; air; water; hazardous and solid wastes; contingency planning and emergency response; enforcement; pollution prevention; and, environmental information resources. Strategies which are central to the Border XXI Program include public involvement, decentralization of border decision making, and increased environmental cooperation between the different governmental agencies operating in the border region. To promote integrated regional planning, the Draft Framework Document is organized around five geographic regions: California-Baja California, Arizona-Sonora, New Mexico-Texas-Chihuahua, Texas-Coahuila-Nuevo Leon, and Texas-Tamaulipas. The Draft Framework Document, developed in cooperation with the Department of Interior and Department of Health and Human Services, reflects an evolving process that will benefit from the experiences and input of various stakeholders, such as the four U.S. and six Mexican border states, as well as tribal nations, local communities, academia, non-governmental organizations, the private sector and border citizens.

Through a series of both domestic and binational public meetings which took place during September through November of 1995 in various border communities, efforts were made to inform the public of objectives of the program and the process adopted for its involvement. At that time, the public also was given an opportunity to comment on the workgroup objectives for the program. These comments were taken into consideration by the binational workgroups in the development of this draft document.

To provide additional opportunity for input, the public will have 45 days from the date of release to comment on the Draft Border XXI Framework Document, which is the first of related documents that will be released under Border XXI. Additional public meetings for receiving verbal comments on the draft will be held during this comment period. Locations and dates of the meetings will be announced separately. The Final Framework Document will be released in the Fall of 1996.

DATES: The Draft Border XXI Framework Document will be made available to the public beginning June 13, 1996. Comments must be submitted no later than July 29, 1996.

AVAILABILITY OF DOCUMENT AND SUBMISSION OF COMMENTS: Copies of the document and information on submission of written comments may be obtained through an EPA ''Toll-Free'' Telephone number: (800) 334–0741. In addition, interested persons in Texas and New Mexico may obtain copies by contacting the EPA El Paso Border Office; interested persons in California and Arizona may obtain copies through the EPA San Diego Border Office. These offices also have information on the locations of information repositories for the Border XXI Program in various cities along the border. The address and phone numbers for these EPA offices are listed below. Copies may also be obtained through the following EPA Home Page: http://www.epa.gov/region 09.

Comments may be submitted in writing to the Border Offices or electronically to the following Internet address: border.team@epamail.epa.gov.

FOR FURTHER INFORMATION CONTACT: For obtaining information in Texas or New Mexico contact: Marvin P. Waters, Director, EPA El Paso Border Office, 4050 Rio Bravo, Suite 100, El Paso, Texas 79902; Telephone (915) 533–7273; FAX (915) 533–2327. For obtaining information in Arizona or California contact: Colleen M. Smith, Director, EPA San Diego Border Office, 610 West Ash Street, Suite 703, San Diego, California 92101; Telephone (619) 235–4768; FAX (619) 235–4771.

SUPPLEMENTARY INFORMATION: In addition to copies of the Draft Framework Document, fact sheets on the Border XXI Program and summaries of the domestic meetings held last year may be obtained by contacting the Toll-free number listed above or by contacting one of the following:

EPA Border Office—El Paso: 4050 Rio Bravo, Suite 100, El Paso, Texas 79902; Telephone (915) 533–7273; FAX (915) 533–2327. Office Hours: 8 a.m.–5:30 p.m.

EPA Border Office—San Diego: 610 West Ash Street, Suite 703, San Diego, California 92101; Telephone (619) 235–4765; FAX (619) 235–4771. Office Hours: 8 a.m.–5 p.m.

U.S. EPA Public Information Center, 401 M Street, SW., Washington DC 20460; Telephone (202) 260–2080; FAX (202) 260–6257. Office Hours: 8 a.m.–5:30 p.m.

EPA Headquarters: EPA Library (INFOTERRA), Room Mall 2904, 401 M Street, SW., Washington, DC 20460. Telephone: (202) 260–5917; FAX (202) 260–3923. Library Hours: 10 a.m.–2 p.m. Telephone Hours: 9 a.m.–3 p.m.

Dated: May 28, 1996.

Alan D. Hecht,

Deputy Assistant Administrator, Office of International Activities.

[FR Doc. 96–14115 Filed 6–4–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket 96–45; DA 96–855]

Federal-State Joint Board on Universal Service, Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On May 29, 1996, Federal Communications Commission released a public notice, as required by law, to announce a meeting of the Federal-State Joint Board on June 5, 1996. The purpose of the notice is to inform the general public of a meeting that will be held by the Federal-State Joint Board on universal service.

FOR FURTHER INFORMATION CONTACT: Jonathan Reel, Accounting and Audits Division, Common Carrier Bureau, at (202) 418–0834.

SUPPLEMENTARY INFORMATION: The Federal-State Joint Board in CC Docket 96–45 will hold an Open Meeting on Wednesday, June 5, 1996 at 12:30 p.m., in Room 856 at 1919 M Street, NW., Washington, DC. At the meeting, the Federal-State Joint Board will hear from a panel of experts addressing universal service issues set forth in Section 254 of the Telecommunications Act.

Federal Communications Commission.

John S. Morabito,

Deputy Chief, Accounting and Audits Division, Common Carrier Bureau.

[FR Doc. 96–14046 Filed 6–4–96; 8:45 am]

BILLING CODE 6712–01–P

Public Safety Wireless Advisory Committee; Steering and Subcommittee Meetings

AGENCIES: The National Telecommunications and Information Administration (NTIA), Larry Irving, Assistant Secretary for Communications and Information, and the Federal Communications Commission (FCC), Reed E. Hundt, Chairman.

ACTION: Notice of the Next Meetings of the Spectrum Requirements, Interoperability, Technology, Operational Requirements and Transition Subcommittees, and the Steering Committee of the Public Safety Wireless Advisory Committee.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, this notice advises interested persons of the next meetings of the five Subcommittees and Steering Committee of the Public Safety Wireless Advisory Committee. The NTIA and the FCC established a Public Safety Wireless Advisory Committee, Subcommittees, and Steering Committee to prepare a final report to advise the NTIA and the FCC on operational, technical and spectrum requirements of Federal, state and local Public Safety entities through the year 2010. All interested parties are invited to attend and to participate in the next round of meetings of the Subcommittees and the Steering Committee.

DATES: June 25, 26, 27, 1996.

ADDRESSES: Postal Square Museum Building, 2 Massachusetts Avenue NE., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: For information regarding the Subcommittees, contact:

Interoperability Subcommittee: James E. Downes at 202–622–1582.

Operational Requirements Subcommittee: Paul H. Wieck at 515–281–5261.

Spectrum Requirements Subcommittee: Richard N. Allen at 703–630–6617.

Technology Subcommittee: Alfred Mello at 401–738–2220.

Transition Subcommittee: Ronnie Rand at 904–322–2500 or 800–949–2726 ext. 600.

For information regarding accommodations and transportation, contact: Deborah Behlin at 202–418–0650 (phone), 202–418–2643 (fax), or dbehlin@fcc.gov. (e.mail). You may also contact Ms. Behlin for general information concerning the Public Safety Wireless Advisory Committee. Information is also available from the Internet at the Public Safety Wireless Advisory Committee homepage (http://pswac.ntia.doc.gov.).

SUPPLEMENTARY INFORMATION: The Steering Committee and the five Subcommittees of the Public Safety Wireless Advisory Committee will hold consecutive meetings over a three-day period, Tuesday through Thursday, June 25, 26, 27, 1996. The expected arrangement of the meetings, which is subject to change at the time of the meetings, is as follows:

June 25: The Steering Committee meeting will start at 9 a.m.

June 26: The Operational Requirements Subcommittee, the Technology Subcommittee and then the Transition Subcommittee will meet consecutively starting at 9 a.m.

June 27: The Interoperability Subcommittee and then the Spectrum Requirements Subcommittee will meet consecutively starting at 9 a.m.

The tentative agenda for the Steering Committee and each subcommittee meeting is as follows:

1. Welcoming Remarks.
2. Approval of Agenda.
3. Administrative Matters.
4. Work Program/Organization of Work.
5. Meeting Schedule.
6. Agenda for Next Meeting.
7. Other Business.
8. Closing Remarks.

Anyone who is submitting papers, information, or written comments for consideration by the Steering Committee or any of the five subcommittees is asked to bring 100 copies to the meeting.

The tentative schedule and general location of future meetings of the Subcommittees of the Public Safety Wireless Advisory Committee is as follows: September 1996, in Washington, D.C.

The tentative schedule and general location of the next full meeting of the Public Safety Wireless Advisory Committee is: September 1996, in Washington, D.C.

The Co-Designated Federal Officers of the Public Safety Wireless Advisory Committee are William Donald Speights, NTIA, and John J. Borkowski, FCC. For public inspection, a file designated WTB–1 is maintained in the Private Wireless Division of the Wireless Telecommunications Bureau, Federal Communications Commission, Room 8010, 2025 M Street NW., Washington, DC 20554.

Federal Communications Commission.

David E. Horowitz,

Deputy Chief, Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 96–14047 Filed 6–4–96; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 3:00 p.m. on Tuesday, May 28, 1996, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following matters:

Matters relating to the Corporation's corporate and supervisory activities.

Matters relating to the probable failure of an insured depository institution.

Personnel matters.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Joseph H. Neely (Appointive), concurred in by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), Ms. Julie Williams, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(8)(A)(ii), (c)(9)(B), and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and—(c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: May 29, 1996.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 96–14228 Filed 6–3–96; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Radiological Emergency Response Plan (FRERP); Operational Plan; Correction

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Correction to notice.

SUMMARY: This document contains corrections to the Federal Radiological Emergency Response Plan (FRERP) published as a notice in the Federal Register on Wednesday, May 8, 1996 (61 FR 20944). Two figures were inadvertently omitted from that notice.

EFFECTIVE DATE: May 8, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas M. Antush, Operations Division, Response and Recovery Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, telephone (202) 646–3617.

SUPPLEMENTARY INFORMATION:

Background

The notice that is the subject of these corrections gives notice of and publishes the Federal Radiological Emergency Response Plan (FRERP) as the operational plan for Federal agencies to discharge their responsibilities during peacetime radiological emergencies. The FRERP establishes an organized, integrated capability for participating Federal agencies to respond to a wide range of peacetime radiological emergencies. The Plan provides a concept of operations, outlines Federal policies and planning considerations, and specifies authorities and responsibilities of each Federal agency that has a significant role in such emergencies.

Need for Correction

Figure II–1, Notification Process, referred to at 61 FR 20960, *E. Stages of the Federal Response,* 1. Notification, and Figure II–2, Onscene Response Operations Structure, referred to at 61 FR 20961, *E. Stages of the Federal Response,* 3. Response Operations, were inadvertently omitted. These figures depict graphically a process and operations structure important to the notification and response operations stages of the Federal response to a radiological emergency.

John P. Carey,

General Counsel.

Correction of Publication

Accordingly, the publication on May 8, 1996 of the notice, Federal Radiological Emergency Response Plan (FRERP); Operational Plan, which was the subject of FR Doc. 96–11313, is corrected by inserting on 61 FR 20962 before Appendix A the following figures:

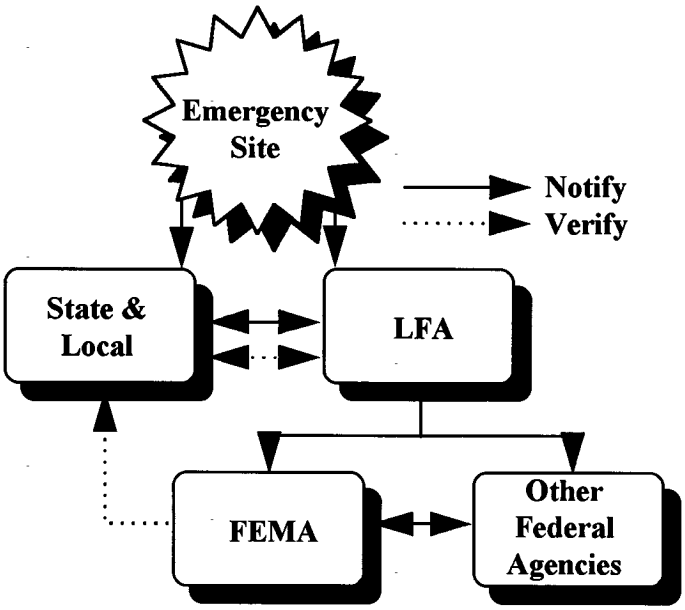

Figure II-1. Notification Process

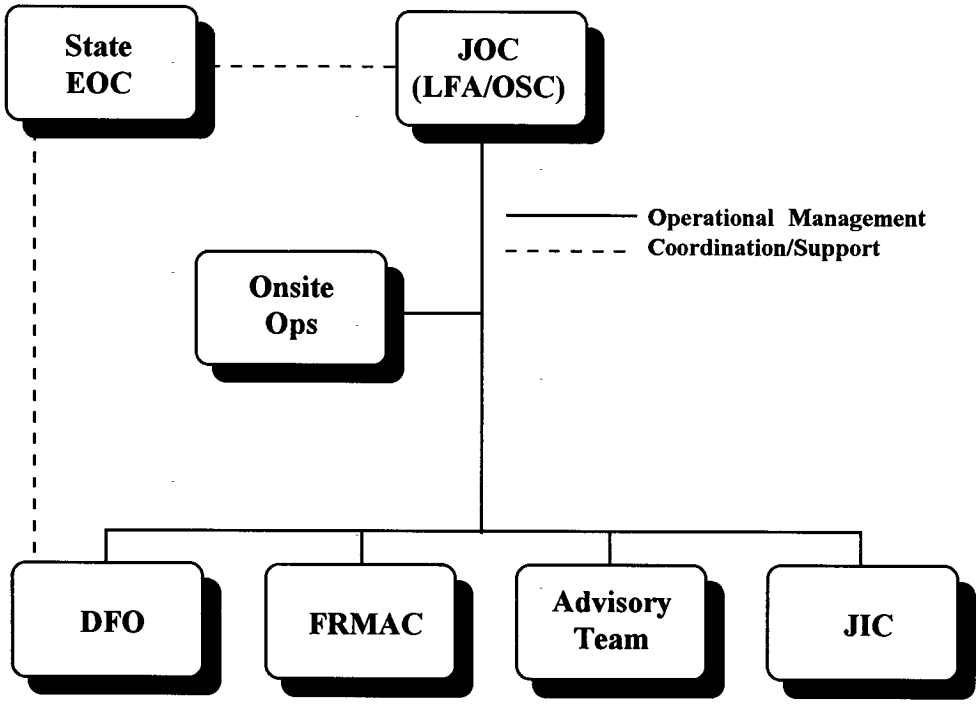

Figure II-2. Onscene Response Operations Structure

[FR Doc. 96–14005 Filed 6–4–96; 8:45 am]
BILLING CODE 6718–02–C

[Docket No. FEMA–REP–4–TN–2]

Tennessee Multi-Jurisdictional Radiological Emergency Response Plan for the Watts Bar Nuclear Plant

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: FEMA gives notice of receipt of the Tennessee Multi-Jurisdictional Radiological Emergency Response Plan for the Watts Bar Nuclear Plant. This plan supports a nuclear power plant that has impacts on the State of Tennessee, and includes plans for local governments near the Tennessee Valley Authority's Watts Bar Nuclear Plant located in Rhea County, Tennessee.

DATES: FEMA received the plan on April 12, 1996. We invite comments on the entire plan or portions of it, which must be received on or before July 5, 1996.

ADDRESSES: Please send any comments to Kenneth D. Hutchison, Regional Director, FEMA Region IV, 1371 Peachtree Street NE., Atlanta, GA 30309, (facsimile) (404) 853–4230 *and* to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (facsimile) (202) 646–4536. Please refer to Docket No. FEMA–REP–4–TN–2.

FOR FURTHER INFORMATION CONTACT: Kenneth D. Hutchison, Regional Director, FEMA Region IV, 1371 Peachtree Street NE., Atlanta, GA 30309, (404) 853–4200. Please refer to Docket No. FEMA–REP–4–TN–2.

SUPPLEMENTARY INFORMATION: Pursuant to 44 CFR Part 350.8, ''Review and Approval of State Radiological Emergency Plans and Preparedness'', the State of Tennessee Multi-Jurisdictional Radiological Emergency Response Plan for the Watts Bar Nuclear Plant was received by the Federal Emergency Management Agency Region IV office on April 12, 1996.

The Tennessee Multi-Jurisdictional Radiological Emergency Response Plan for the Watts Bar Nuclear Plant contains plans for local governments that are wholly or partially within the plume exposure pathway emergency planning zones of the Watts Bar Nuclear Plant, including plans for Rhea, Meigs, McMinn, Hamilton, Cumberland and Roane Counties.

Copies of the plan are available for review at the FEMA Region IV office, or are available upon request in accordance with the fee schedule for FEMA Freedom of Information Act requests, as set out in subpart C of 44 CFR Part 5. There are 1434 pages in the Tennessee plan; reproduction fees are $0.10 per page, payable with the request for copy.

Under 44 CFR 350.10, which requires a public meeting on the plan before it is approved by FEMA, FEMA held a public meeting at the Sweetwater Hotel, Sweetwater, Tennessee, on November 16, 1995.

Dated: May 24, 1996.

Kenneth D. Hutchison,

Regional Director, FEMA Region IV.

[FR Doc. 96–13988 Filed 6–4–96; 8:45 am]

BILLING CODE 6718–06–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have 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 the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 20, 1996.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Kosman, Inc., Scottsbluff, Nebraska, to acquire a total of 23.0 percent; Henry H. Kosman, Scottsbluff, Nebraska, to acquire a total of 23.6 percent; Dianna L. Kosman, Alachua, Florida, to acquire a total of 23.6 percent; and Ann K. Burkholder, Cozad, Nebraska, to acquire a total of 23.6 percent, of the voting shares of FirstMorrill Co., Morrill, Nebraska, and thereby indirectly acquire First National Bank in Morrill, Morrill, Nebraska.

Board of Governors of the Federal Reserve System, May 31, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–14153 Filed 6–4–96; 8:45 am]

BILLING CODE 6210–01–F

Change in Bank Control Notices; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 96-13653) published on page 27352 of the issue for Friday, May 31, 1996.

Under the Federal Reserve Bank of Minneapolis heading, the entry for Peterka Family Partnership, Miller, South Dakota, is revised to read as follows:

1. Peterka Family Partnership, Miller, South Dakota; to become a bank holding company by acquiring 36.87 percent of the voting shares of M&H Financial Services, Inc., Miller, South Dakota, and thereby indirectly acquire First State Bank of Miller, Miller, South Dakota.

Comments on this application must be received by June 24, 1996.

Board of Governors of the Federal Reserve System, May 31, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–14154 Filed 6–4–96; 8:45 am]

BILLING CODE 6210–01–F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are 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 standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company 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'' (12 U.S.C. 1843). Any request for a hearing 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, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 28, 1996.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Assabet Valley Bancorp, Hudson, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Hudson Savings Bank, Hudson, Massachusetts.

2. UFS Bancorp, Whitinsville, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of UniBank for Savings, Whitinsville, Massachusetts.

B. Federal Reserve Bank of New York (Christopher J. McCurdy, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. HUBCO, Inc., Mahwah, New Jersey; to merge with Hometown Bancorporation, Inc., Darien, Connecticut, and thereby indirectly acquire The Bank of Darien, Darien, Connecticut.

2. Toronto-Dominion Bank, Toronto, Canada, and TD/Oak, Inc., New York, New York; to become bank holding companies by acquiring up to 100 percent of the voting shares of Waterhouse Investor Services, Inc., New York, New York, and thereby indirectly acquire Waterhouse National Bank, White Plains, New York.

In addition, Toronto-Dominion Bank, Toronto, Canada, also has applied to acquire up to 6.9 percent of the voting shares of Waterhouse Investor Services, Inc., New York, New York, and thereby indirectly acquire Waterhouse National Bank, White Plains, New York.

In connection with this application, Applicants also have applied to acquire Waterhouse Securities New York, Inc., and thereby indirectly acquire Washington Discount Brokerage Corp., both of New York, and thereby engage in securities brokerage services restricted to buying and selling securities solely as agent for the account of customers, pursuant to § 225.25(b)(15)(i) of the Board's Regulation Y; in providing execution, clearing and other services incidental to brokerage, for affiliates and for third-parties, pursuant to § 225.25(b)(15)(i) of the Board's Regulation Y; in the purchase and sale of securities on the order of customers as riskless principal, pursuant to authority granted in previous Board Orders (*Bankers Trust New York Corp.*, 75 Fed. Res. Bull. 829); and in software development activities incidental to its securities brokerage business, pursuant to §§ 225.25(b)(7)&(15) of the Board's Regulation Y, through the acquisition of a 50 percent interest in a joint venture, Marketware International, Inc.

C. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Fidelity National Corporation, Decatur, Georgia; to acquire 100 percent of the voting shares of Friendship Community Bank, Ocala, Florida.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Citizens Holding Corporation ESOP, Keenesburg, Colorado; to acquire up to 35 percent of the voting shares of Citizens State Bank, Keenesburg, Colorado.

E. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Oakwood Bancshares, Inc., Roanoke, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Oakwood Nevada Financial Corporation, Reno, Nevada, and thereby indirectly acquire Oakwood National Bank, Westlake, Texas, a *de novo* bank.

In connection with this application, Oakwood Nevada Financial Corporation, Reno, Nevada, also has applied to become a bank holding company by acquiring 100 percent of the voting shares of Oakwood National Bank, Westlake, Texas a *de novo* bank.

F. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Frontier Financial Corporation, Everett, Washington; to acquire 9.9 percent of the voting shares of Washington Banking Company, Oak Harbor, Washington (formerly known as Western Washington Bancorp.), and thereby indirectly acquire Whidbey Island Bank, Coupeville, Washington.

Board of Governors of the Federal Reserve System, May 30, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–14029 Filed 6–4–96; 8:45 am]

BILLING CODE 6210–01–F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are 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 standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company 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'' (12 U.S.C. 1843). Any request for a hearing 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, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank

indicated or the offices of the Board of Governors not later than July 1, 1996.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Appalachian Bancshares, Inc., Ellijay, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Gilmer County Bank, Ellijay, Georgia.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Platte Valley Banc, Inc., Scottsbluff, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of Platte Valley National Bank, Scottsbluff, Nebraska, a *de novo* bank.

Board of Governors of the Federal Reserve System, May 31, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–14152 Filed 6–4–96; 8:45 am]

BILLING CODE 6210–01–F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for 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 on the question whether the proposal complies with the standards of section 4 of the BHC Act, including 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'' (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 19, 1996.

A. Federal Reserve Bank of Cleveland (R. Chris Moore, Senior Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. BancFirst Ohio Corp., Zanesville, Ohio; to acquire County Savings Bank, Newark, Ohio, 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 Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Southwest Financial Group of Iowa, Inc., Red Oak, Iowa; to engage *de novo* in making and servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 30, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–14030 Filed 6–4–96; 8:45 am]

BILLING CODE 6210–01–F

Consumer Advisory Council; Notice of Meeting of Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, June 27. The meeting, which will be open to public observation, will take place in Terrace Room E of the Martin Building. The meeting is expected to begin at 9:00 a.m. and to continue until 4:00 p.m., with a lunch break from 1:00 p.m. until 2:30 p.m. The Martin Building is located on C Street, Northwest, between 20th and 21st Streets in Washington, D.C.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under the Consumer Credit Protection Act and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

Home Equity Lines of Credit. Discussion led by the Consumer Credit Committee on the Board's upcoming report to Congress on whether the Truth in Lending Act cost disclosure and other rules for home equity lines of credit provide adequate consumer protections. The Board's report may include suggestions for legislative revisions.

Community Reinvestment Act Reform. Discussion led by the Bank Regulation Committee on the results of the small bank examinations conducted since the implementation of revised CRA regulations.

Interim Report on Streamlining Mortgage Loan Closing Process. Discussion led by the Community Affairs and Housing Committee on its efforts, jointly with the Consumer Credit Committee, to identify and recommend areas to streamline the mortgage closing paperwork process.

Regulatory Coverage for Stored-Value Cards and Electronic Banking. Discussion led by the Depository and Delivery Systems Committee on the proposal by the Federal Reserve Board to exempt many types of stored-value cards from consumer protections included in Regulation E.

Governor's Report. Report by Federal Reserve Board Member Lawrence B. Lindsey on economic conditions, recent Board initiatives, and issues of concern, with an opportunity for questions from Council members.

Members Forum. Presentation of individual Council members' views on the economic conditions present within their industries or local economies.

Committee Reports. Reports from Council committees on their work for 1996.

Other matters previously considered by the Council or initiated by Council members also may be discussed.

Persons wishing to submit to the Council their views regarding any of the above topics may do so by sending written statements to Deanna Aday-Keller, Secretary, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Comments must be of a quality suitable for reproduction.

Information with regard to this meeting may be obtained from Ms. Aday-Keller, 202-452-6470. Telecommunications Device for the Deaf (TDD) users may contact Dorothea Thompson, 202-452-3544.

Board of Governors of the Federal Reserve System, May 30, 1996.

William W. Wiles,

Secretary of the Board

[FR Doc. 96–14052 Filed 6–4–96; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 050696 AND 051796

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
K–III Communications Corporation, Westcott Communications, Inc., Westcott Communications, Inc	96–1727	05/06/96
Palmer Communications Incorporated, Horizon Cellular Telephone Company, L.P., Horizon Cellular Telephone Company of Spalding, L.P	96–1731	06/07/96
Hayes Wheels International, Inc., Joseph Littlejohn & Levy Fund II, L.P., MWC Holdings, Inc	96–1612	05/07/96
Joseph Littlejohn & Levy Fund II, L.P., Hayes Wheels International, Inc., Hayes Wheels International, Inc	96–1613	05/07/96
TSG Capital Fund II, L.P., Hayes Wheels International, Inc., Hayes Wheels International, Inc	96–1622	05/07/96
Canadian Imperial Bank of Commerce, Hayes Wheels International, Inc., Hayes Wheels International, Inc	96–1623	05/07/96
Mohawk Industries, Inc., J. Chadwick McEntire, Fiber One, Inc	96–1701	05/07/96
Bankers Trust New York Corporation, Homer Tolliver, Acutus Holdings, Incorporated	96–1702	05/07/96
Warburg, Pincus Capital Company, L.P., Keepco II, Keepco II	96–1710	05/07/96
Warburg, Pincus Capital Company, L.P., Keepco I, Keepco I	96–1711	05/07/96
Mason Best Company, L.P., Tracor, Inc., Tracor, Inc	96–1715	05/07/96
Robert M. Davidson and Janice G. Davidson, CUC International Inc., CUC International Inc	96–1717	05/07/96
CUC International Inc., Robert M. Davidson and Janice G. Davidson, Davidson & Associates, Inc	96–1718	05/07/96
Union Camp Corporation, The Alling & Cory Company, The Alling & Cory Company	96–1719	05/07/96
Warburg, Pincus Capital Company, L.P., Panavision International, L.P., Panavision International, L.P	96–1721	05/07/96
Telephone and Data Systems, Inc. Voting Trust, Nelson-Ball Ground Telephone Holding, Inc., Nelson-Ball Ground Telephone Holding, Inc	96–1557	05/08/96
John Hancock Mutual Life Insurance Co., Willamette Industries, Inc., Willamette Industries, Inc	96–1561	05/08/96
Rockwell International Corporation, Intercolor Corporation, Intercolor Corporation	96–1565	05/08/96
Welsh, Carson, Anderson & Stowe VII, L.P., Global Financial Information Corporation, Global Financial Information Corporation	96–1628	05/08/96
Heritage Media Corporation, EZ Communications, Inc., Professional Broadcasting, Inc	96–1692	05/08/96
EZ Communications, Inc., Heritage Media Corporation, Heritage Media, Inc	96–1693	05/08/96
Clear Channel Communications, Inc., Tomlin Family Trust II, Stephen I. Burr Esq., Trustee, Roy H. Park Broadcasting of Virginia, Inc	96–1699	05/08/96
Clear Channel Communications, Inc., Dr. Gary B. Knapp, Roy H. Park Broadcasting of Virginia, Inc	96–1700	05/08/96
Hellman & Friedman Capital Partners III, L.P., Advanstar Holdings, Inc., Advanstar Holdings, Inc	96–1704	05/08/96
Tyler Capital Fund, L.P., Niagara Envelope Company, Inc., Niagara Envelope Company, Inc	96–1724	05/08/96
Nichols Research Corporation, Advanced Marine Enterprises, Inc., Advanced Marine Enterprises, Inc	96–1746	05/08/96
Roundy's, Inc. Voting Trust, Rindt Enterprises, Inc., Rindt Enterprises, Inc	96–1748	05/08/96
Ruddick Corporation, Daniel K. Frierson, Dixie Yarns, Inc	96–1262	05/09/96
Columbia/HCA Healthcare Corporation, Pasadena Healthcare Management, Inc., Southmore Medical Center, Ltd	96–1575	05/09/96
Computer Associates International Inc., Digital Equipment Corporation, Digital Equipment Corporation	96–1631	05/09/96
Scientific-Atlanta, Inc., Amoco Corporation, ATx Telecom Systems, Inc	96–1660	05/09/96
Tenet Healthcare Corporation, Versacare, Inc., Tenet Hialeah Health System, Inc	96–1674	05/09/96
Protective Life Corporation, American General Corporation, The Franklin Life Insurance Company	96–1667	05/10/96
Corporate Express, Inc., ASAP Software Express, Inc., ASAP Software Express, Inc	96–1729	05/10/96
Automobile Club of Southern California, American Automobile Association, American Automobile Association	96–1740	05/10/96
Sony Corporation, The News Corporation Limited, Etak, Inc	96–1744	05/10/96
North Dakota Telephone Company, US WEST, Inc., US WEST Communications, Inc	96–1713	05/14/96
West River Telecommunications Cooperative, US WEST, Inc., US WEST Communications, Inc	96–1720	05/14/96
Discovery Communications, Inc., CML Group, Inc., The Nature Company and The Nature Company International	96–1745	05/14/96
Furnishings International Inc., Masco Corporation, Masco Corporation's Home Furnishings Group	96–1747	05/14/96
Alusuisse-Lonza Holding Ltd., Mebane Packaging Group, Inc., Mebane Packaging Group, Inc	96–1749	05/14/96
PacifiCorp, GTE Corporation, GTE North Incorporated	96–1750	05/14/96
Ford Motor Company, Fleetwood Enterprises, Inc., Fleetwood Credit Corp	96–1751	05/14/96
Allegheny Power System, Inc., DQE, Inc., Duquesne Light Company	96–1753	05/14/96
Genstar Capital Partners II, L.P., Domtar Inc. (a Canadian corporation), Domtar Industries Inc./The Melamine Group, Inc	96–1763	05/14/96
American Radio Systems Corporation, Howard P. Tanger, Marlin Broadcasting, Inc	96–1765	05/14/96
The Titan Corporation, Jack D. Witt, Eldyne, Unidyne & assets of Diversified Control Systems	96–1766	05/14/96
Roper Industries, Inc., Fluid Metering, Inc., Fluid Metering, Inc	96–1769	05/14/96
Questor Partners Fund, L.P., Anacomp, Inc., Anacomp, Inc	96–1773	05/14/96
Long Reach Holdings, Inc., Tredegar Industries, Inc., Brudi, Inc	96–1774	05/14/96

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 050696 AND 051796—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Palmer Communications Incorporated, Telephone and Data Systems, Inc., Voting Trust, USCOC of Georgia RSA #1, Inc	96–1775	05/14/96
Seacor Holdings, Inc., McCall Enterprises Inc., McCall Enterprises Inc	96–1776	05/14/96
Golder, Thoma, Cressey, Rauner Fund IV, L.P., Scott L. Sumsion, Valley Asphalt, Inc	96–1782	05/14/96
ASEA AB, Itochu Corporation (a Japanese corporation), Kalaeloa Partners, L.P	96–1785	05/14/96
BBC Brown Boveri Ltd., Itochu Corporation (a Japanese corporation), Kalaeloa Partners, L.P	96–1786	05/14/96
Golder, Thoma, Cressey, Rauner Fund IV, L.P., Brent R. Sumsion, Valley Asphalt, Inc	96–1794	05/14/96
BWAY Corporation, Crown Cork & Seal Company, Inc., Davies Can Division of Van Dorn Company	96–1795	05/14/96
Warburg, Pincus Investors, L.P., AGRA Industries Limited, Contain-A-Way Holdings, Inc	96–1797	05/14/96
Sumitomo Corporation, Komatsu Ltd. (a Japanese company), Linder Industrial Machinery Company	96–1798	05/14/96
Sara Lee Corporation, Ralph Lauren, Polo Ralph Lauren, L.P	96–1799	05/14/96
Louisiana-Pacific Corporation, Richard L. and Mary M. Rosenberg, Associated Chemists, Inc	96–1801	05/14/96
The Robert Rosenkranz Trust, Acadia Partner, L.P., BMK Acquisition, Inc	96–1802	05/14/96
LG Information & Communications, Inc., Allen Salmasi, Next Wave Telecom Inc	96–1803	05/14/96
Berkshire Hathaway Inc., Kansas Bankers Surety Company, Kansas Bankers Surety Company	96–1810	05/14/96
Great Lakes Chemical Corporation, Nowsco Well Service Ltd., Nowsco Well Service Ltd	96–1820	05/14/96
Tyco International Ltd., Nashua Corporation, Nashua Tape Products Division	96–1651	05/15/96
General Instrument Corporation, Compression Labs, Incorporated, Broadcast Products Group of CLI	96–1679	05/15/96
H&R Block, Inc., Kenton and GrayNell Richard, Bay Colony, Ltd	96–1698	05/15/96
Alusuisse-Lonza Holding, Ltd., Wheaton Inc., Wheaton Inc	96–1777	05/15/96
TBC Corporation, Big O Tires, Inc., Big O Tires, Inc	96–1800	05/15/96
Sinclair Broadcast Group, Inc., River City Broadcasting, L.P., River City Broadcasting, L.P	96–1861	05/15/96
Thermo Electron Corporation, XRE Corporation, XRE Corporation	96–1615	05/16/96
World Color Press, Inc., Verlags A.G., Krueger Acquisition Corporation	96–1705	05/16/96
Baker, Fentress & Company, Mr. John A. Levin, John A. Levin & Co., Inc	96–1725	05/16/96
John A. Levin, Baker, Fentress & Company, Baker, Fentress & Company	96–1726	05/16/96
Battle Mountain Gold Company, Hemlo Gold Mines Inc., Hemlo Gold Mines Inc	96–1736	05/16/96
Meridian Insurance Group, Inc., Citizens Security Mutual Insurance Company, Citizens Security Group, Inc	96–1768	05/16/96
Circle Investors, Inc., J. Steven Wilson, Secures Financial Corporation	96–1695	05/17/96
Noranda Inc., Battle Mountain Gold Inc., Battle Mountain Canada Holdco Inc	96–1737	05/17/96
Exor Group S.A. Kenneth D. Lewis, KSQ Blowmolding, Engineering, Manufacturing, Inc	96–1783	05/17/96
Blackstone Capital Partners II Merchant Banking Fund LP, GS Capital Partners II, L.P., AMF Holdings Inc	96–1796	05/17/96
Robert R. Dyson, Bucilla Corporation, Bucilla Corporation	96–1809	05/17/96
Siemens Aktiengesellschaft, Ted Davis, Ted's Restorations, Inc	96–1813	05/17/96
ReSound Corporation, Minnesota Mining & Manufacturing Company, Minnesota Mining & Manufacturing Company	96–1818	05/17/96
CRH plc, Herbert Smilowitz, Allied Building Products Corp	96–1821	05/17/96
AMNEX, Inc., Robert A. Rowland, Capital Network Systems, Inc	96–1826	05/17/96
Aurora Equity Partners L.P., Larry Ross Weinberger, Larry Ross Advertising, Inc., Staten Island Publication	96–1832	05/17/96
Vanstar Corporation, Dataflex Corporation, Dataflex Southwest Corporation	96–1834	05/17/96
Richard E. Rainwater, MESA Inc., MESA Inc	96–1835	05/17/96
Stonington Capital Appreciation 1994 Fund, L.P., Rockwell International Corporation, Rockwell International Corporation	96–1838	05/17/96
Sinclair Broadcast Group, Inc., ABRY Communications III, L.P.,Kansas City 62 TV Limited Partnership	96–1841	05/17/96
Howard P. Tanger, American Radio Systems Corporation, Marlin Broadcasting of Miami, Inc	96–1842	05/17/96
Fred's, Inc. Rose's Stores, Inc	96–1847	05/17/96
FMR Corp, Wagner Stott Mercator Partners, L.P., Wagner Stott Mercator Partners. L.P	96–1854	05/17/96

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 96–14049 Filed 6–4–96; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Notice of Availability of Draft Environmental Assessment

The General Services Administration (GSA) has filed with the Environmental Protection Agency and made available to other governmental and private bodies a draft environmental assessment of the proposed construction of a building on or near the National Mall in Washington, DC, to house the National Museum of Health and Medicine.

The National Museum of Health and Medicine (NMHM) is a component of the Armed Forces Institute of Pathology (AFIP) of the Department of Defense (DOD). It is currently located at the Walter Reed Army Medical Center in Northwest Washington, DC.

Agencies and the public are invited and encouraged to provide written comments on this document and/or proposed project. All comments must be received by June 30, 1996. Written comments should be sent to:

General Services Administration, National Capital Region, Portfolio Management Division (WPT), Seventh and D Streets, SW., Room 7618, Washington, DC 20407, Attention: Frank T. Thomas

Additional copies of the Draft EA are available for public inspection at the following locations:

1. General Services Administration, National Capital Region, Bid Room, Room 1701, 7th and D Streets, SW., Washington, DC 20407
2. Martin Luther King Jr., Memorial Library, 901 G Street, NW., Washington, DC
3. Southwest Branch Library, 7th and D Streets, SE., Washington, DC

If you have further questions on this project or would like to obtain a copy of the Draft Environmental Assessment, please contact Mr. Brian Peper, Project Officer, NCR Property Development Division, at (202) 708–7248.

Dated: May 28, 1996.

Linda Eastman,

Director, NCR Portfolio Management (WPT).

[FR Doc. 96–14008 Filed 6–4–96; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Institute for Occupational Safety and Health: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Board of Scientific Counselors, National Institute for Occupational Safety and Health (BSC, NIOSH).

Time and Date: 9 a.m.–4 p.m., July 9, 1996.

Place: The Washington Court Hotel, Montpelier Room, 525 New Jersey Avenue NW., Washington, DC 20001.

Status: Open to the public, limited only by the space available.

Purpose: The Board reviews research activities to provide guidance on the quality, timeliness, and efficacy of the Institute's programs.

Matters to be Discussed: Agenda items include a report from the Director of NIOSH, implementation of the National Occupational Research Agenda, update on Musculoskeletal Program Evaluation, Research/Capacity Building in Developing Countries (and other international occupational safety and health activities), and future activities of the Board.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Bryan Hardin, Ph.D., Acting Executive Secretary, BSC, NIOSH, and Acting Deputy Director, NIOSH, CDC, 1600 Clifton Road NE., M/S D–35, Atlanta, GA 30333, telephone 404/639–3773.

Dated: May 30, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–14035 Filed 6–4–96; 8:45 am]

BILLING CODE 4163–19–M

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Fernald Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites: Fernald Health Effects Subcommittee.

Times and Dates: 9 a.m.–4 p.m., June 12, 1996. 9 a.m.–12 noon, June 13, 1996.

Place: Sheraton Springdale Hotel, 11911 Sheraton Lane, Springdale, Ohio 45246, telephone 513/671–6600, FAX 513/671–0507.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, an MOU was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR'S public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at respective DOE sites. The purpose of this meeting is to provide a forum for community, and labor interaction and serve as a vehicle for community concern to be expressed as advice and recommendations to CDC and ATSDR.

Matters to be Discussed: Agenda items include: presentations from the National Center for Environmental Health (NCEH) regarding current activities; the National Institute for Occupational Safety and Health, and ATSDR, will address the progress of current studies; and Radiologic Assessments Corporation will present an update of the Fernald Dose Reconstruction.

Agenda items are subject to change as priorities dictate.

Contact Persons for more Information: Steven A. Adams or Nadine Dickerson, Radiation Studies Branch, Division of Environmental Hazards and Health, NCEH, CDC, 4770 Buford Highway, NE., (F–35), Atlanta, Georgia 30341–3724, telephone 770/488–7040, FAX 770/488–7044.

Due to difficulty in location of meeting facility, this notice is being published less than 15 days prior to the meeting.

Dated: May 30, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 96–14034 Filed 6–4–96; 8:45 am]

BILLING CODE 4163–18–M

Scientific and Technical Meeting on Occupational Exposure to Asphalt During Paving Operation

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Scientific and Technical Meeting on Occupational Exposure to Asphalt During Paving Operations.

Times and Dates: 12 noon–5 p.m., July 8, 1996. 8:30 a.m.–5 p.m., July 9, 1996. 8:30 a.m.–12 noon, July 10, 1996.

Place: The Omni Netherland Plaza Hotel, Landmark Center Meeting Room, 5th and Race Streets, Cincinnati, Ohio 45202.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 250 people.

Purpose: NIOSH is planning to convene a public meeting to discuss the scientific and technical issues relevant to the development of recommendations for controlling occupational exposures to asphalt during asphalt paving operations.

NIOSH is convening a panel of individuals knowledgeable of the potential health effects and of current control technologies of asphalt exposure. The panel will be asked to prescribe the types of remedial action (e.g., engineering controls, exposure limit) that may be needed to protect workers' health. The goal of the meeting is to seek the widespread support of the participants in identifying and resolving issues relevant to reducing exposure to asphalt. However,

NIOSH retains the responsibility for developing the conclusions and recommendations in the final document. The public is invited to attend and comment on the deliberations of this meeting.

NIOSH plans to hold a similar meeting at a later date to discuss the scientific and technical issues relevant to controlling exposures to asphalt during asphalt roofing operations.

Contact Persons for Additional Information: Technical information may be obtained from Ralph Zumwalde, NIOSH, CDC, 4676 Columbia Parkway, M/S C–32, Cincinnati, Ohio, 45226, telephone 513/533–8319, e-mail address: rdzl@NIOSDT1.em.cdc.gov.

Persons wishing to attend the meeting, obtain a copy of the draft document, or reserve overnight accommodations at the Omni Netherland Plaza Hotel, should respond by close of business June 31, 1996, to Kellie Wilson, NIOSH, 4676 Columbia Parkway, M/S C–34, Cincinnati, Ohio 45226, telephone 513/533–8362, fax 513/533–8285, e-mail address: kmp0@NIOSDT1.em.cdc.gov.

Persons interested in providing comments on the draft document should submit comments by close of business June 17, 1996, to Diane Manning, NIOSH Docket Office, 4676 Columbia Parkway, M/S C–34, Cincinnati, Ohio 45226. Information may also be obtained by calling 1–800–35–NIOSH or by the Internet NIOSH Homepage: http:/www.cdc.gov/niosh/homepage.html.

Dated: May 29, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–14050 Filed 6–4–96; 8:45 am]

BILLING CODE 4160–19–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4066–N–02]

Office of Administration; Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration (HUD).

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: The due date for comments is June 12, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received with 7 days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, an information collection package with respect to a proposed ''Application Kit for the Tenant Opportunities Program'' (TOP).

The TOP Program meets the needs in many communities for business development, education, job training and development, social services, and opportunities for other self-help initiatives. The program enables resident entities to establish priorities, based on the efforts in their public and Indian housing communities, that are aimed at furthering economic lift and independence. Financial assistance in the form of technical assistance grants is provided by the Secretary to resident grantees to prepare for management activities in their housing development. The TOP technical assistance grants are available for ''the development of resident management entities, including the formation of such entities, the development of the management capability of newly formed or existing entities, the identification of the social support needs of residents of public housing projects and the securing of such support.''

Residents may use TOP technical assistance grants for training related to any TOP initiative. The results from organizations in training have been significant and multifaceted. For example, resident-managed activities have resulted in economic development, resident self-sufficiency, improved living conditions, and enhanced social services for residents (i.e., child care and other youth projects). TOP will provide public and Indian housing residents the opportunity to be trained and move toward responsible roles in their communities. The training will aim to enhance the functioning of the resident council as well as develop skills to engage in resident-managed activities in its community.

The TOP offers the Basic and Additional technical assistance grants to Resident Councils (RCs)/Resident Management Corporations (RMCs)/Resident Organizations (ROs) and National Resident Organizations (NROs)/Regional Resident Organizations (RROs) and Statewide Resident Organizations (SROs). The grants are awarded on a competitive basis and the maximum amount is $100,000 per project.

To appropriately determine which RCs/RMCs/ROs and NROs/RROs/SROs should be awarded a Tenant Opportunities Program Technical Assistance Grant (TOP/TAG), all applicants must complete certain information to be eligible for funding.

The Department has submitted the proposal for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Department has requested emergency clearance of the collection of information, as described below, with approval being sought by June 3, 1996:

(1) Title of the information collection proposal:

Application Kit—Tenant Opportunities Program

(2) Summary of the collection of information:

Each respondent seeking to obtain a TOP technical assistance grant would be required to submit current information, as listed below as:

1. Fact Sheet—information about the respondent: name, address, telephone, the local housing authority information, and elected Board information.

2. Work Plan/Training Programs/Budget Requirements—an outline of the TOP activities/timeframes/costs of accomplishing the RCs/RMCs/ROs goals within 3–5 years. Criteria—rating factors established for the Basic, Additional and NROs/RROs/SROs applicants.

5. Form S.F. 424—Application for Federal Assistance.

6. Form S.F. 424A—Budget Information—Non-Construction Programs.

7. HUD 2880—Applicant/Recipient Dislcosure/Update Report.

8. S.F. LLL–A—Disclosure of Lobbying Activities.

9. Certification Assurances with applicable Federal requirements.

10. Certification Regarding Drug-Free workplace Requirements.

11. Other documentation (Certification of RC/RMC Board Election, Resolution of Agreement to Comply with HUD Terms and Conditions for Technical Assistance, and Other Funding Sources).

12. Form HUD–52370—Tenant Opportunities Semi-Annual Report.

13. Form HUD–52371—Tenant Opportunities Program Consultant Application.

(3) Description of the need for the information and its proposed use:

To appropriately determine which RCs/RMCs/ROs and NROs/RROs/SROs should be awarded the TOP/TAG, certain information is necessary as stated in the TOP Notice of Funding Availability.

(4) Description of the likely respondents, and proposed frequency of response to the collection of information:

Respondents will be RCs/RMCs/ROs and NROs/RROs/SROs.

The estimated number of respondents is 1,500. The proposed frequency of the response to the collection of information is one-time.

(5) Estimate of the total reporting and recordkeeping burden that will result form the collection of information:

Reporting Burden:

Number of respondents: 1,500

Total burden hours: 19,400

(@ 0.5 hours per response): 5

Total Estimated Burden Hours: 19,400

Authority: Sec. 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 29, 1996.

David S. Cristy,

Director, IRM Policy and Management Division.

[FR Doc. 96–14100 Filed 6–4–96; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–320–1330–01–24 1A]

RIN 1004–0103

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposed renewal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On February 27, 1996, BLM published a notice in the Federal Register (61 FR 7272–7273) requesting comment on this proposed collection. The comment period ended on April 29, 1996. BLM received no comment from the public in response to that notice. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the BLM Information Collection Clearance Officer at the telephone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the BLM Information Collection Clearance Officer and to the Office of Management and Budget, Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395–7340.

Title: Mineral Materials Disposal (43 CFR part 3600).

OMB approval number: 1004–0103.

Abstract: The Bureau of Land Management is proposing to renew the approval of an information collection for the rule at 43 CFR part 3600. This rule manages the disposal of mineral materials such as sand, gravel, and petrified wood from public lands by sale or free use. Such disposals are made at the discretion of the Secretary of the Interior. The information that the regulations require an applicant or permittee to submit will be used by the BLM to determine if the disposal of materials is in the public interest, to mitigate environmental impacts of mineral materials development, to get fair market value for the materials sold, and to prevent trespass removal of the materials.

Bureau Form Number: 3600–4 and 3600–5.

Frequency: Generally once; annually for some.

Description of respondents: Individuals or entities who want to purchase or use federally owned mineral materials.

Estimated completion time: 0.25 hour (approx.) or 15 minutes for Form 3600–4; 0.8 hour (approx.) or 50 minutes for Form 3600–5.

Annual responses: 3070.

Annual burden hours: 1560.

Information Collection Clearance Officer: Wendy Spencer, 303–236–6642.

Dated: May 31, 1996.

Ted Hudson,

Acting Chief, Regulatory Management Team.

[FR Doc. 96–14096 Filed 6–4–96; 8:45 am]

BILLING CODE 4130–84–P

[ES–930–06–1320–01–241A; ALES–46611]

Alabama: Notice of Coal Lease Offering; Coal Lease Application ALES 46611

AGENCY: Bureau of Land Management, Interior.

ACTION: Competitive coal lease offering by sealed bid.

SUMMARY: Notice is hereby given that as a result of a Coal Lease Application filed by Drummond Company Incorporated, for the tract below will be offered for competitive lease by sealed bid. This is in accordance with the provisions of the Federal Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq*). The application area consists of private surface with federally-owned coal. The coal tract to be offered is underground-minable, potentially bypass coal. The coal tract is described as the Prescott Tract in the Mary Lee Seam, T. 16 S., R. 6 W., Sec. 30, SWSW, Walker County, Alabama, Huntsville Principal Meridian, containing 40.08 acres more or less. The Prescott Tract will be leased to the highest qualified bidder provided that the high bid equals or exceeds the Fair Market Value (FMV) for the tract as determined by the Authorized Officer. The Department has established a minimum bid of $100.00 per acre for the tract. The minimum bid may not represent the amount for which the tract may actually be leased, since FMV will be determined in a separate postsale analysis.

DATES: The lease sale will be held at 10 a.m. Friday, June 28, 1996. Each bid must be clearly identified on the outside of the sealed envelope containing the bid. The bid should be sent by certified mail, return receipt or be hand delivered on or before 4:30 p.m., Thursday, June 27, 1996 to Bureau of Land Management at the address below. If any bid is received after the time specified it will not be considered.

ADDRESSES: The sale will be held at the Bureau of Land Management, Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153.

SUPPLEMENTARY INFORMATION: Any lease issued as a result of this offering will require an annual rental payment of $3.00 per acre and a royalty payable to the United States of 8.0 percent of the value of the coal mined by underground methods. The value of the coal shall be determined in accordance with 43 CFR 3485.2. Bidding instructions and bidder qualifications are included in the Detailed Statement.

FOR FURTHER INFORMATION CONTACT: Copies of the Detailed Statement and of the proposed coal lease and case file documents are available at the Bureau of Land Management, Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153. Please contact Ida V. Doup at (703) 440–1541.

Dated: May 30, 1996.

Walter Rewinski,

Deputy State Director, Resources Planning, Use and Protection.

[FR Doc. 96–14064 Filed 6–4–96; 8:45 am]

BILLING CODE 4310–HC–M

[NV–930–1990–01; Nev-066123]

Realty Action; Termination of Recreation and Public Purposes (R&PP) Classification; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates R&PP Classification Nev-066123. The associated R&PP lease has expired and the land is now within the Toiyabe National Forest. The termination of this classification is for record-clearing purposes.

EFFECTIVE DATE: June 5, 1996.

FOR FURTHER INFORMATION CONTACT: Carmen Donelson, BLM Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, 702–785–6532.

SUPPLEMENTARY INFORMATION: On March 17, 1966, R&PP Lease Nev-066123 was issued to the Washoe County School District. The lease expired on March 16, 1986, without the land ever being developed. Subsequent to the expiration of the lease, the land was transferred to the Forest Service pursuant to Public Law 100–550. The classification was never terminated.

Pursuant to the R&PP Act of June 14, 1926, as amended (43 U.S.C. 869 et seq.), the regulation contained in 43 CFR 2091.7–1, and the authority delegated by Appendix 1 of the Bureau of Land Management Manual 1203, R&PP Classification Nev-066123 is hereby terminated in its entirety for the following described land:

Mount Diablo Meridian

T. 18 N., R. 19 E.,
Sec. 24, W½SE¼ and SE¼SE¼.

The area described contains 120 acres in Washoe County. The land is within the Toiyabe National Forest and subject to such forms of disposition as may by law be made of National Forest System lands.

Dated: May 31, 1996.

William K. Stowers,

Lands Team Lead.

[FR Doc. 96–14221 Filed 6–4–96; 8:45 am]

BILLING CODE 4310–HC–P

[NV–050–96–1220–00]

Temporary Occupancy and Camping Closure on Certain Public Lands Managed by the Bureau of Land Management, Las Vegas District

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Temporary occupancy and camping closure on selected public lands in Clark County, Nevada.

SUMMARY: The District Manager of the Las Vegas District announces a temporary occupancy and camping closure on selected public lands under its administration.

The increase in population and growth in employment in the Las Vegas area has attracted many short term and transient residents and workers. Many of these individuals set up residence on public lands under the guise of ''camping''. The existing 14 day stay limit has not been effective in correcting this situation. This problem is particularly prone to occur on public lands along State Highway 160. Trash accumulations and human refuse are impacting public lands. This action is being taken to help ensure public safety, prevent unnecessary environmental degradation and prevent long-term occupancy of public lands.

EFFECTIVE DATE: The closure will be effective June 19, 1996. It will remain in effect until final action is taken to establish closures, restrictions, and/or supplementary rules to implement the Resource Management Plan currently under consideration for the Stateline Resource Area, Las Vegas District.

CLOSURE AREA: Public lands within one mile of State Highway 160, from State Highway 160's intersection with Interstate 15 westward to the boundary of the Red Rock Canyon National Conservation Area (RRCNCA); and within one mile of State Highway 159 from its junction with State Highway 160 west to the RRCNCA boundary. These lands all fall within Township 22 South, Ranges 59, 60, and 61 E, Mount Diablo Meridian.

Exceptions to the closure are: Camping locations which may be designated by the Las Vegas District Manager for overnight use. Such designations may be by the posting of appropriate signs, by publication in the Federal Register, or be made available to the public by such other means as deemed most appropriate by the authorized officer.

Closure Restrictions: Unless otherwise authorized, within the closure area no person shall:

a. Camp or engage in camping.

b. Park, stop, or stand personal property, whether attended or unattended, continuously for more than 4 hours.

c. Park any vehicle in violation of posted restrictions, or in such a manner as to obstruct or impede normal or emergency traffic movement, create a safety hazard, or endanger any person, property, or natural feature. Vehicles so parked are subject to citation, and to removal and impoundment at the owner's expense.

d. Take, drive, or operate any vehicle through, around, or beyond a restrictive sign, barricade, fence, or traffic control barrier or device.

e. Fail to follow orders or directions of an authorized officer relating to this closure order.

f. Obstruct, resist, or attempt to elude a law enforcement officer, or fail to follow their orders or directions, relating to this closure order.

Definitions

''Camp'' or ''camping'' means the erecting of a tent or shelter, preparing a sleeping bag or other bedding material for use, or the parking of a vehicle, motor vehicle, motor home, or trailer for the apparent purpose of sleeping or overnight occupancy.

''Personal property'' includes bicycles, vehicles whether propelled by living or non-living power sources, motor vehicles, trailers, tents, campers, pets, and livestock.

Maps depicting the area affected by this closure order are available for public inspection at the Las Vegas District Office, Bureau of Land Management.

This closure order is issued under the authority of 43 CFR 8364.1. Violation of any of the terms, conditions, or restrictions contained within this closure order may subject the violator to citation or arrest, with the penalty of fine or imprisonment as specified by law.

FOR FURTHER INFORMATION CONTACT: Dave Wolf, Recreation Manager; or Randolph August, District Ranger; at the Bureau of Land Management, Las Vegas District Office, 4765 W. Vegas Drive, Las Vegas, NV 89108, telephone (702) 647–5000.

Dated: May 21, 1996.

Michael F. Dwyer,

District Manager.

[FR Doc. 96–14076 Filed 6–4–96; 8:45 am]

BILLING CODE 4310–HC–M

[CO–050–1610–00]

Notice of Availability; Royal Gorge Resource Area Approved Resource Management Plan and Record of Decision

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Canon City District provides announces the availability of the approved Resource Management Plan (RMP) and Record of Decision (ROD) for the Royal Gorge Resource Area. This RMP/ROD supersedes the existing management framework plans and other related documents for managing BLM-administered public lands located in southeastern Colorado. The approved RMP contains decisions for managing 653,000 acres of Federal surface estate and 2,566,000 acres of Federal subsurface mineral estate within Baca, Bent, Chaffee, Crowley, Custer, El Paso, Fremont, Huerfano, Kiowa, Lake, Las Animas, Otero, Park, Prowers, Pueblo and Teller Counties.

DATES: The effective date of the RMP/ROD was May 13, 1996.

ADDRESSES: Copies of the RMP/ROD are available upon request by writing to the Bureau of Land Management, Royal Gorge Resource Area, 3170 East Main Street, Canon City, CO 81212 or by calling (719) 269–8500.

FOR FURTHER INFORMATION CONTACT: Levi Deike, Area Manager or Pete Zwaneveld, Land-Use Planner at the above address and phone number.

SUPPLEMENTARY INFORMATION: The Royal Gorge RMP/ROD is essentially the same as the Royal Gorge Proposed Resource Management Plan and Final Environmental Impact Statement (PRMP). No changes to the proposed decisions have been made. Some clarifying language, however, has been included as a result of four protests that were received on the PRMP. Approval of the plan resulted in the designation of nine Areas of Critical Environmental Concern (ACEC). The following lists the ACECs, the acreage designated, and the area's significant resources: (1) Arkansas Canyonlands—23,921 acres—botanical, cultural, recreational, visual and wildlife resources; (2) Beaver Creek—12,081 acres—recreational, visual and wildlife resources; (3) Browns Canyon—11,697 acres—cultural, recreational, visual and wildlife resources; (4) Cucharas Canyon—1,866 acres—cultural, riparian and visual resources; (5) Droney Gulch—705 acres—sensitive plants; (6) Garden Park—2,728 acres—cultural, paleontological, riparian and wildlife resources and sensitive plants; (7) Grape Creek—15,978 acres—riparian, recreational, visual and wildlife resources; (8) Mosquito Pass—4,036 acres—visual resources and sensitive plants; and (9) Phantom Canyon—6,096 acres—cultural, recreational, riparian, visual and wildlife resources.

Special management will be provided to minimize surface disturbing activities (e.g., motorized vehicle limitations, mineral development restrictions, etc.) that would adversely affect the significant values within these nine areas. Integrated Activity Plans will be prepared to detail these protective measures.

Kenneth L. Smith,

Acting District Manager.

[FR Doc. 96–14009 Filed 6–4–96; 8:45 am]

BILLING CODE 4310–JB–P

[OR–958–0777–54; GP6–0054; OR–51831(WA)]

Proposed Withdrawal and Opportunity for Public Meeting; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 160 acres of public lands and 80 acres of non-Federal lands, to protect the natural and recreational values on seven waterfront tracts, one inland tract, and two islands in the San Juan Archipelago. This notice closes the lands for up to 2 years from surface entry and mining. The public lands have been and will remain open to mineral leasing. Upon acquisition, the non-Federal lands will be opened to the mineral leasing laws.

DATES: Comments and requests for a public meeting must be received by September 3, 1996.

ADDRESSES: Comments and meetings requests should be sent to the Oregon/Washington State Director, BLM, P.O. Box 2965, Portland, Oregon 97208–2965.

FOR FURTHER INFORMATION CONTACT: Betty McCarthy, BLM Oregon/Washington State Office, 503–952–6155.

SUPPLEMENTARY INFORMATION: On April 30, 1996, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public lands and non-Federal lands from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1988)) but not from leasing under the mineral leasing laws, subject to valid existing rights:

Willamette Meridian

Federal Lands

T. 34 N., R.1 W., (Tract H),
Sec. 17, those portions of the south 200 feet of the N½SE¼ and SW¼SE¼ and SE¼SE¼ as more particularly identified and described in the official records of the Bureau of Land Management, Oregon/Washington State Office and the Wenatchee Area Office, Wenatchee, Washington.

T. 34 N., R. 1 W., (Tract J),
Sec. 21, those portions of lot 2 and the SW¼NW¼, TOGETHER with tidelands of the second class abutting thereon as more particularly identified and described in the official records of the Bureau of Land Management, Oregon/Washington State Office and the Wenatchee Area Office, Wenatchee, Washington.

T. 34 N., R.1 W., (Cape St. Mary, Tract L)
Sec. 15, lot 1.

T. 35 N., R.1 W., (Lopez Pass, Tract M)
Sec. 33, lot 1.

T. 36 N., R. 2 E., (Eliza Island, Tract N)
Sec. 5, unsurveyed portion of Eliza Island.

T. 36 N., R. 2 E., (Carter Point, Tract O)
Sec. 6, unsurveyed portion of Lummi Island.

T. 37 N., R. 1 E., (Lummi Rocks, Tract P)
Sec. 27, unsurveyed Lummi Rocks in the NW¼ and SW¼NE¼.

T. 37 N., R. 2 E., (Chuckanut Rock, Tract Q)
Sec. 24, unsurveyed Chuckanut Rock.

The areas described aggregate approximately 160 acres of Federal lands in San Juan and Whatcom Counties, Washington.

Non-Federal Land

Tract I

T. 34 N., R.1 W.,
Sec. 21, lot 1 and NW¼NW¼.

Tract K

T. 34 N., R. 1 W.,
Sec. 21, that portion of lot 2 as more particularly identified and described in the official records of the Bureau of Land Management, Oregon/Washington State Office and the Wenatchee Area Office, Wenatchee, Washington.

The areas described aggregate approximately 80 acres of non-Federal lands in San Juan County, Washington.

The purpose of the proposed withdrawal is to protect the unique natural and recreational values and improvements as to ten tracts of public and non-Federal lands located in the San Juan Islands.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the State Director at the address indicated above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the State Director at the address indicated above within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the Federal Register at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the Federal Register, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary land uses which may be permitted during this segregative period include leases, licenses, permits, rights-of-way, and disposal of mineral or vegetative resources other than under the mining laws.

Dated: May 23, 1996.

Kenneth J. St.Mary,

Acting Chief, Branch of Realty and Records Services.

[FR Doc. 96–14077 Filed 6–4–96; 8:45 am]

BILLING CODE 4310–33–P

National Park Service

General Management Plan, Whiskeytown Unit, California; Notice of Intent To Prepare an Environmental Impact Statement

SUMMARY: The National Park Service will prepare a General Management Plan/Environmental Impact Statement (GMP/EIS) for Whiskeytown Unit, Whiskeytown-Shasta-Trinity National Recreation Area, California and initiate the scoping process for this document. This notice is in accordance with 40 CFR 1501.7 and 40 CFR 1508.22, of the regulations of the President's Council on Environmental Quality for the National Environmental Policy Act of 1969, Public Law 91–190.

BACKGROUND: The purpose of the GMP/EIS will be to state the management philosophy for the unit and provide strategies for addressing major issues facing the area. Two types of strategies will be presented in the GMP: (1) Those required to manage AND preserve cultural and natural resources; and (2) those required to provide for safe, accessible and appropriate use of those resources by visitors. Based on these strategies, the GMP will identify the programs, actions and support facilities needed for their implementation.

Persons wishing to comment or express concerns on the management issues and future management direction of Whiskeytown Unit should address these to the Superintendent, Whiskeytown Unit, P.O. Box 188, Whiskeytown, California 96095. Questions regarding the plan should be addressed to the superintendent either by mail to the above address, or by telephone at (916) 241–6584. Comments on the scoping of the proposed GMP/EIS should be received no later than July 31, 1996.

Three public scoping sessions have been scheduled as follows to receive comments and suggestions:

Date: June 10, 1996

Time: 6:00–10:00 p.m.

Place: Red Lion Inn, 1830 Hilltop Drive, Redding, California

Date: June 11, 1996

Time: 6:00–10:00 p.m.

Place: French Gulch Elementary School, French Gulch, California

Date: June 12, 1996

Time: 6:00–10:00 p.m.

Place: Igo Elementary School, Igo/Ono, California

The responsible official is Stanley T. Albright, Field Director, Pacific West Area, National Park Service. The draft GMP/EIS is expected to be available for public review in early summer 1997, and the final GMP/EIS and Record of Decision completed in late 1997.

Dated: May 16, 1996.

Patricia L. Neubacher,

Acting Field Director, Pacific West Area.

[FR Doc. 96–13996 Filed 6–4–96; 8:45 am]

BILLING CODE 4310–70–P

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 MAY 25, 1996. 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, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by June 20, 1996.

Carol D. Shull,

Keeper of the National Register.

California

San Francisco County

Folger Coffee Company Building,
101 Howard St.,
San Francisco, 96000679

Louisiana

Webster Parish

Downtown Minden Historic District,
Roughly bounded by Monroe, Pine, Main, E. Union, Chevrolet, and Fogle Sts., Minden, 96000680

Nebraska

Jefferson County

Fairbury Rock Island Depot and Freight House,
S side of 2nd St. between I and J Sts.,
Fairbury, 96000681

Platte County

Humphrey City Hall,
407 S. 4th St.,
Humphrey, 96000682

Polk County

Strickland Site,
Approximately 3.5 mi. N of NE 92, 5.7 mi. S and 3 mi W of Silver Cr.,
Silver Creek vicinity, 96000683

New York

Rensselaer County

Delaney Hotel,
Jct. of NY 22 and NY 67,
North Hoosick, 96000684

South Carolina

Beaufort County

Bluffton Historic District,
Roughly bounded by the May River, Huger Cove, and Bridge St.,
Bluffton, 96000686

Charleston County

Porter Military Academy,
175—181 Ashley Ave.,
Charleston, 96000685

Tennessee

Rutherford County

Williamson, Thomas, House,
2263 Little Rock Rd.,
Eagleville vicinity, 96000687

Texas

Hunt County

Hunt County Courthouse,
2500 Lee St.,
Greenville, 96000688

Vermont

Bennington County

East Arlington Village Historic District,
Roughly bounded by Old Mill, Ice Pond, E. Arlington, and Warm Brook Rds., Maple and Pleasant Sts., and the Lane,

Arlington, 96000689

A proposed move is being considered for the following property:

Wisconsin

Dane County

Waunaukee Railroad Depot
Jct. of South and Main Sts.
Waunaukee, 78000092

[FR Doc. 96–13995 Filed 6–4–96; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'')

In accordance with the Department policy, notice is hereby given that a proposed consent decree in *United States* v. *Koppers Industries, Inc., et al*, Civil Action No. 93–10136, was lodged on May 20, 1996 with the United States District Court for the Northern District of Florida. The consent decree resolves the liability under CERCLA of defendants Koppers Industries Inc., Beazer East, Inc., and CSX Transportation, Inc. under section 107 of CERCLA in connection with response actions at the Cabot Carbon/Koppers Superfund Site in Gainesville, Alachua County, Florida. Under the consent decree, the defendants will reimburse the United States for $1,290,071.11 in past response costs and pay oversight costs incurred by the United States in connection with certain response actions being conducted at the site.

The Department of Justice will receive, for a period of thirty days (30) from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Koppers Industries, Inc., et al.*, DOJ Ref. #90–11–2–622A.

The proposed consent decree may be examined at the office of the United States Attorney, 315 South Calhoun Street, Suite 510, Tallahassee, Florida 32301; the Region IV Office of the Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $8.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–14069 Filed 6–4–96; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cable Television Laboratories, Inc.

Notice is hereby given that, on August 2, 1995, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Cable Television Laboratories, Inc. (''CableLabs'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to the membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically the following company has joined CableLabs:

Cable Atlantic Inc., St. John's, Newfoundland, CANADA.

No other changes have been made in either the membership or planned activity of CableLabs. Membership remains open and CableLabs intends to file additional written notifications disclosing all changes in membership.

On August 8, 1988, CableLabs filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on September 7, 1988 (53 FR 34593). The last notification with respect to membership changes was filed with the Department on December 7, 1994. A notice was published in the Federal Register pursuant to section 6(b) of the Act on March 23, 1995 (60 FR 15307). Corrections to the December 7, 1994 filing were published on July 25, 1995 (60 FR 38058) and on April 30, 1996 (61 FR 19089).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–14071 Filed 6–4–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Dialkyl Project

Notice is hereby given that, on May 15, 1996, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Lonza Inc. has filed written notification simultaneously with the Attorney General and the Federal Trade Commission regarding a Second Restated and Revised Agreement Among Members of the Dialkyl Project (the ''Second Restated and Revised Agreement''). The notification was filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the Second Restated and Revised Agreement and its general objectives are given below.

The parties to the Second Restated and Revised Agreement are the same as in the original notice: Lonza Inc., Fair Lawn, NJ; Huntington Laboratories, Inc., Huntington, IN; Mason Chemical Company, Arlington Heights, IL; and Stepan Company, Northfield, IL.

The objectives of the project are to conduct toxicological research to be submitted to the United States Environmental Protection Agency in connection with the reregistration and data call-in of pesticides containing these Dialkyl quaternary ammonium compounds as active ingredients. The purpose of the Second Restated and Revised Agreement is to revise certain conditions for data citation.

On August 3, 1988, the Dialkyl Project filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on August 25, 1988, (53 FR 32480). The last notification was filed with the Department on July 17, 1991. A notice was published in the Federal Register pursuant to section 6(b) of the Act on August 8, 1991, (56 FR 37722).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–14074 Filed 6–4–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Center for Manufacturing Sciences, Inc. (NCMS)

Notice is hereby given that, on May 9, 1996, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301

et seq. (''the Act''), the National Center for Manufacturing Sciences, Inc. (''NCMS'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership and providing information on the status of its research projects. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following company was accepted as an active member of NCMS: Vacuum Instrument Corporation, Ronkonkoma, NY. The following organizations were also approved for affiliate membership: Forging Industry Association, Cleveland, OH; Iowa State University, Ames, IA; Michigan State University, E. Lansing, MI; ORTECH Corporation, Mississauga, Ontario, Canada and The University of Michigan, College of Engineering, Ann Arbor, MI. The following companies have resigned from active membership in NCMS: AlliedSignal Inc., Morristown, NJ; Franklin Consulting, Ltd., Troy, MI; Groupe Procycle Inc., St. Georges, Quebec, Canada and Labbe Designers & Inc., Montreal, Quebec. The following organization has resigned from affiliate membership in NCMS: Texas State Technical College, Waco, TX.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NCMS intends to file additional written notification disclosing all changes in membership.

On February 20, 1987, NCMS filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on March 17, 1987 (52 FR 8375).

The last notification was filed with the Department on February 16, 1996. This notice was published in the Federal Register on April 8, 1996 (61 FR 15521).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–14068 Filed 6–4–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Southwest Research Institute Transguide System Media Services Software Project; Correction

In notice document 95–29504 appearing on page 62262 in the issue of Tuesday, December 5, 1995, in the first column, in the first full paragraph, in the 25th line, the words ''San Antonio, TX'' should be deleted.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–14072 Filed 6–4–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Southwest Research Institute Transguide System Media Services Software Project

Notice is hereby given that, on March 8, 1996, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 et seq. (''the Act''), the Southwest Research Institute, on behalf of the Transguide System Media Services Software Project, has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the changes are as follows: Metro Networks Ltd., San Antonio, TX has been added to the venture.

On August 23, 1995, the Southwest Research Institute, on behalf of the Transguide System Media Services Software Project, filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on December 5, 1995 (60 FR 62262).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–14073 Filed 6–4–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Switched Multi-Megabit Data Service Interest Group

Notice is hereby given that, on March 6, 1996, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Switched Multi-Megabit Data Service Interest Group (''the Group'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes to its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identity of the new member to the Group is Cascade Communications Corporation, Westford, MA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Group intends to file additional written notifications disclosing all changes in membership.

On April 19, 1991, the Group filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on May 23, 1991, (56 FR 23723). The last notification was filed with the Department on June 23, 1994. A notice was published in the Federal Register pursuant to section 6(b) of the Act on September 26, 1994, (59 FR 49084).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–14070 Filed 6–4–96; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Correction

On March 4, 1996, a Notice of Application for Johnson Matthey, Inc. (Johnson Matthey), Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066, was published in the Federal Register requesting registration as a bulk manufacturer of Schedules I and II controlled substances. *See* 61 FR 8303. The notice invited that comments or objections be filed by May 3, 1996. A correction was subsequently published on April 10, 1996, adding dihydrocodeine (9120) and meperidine (9230) to the list of controlled substances that Johnson Matthey made application to manufacture in bulk. *See* 61 FR 15974. Comments regarding Johnson Matthey's application for dihydrocodeine and meperidine must be filed by June 10, 1996.

It has come to the Drug Enforcement Administration's (DEA) attention that Johnson Matthey does not wish to be registered as a bulk manufacturer of meperidine. Therefore, meperidine is hereby deleted from the list of controlled substances for which Johnson Matthey made application to manufacture in bulk. However, the list of controlled substances for which Johnson Matthey has applied to manufacture in bulk should have included thebaine (9333) and alfentanil (9737).

Any other such applicant and any person who is presently registered with DEA to manufacture thebaine and alfentanil may file comments or objections to the issuance of the above application.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (60 days from publication).

Dated: May 28, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–14058 Filed 6–4–96; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 22, 1996, Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Dihydromorphine (9145)	I
Pholcodine (9314)	I
Methylphenidate (1724)	II
Coca Leaves (9040)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Opium, raw (9600)	II
Opium extracts (9610)	II
Opium fluid extract (9620)	II
Opium tincture (9630)	II
Opium powdered (9639)	II
Opium granulated (9640)	II
Levo-alphacetylmethadol (9648)	II
Opium poppy (9650)	II
Oxymorphone (9652)	II
Poppy Straw Concentrate (9670)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The firms plans to manufacture the listed controlled substances for distribution as bulk pharmaceutical products to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 5, 1996.

Dated: May 22, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–14057 Filed 6–4–96; 8:45 am]

BILLING CODE 4410–09–M

Importer of Controlled Substances; Registration

By Notice dated March 27, 1996, and published in the Federal Register on April 4, 1996, (61 FR 15121), Radian Corporation, 8501 Mopac Blvd., PO Box 201088, Austin, Texas 78720, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

Drug:	Schedule
Ibogaine (7260)	I
Etorphine (except HCL) (9056)	I
Heroin (9200)	I
Cocaine (9041)	II
Codeine (9050)	II
Oxycodone (9143)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Radian Corporation to import the listed controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: May 23, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–14059 Filed 6–4–96; 8:45 am]

BILLING CODE 4410–09–M

Immigration and Naturalization Service

[INS No. 1776–96]

Discontinuation of the Nicaraguan Review Process

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice announces the extension until June 12, 1997, of the transitional work authorization criteria to be applied to applications filed by Nicaraguans affected by the termination of the Nicaraguan Review Program (NRP) on June 13, 1995. The extension of these criteria is designed to afford Nicaraguans affected by the termination of the NRP, who have yet to file a motion to reopen their deportation proceedings to apply for suspension of deportation as well as those who will not have met the seven-years physical presence requirement for suspension of deportation by June 12, 1996, the opportunity to benefit from these transitional criteria.

EFFECTIVE DATE: June 5, 1996.

FOR FURTHER INFORMATION CONTACT: Robert A. Jacobson, Director, Policy Development and Special Programs Branch, Detention and Deportation Division, Immigration and Naturalization Service, 425 I Street, NW., Room 3008, Washington, DC 20536, telephone (202) 514–2871.

SUPPLEMENTARY INFORMATION:

Background

In a Federal Register Notice dated June 13, 1995, 60 FR 31168, the INS announced the termination of the Nicaraguan Review Program. The INS advised that Nicaraguans affected by the termination of the NRP, *i.e.* certain Nicaraguans who are subject to orders of

deportation that became final before June 13, 1995, may be eligible to apply for suspension of deportation pursuant to section 244 of the Immigration and Nationality Act, 8 U.S.C. 1254, if they: (1) Have been present in the United States for at least 7 years; (2) are persons of good moral character; (3) are persons whose deportation would impose an extreme hardship to themselves or to their spouse, parent, or child who is either a United States citizen or a lawful, permanent resident. The INS further advised that to apply for such relief, aliens with final orders must file a motion to reopen with the Immigration Court pursuant to 8 CFR 3.23 and 242.22 or the Board of Immigration Appeals (BIA) pursuant to 8 CFR 3.2 and 3.8.

The INS also announced certain transitional criteria for the processing of work authorization requests filed by Nicaraguans affected by the termination of the NRP and whose employment authorization no longer would be extended automatically. Specifically, the INS provided that it would treat the filing of a motion to reopen deportation proceedings accompanied by an application for suspension of deportation as a sufficient basis upon which such a person may apply for work authorization. In such cases, work authorization may be granted upon a finding that the alien has met the physical presence requirement for suspension of deportation.

In an effort to moderate any lingering disruptive effects that the termination of the NRP may cause, the transitional criteria for suspension-based work authorization applications filed by Nicaraguans subject to orders of deportation that became final before June 13, 1995, will be extended for one year, through June 12, 1997. This extension will afford Nicaraguans affected by the termination of the NRP who have yet to file a motion to reopen their deportation proceedings to apply for suspension of deportation as well as those who will not have met the seven-years physical presence requirement for suspension of deportation by June 12, 1996, the opportunity to benefit from these transitional criteria.

Dated: May 24, 1996.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 96–14031 Filed 6–4–96; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed revision collection of the Application of the Employee Polygraph Protection Act (EPPA) of 1988.

A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before August 8, 1996. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Mr. Rich Elman, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20201, telephone (202) 219–6375 (this is not a toll-free number), fax 202–219–6592.

SUPPLEMENTARY INFORMATION:

I. Background

EPPA prohibits most private employers (Federal, State and local governments are exempted from this Act) from using any lie detector tests either for preemployment screening or during the course of employment. The law contains certain limited exceptions which authorize polygraph tests under certain conditions, including (1) Testing of employees who are reasonably suspected of involvement in a workplace incident that results in economic loss or injury to the employer's business; (2) testing by the Federal government of experts, consultants, or employees of Federal contractors engaged in national security intelligence or counterintelligence functions; (3) testing of some prospective employees of private armored car, security alarm, and security guard firms; and (4) the testing of some current and prospective employees in firms authorized to manufacture, distribute or dispense controlled substances. Employers who violate any of the Act's provisions may be assessed civil monetary penalties up to $10,000. This information collection is necessary to carry out this Act and require the keeping of records necessary or appropriate for administration of the Act. In addition to recordkeeping requirements which were previously cleared under OMB 1215–0170, this information collection contains a third party notification which was not previously subject to PRA.

II. Current Actions

The Department of Labor seeks the revision approval to collect this information in order to carry out its responsibility to ensure that individuals subjected to polygraph testing are afforded the rights and protections contained in EPPA. Failure to collect this information would make it extremely difficult for the Wage and Hour Division to enforce the provisions of the Act. Hours for third party notification not previously in the information collection are now included.

Type of Review: Revision.

Agency: Employment Standards Administration.

Title: Application of the Employee Polygraph Protection Act of 1988.

OMB Number: 1215–0170.

Affected Public: Individuals or households; Businesses or other for-profit; Not-for-profit institutions.

Total Respondents: 328,000.

Frequency: On occasion.

Total Responses: 328,000.

Average Time Per Response for Reporting: ½ hour.

Average Time For Recordkeeping Per Record: 1 to 5 minutes.

Estimated Total Burden Hours: 82,406.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 31, 1996.

Cecily A. Rayburn,

Director, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 96–14091 Filed 6–4–96; 8:45 am]

BILLING CODE 4510–27–M

Mine Safety and Health Administration

Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers; Meeting

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of advisory committee meeting.

SUMMARY: This notice announces the date, time, place, and agenda summary for the fourth meeting of the Mine Safety and Health Administration's Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, room 631, Arlington, Virginia 22203; phone 703–235–1910.

SUPPLEMENTARY INFORMATION: A public meeting of the advisory committee will be held as follows:

(1) Date and Time

a. June 20, 1996, in Salt Lake City, Utah. The meeting will begin at 8:00 a.m. and end at 9:00 p.m.

b. June 21, 1996, in Salt Lake City, Utah. The meeting will begin at 8:00 a.m. and end at 3:30 p.m.

(2) Location

The meeting will be held on both days at the Ramada Inn Downtown (Beehive North & South Room), 230 West, 600 South, Salt Lake City, Utah 84101. Phone: 801–364–5200.

The Secretary of Labor established this advisory committee (60 FR 5947) to develop recommendations for improved standards or other appropriate actions addressing: permissible exposure limits to eliminate black lung disease and silicosis; the means to control respirable coal mine dust levels; improved monitoring of respirable coal dust levels and the role of the miner in that monitoring; and the adequacy of operator sampling programs to determine the actual levels of dust concentrations to which miners are exposed. The advisory committee is chartered through September 30, 1996 (60 FR 55284), but must complete its deliberations by August 19, 1996.

The agenda for the fourth meeting will include discussions on:

(1) Ventilation plans.

(2) Permissible exposure limits.

(3) The application of the Respirable Dust Program to surface mines and surface miners.

(4) Medical surveillance, including the use of medical records.

(5) Role of miners.

A presentation will be made regarding the University of Utah's study on air-stream helmets.

The public is invited to attend. The chairperson will provide one hour during the afternoon of the meeting on June 20, 1996, to allow interested persons to make comments. Official records of the meeting will be available for public inspection at the above MSHA address.

Dated: May 31, 1996.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 96–14108 Filed 5–31–96; 3:53 pm]

BILLING CODE 4510–43–P

Occupational Safety and Health Administration

National Advisory Committee on Occupational Safety and Health; Full Committee Meeting

Notice is hereby given that the National Advisory Committee on Occupational Safety and Health (NACOSH), established under section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Act, will meet on June 26, 1996, in Room N4437 B–D of the Department of Labor Building located at 200 Constitution Avenue NW, Washington, DC. The meeting is open to the public and will begin at 9 a.m. lasting until approximately 4 p.m.

Agenda items for the morning will include a brief overview of current activities in the Occupational Safety and Health Administration (OSHA) and the National Institute of Occupational Safety and Health (NIOSH), as well as an extensive planning session to determine issues and topics for future committee action. The afternoon will be devoted to a discussion of current ''partnership initiatives'' and how they fit into the overall mix of OSHA interventions.

Written data, views or comments for consideration by the committee may be submitted, preferably with 20 copies, to Joanne Goodell at the address provided below. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting. Anyone wishing to make an oral presentation should notify Ms. Goodell before the meeting. The request should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Persons who request the opportunity to address the Advisory Committee may be allowed to speak to the extent time permits, at the discretion of the Chair of the Advisory Committee. Individuals with disabilities who need special accommodations should contact Tom Hall one week before the meeting at the address indicated below.

An official record of the meeting will be available for public inspection in the OSHA Technical Data Center (TDC) located in Room N2625 of the Department of Labor Building (202–219–7500).

For additional information contact: Joanne Goodell, Directorate of Policy, Occupational Safety and Health Administration, Room N–3641, 200 Constitution Avenue NW, Washington, DC 20210, telephone (202) 219–8021, ext. 107.

Signed at Washington, DC this 30th day of May, 1996.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 96–14089 Filed 6–4–96; 8:45 am]

BILLING CODE 4510–26–7

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 96–055]

NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Task Force on Countermeasures; 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 Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Task Force on Countermeasures.

DATES: June 27, 1996, 8:00 a.m. to 5:00 p.m.; and June 28, 1996, 8:00 a.m. to 3:00 p.m.

ADDRESSES: Universities Space Research Association, 3600 Bay Area Blvd., Houston, TX, 77058.

FOR FURTHER INFORMATION CONTACT: Dr. Frank Sulzman, Code UL, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0220.

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:

—Status and review of Report Outline

—Reports and presentations

—Sub-group status reports

—Discussion

—Tag up

—Sub-group break-out sessions

—Sub-group reports

—Sub-group break-out sessions

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: May 30, 1996.

Leslie M. Nolan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 96–14039 Filed 6–4–96; 8:45 am]

BILLING CODE 7510–01–M

[Notice (90–056)]

NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, NASA–NIH Advisory Subcommittee on Behavioral and Biomedical Research; 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 Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, NASA–NIH Advisory Subcommittee on Behavioral and Biomedical Research.

DATES: June 20, 1996, 12:30 p.m. to 5:30 p.m.; and June 21, 1996, 8:30 a.m. to 3:00 p.m.

ADDRESSES: Cocoa Beach Hilton, 1550 North Atlantic Avenue, Cocoa Beach, Florida 32930.

FOR FURTHER INFORMATION CONTACT: Dr. Arnauld Nicogossian, Code U, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0215.

SUPPLEMENTARY INFORMATION: The meeting will be closed to the public on Thursday, June 20, 1996, from 5:00 p.m. to 5:30 p.m. in accordance with 5 U.S.C. 552b(c)(6), to allow for discussion on qualifications of individuals being considered for membership to the Committee. The remainder of the meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review of the Office of Life and Microgravity Sciences and Applications Status

—Status of NASA–NIH Activities

—Global Health and Remote Sensing

—Behavioral Studies

—International Space Station

—Science Institutes

—Pharmacology

—Committee Discussion Regarding Future Activities

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: May 29, 1996.

Leslie M. Nolan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 96–14040 Filed 6–4–96; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) Propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATES: Request for copies must be received in writing on or before July 22, 1996. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, College Park, MD 20740. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are

updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Agriculture, Agricultural Marketing Service (N1–136–96–1). Change in retention period for regulatory enforcement case files.

2. United States Department of the Interior, Bureau of Reclamation (N1–115–94–8). General administrative records pertaining to project and power management.

3. Department of State (N1–59–96–12). Routine, facilitative, duplicative, and fragmentary files identified during review of the 1964–66 office files.

4. Department of Transportation, Federal Transit Administration, Office of Grants Management (N1–408–94–1). Triennial review files for the Capital and Operating Assistance Program.

5. Department of Transportation, Surface Transportation Board (N1–134–96–2). Change in retention standards for recordation files.

6. Environmental Protection Agency (N1–412–95–7). Reduction in retention periods for permit and compliance files and administrative files relating to computer center operations.

7. Tennessee Valley Authority (N1–142–95–12). Printouts and reports produced by the Human Resource Information System (the electronic records produced by this system are designated for permanent retention).

Dated: May 23, 1996.

James W. Moore,

Assistant Archivist for Records Administration.

[FR Doc. 96–14010 Filed 6–4–96; 8:45 am]

BILLING CODE 7515–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–286]

Port Authority of the State of New York Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–64 issued to New York Power Authority for operation of the Indian Point Nuclear Generating Unit No. 3 (IP3) located in Westchester County, New York.

The proposed amendment would allow the reactor coolant system (RCS) leak test, which is performed after each refueling outage, to be conducted at normal operating pressure as opposed to being conducted at 2335 psig.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves 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. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: The proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The change proposes a system leakage test for the RCS that is comparable to the hydrostatic test that it replaces, as acknowledged by the NRC approval of ASME [American Society of Mechanical Engineers] Code Case N–498, ''Alternative Rules for 10-Year Hydrostatic Pressure Testing for Class 1 and 2 Systems Section XI, Division 1,'' and the ASME Boiler and Pressure Vessel Code, Section XI. As discussed in Section 2 [see application dated April 26, 1996], ''Evaluation of Change,'' the proposed change to substitute a system leak test at normal operating pressure in lieu of the hydrostatic test at 2335 psig will minimize challenge to plant safety and demonstrate leak tightness of the RCS. Therefore, the proposed change would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not involve the addition of any new or different type of equipment, nor do they involve the operation of equipment required for safe operation of the facility in a manner different from those addressed in the Final Safety Analysis Report. As stated in Section 2 [see application dated April 26, 1996] based on industry experience, it is expected that any leaks would be discovered by the leak test at normal operating pressure.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: The proposed license amendment does not involve a significant reduction in a margin of safety. The proposed changes do not adversely affect performance of any safety related system or component, instrument operation, or safety system setpoints and do not result in increased severity of any of the accidents considered in the safety analysis. Although the current basis states that if the system does not leak at 2335 psig (operating pressure +100 psig) it will be leak tight during normal operation, industry experience demonstrates that leaks are not discovered as a result of hydrostatic test pressure propagating a pre-existing flaw through wall. In most cases, leaks are discovered when the system is at normal operating pressure. Also, testing will continue to be performed as required by ASME Boiler and Pressure Vessel Code Section XI.

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.

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. 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 hearing and petitions for leave to intervene is discussed below.

By July 5, 1996, 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 located at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made 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 Jocelyn A. Mitchell: 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 Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the 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 dated April 26, 1996, 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 located at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Dated at Rockville, MD, this 31st day of May 1996.

For the Nuclear Regulatory Commission.

George F. Wunder,

Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 96–14044 Filed 6–4–96; 8:45 am]

BILLING CODE 7590–01–P

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 May 11, 1996, through May 23, 1996. The last biweekly notice was published on May 22, 1996 (61 FR 25696).

Notice Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards onsideration 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 Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, 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 July 5, 1996, 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 20555-0001, 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 20555-0001, 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.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: May 1, 1996

Description of amendment request: The proposed amendment will relocate the administrative controls related to the quality assurance review and audit requirements of Section 6 from the Pilgrim Station Technical Specifications to the Boston Edison Quality Assurance Manual. This change is in accordance with the guidance contained in NRC Administrative Letter 95-06, ''Relocation of Technical Specification Administrative Controls Related to Quality Assurance.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The change will relocate the administrative controls related to the quality assurance review and audit requirements from the technical specifications to the quality assurance plan. These changes are administrative in nature and do not impact initiators of analyzed events, accident mitigation capabilities, or transient events. The quality assurance program is a logical candidate for such relocation due to the controls imposed by such regulations as Appendix B to 10 CFR [Part] 50, the existence of NRC approved quality assurance plans and commitments to industry quality assurance standards, and the established quality assurance program change control process in 10 CFR 50.54(a). Therefore, the changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The change will relocate the administrative controls related to the quality assurance review and audit requirements from the technical specifications to the quality assurance plan. The quality assurance program is a logical candidate for such relocation due to the controls imposed by such regulations as Appendix B to 10 CFR [Part] 50, the existence of NRC approved quality assurance plans and commitments to industry quality assurance standards, and the established quality assurance program change control process in 10 CFR 50.54(a). The proposed changes do not involve a physical alteration of the plant or changes in methods governing plant operation. The changes will not impose or eliminate any new or different requirements. Therefore the changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in a margin of safety.

The change will relocate the administrative controls related to the quality assurance review and audit requirements from the technical specifications to the quality assurance plan. These changes are administrative in nature. The quality assurance program is a logical candidate for such relocation due to the controls imposed by such regulations as Appendix B to 10 CFR [Part] 50, the existence of NRC approved quality assurance plans and commitments to industry quality assurance standards, and the established quality assurance program change control process in 10 CFR 50.54(a). The proposed change will not reduce a margin of safety because it has no impact on any safety analysis assumptions. Therefore, the operation of PNPS [Pilgrim Nuclear Power Station] in accordance with the proposed license amendment will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esquire, Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: Jocelyn A. Mitchell, Acting

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: May 1, 1996

Description of amendment request: The proposed amendment will reflect the implementation of 10 CFR Part 50, Appendix J, Option B at the Pilgrim Nuclear Power Station.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes do not involve any physical or operational changes to structures, systems or components. The proposed changes provide a mechanism within the TS [Technical Specifications] for implementing a performance-based leakage rate test program which was promulgated by the revision to 10CFR50 to incorporate Option B into Appendix J. The TS Limiting Conditions for Operation (LCO) remain unaffected by these changes. Thus, the safety design basis for the accident mitigation functions of the primary containment is maintained. Therefore, these changes will not increase the probability or consequences of an accident previously evaluated.

2. The operation of Pilgrim Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Revising surveillance requirement acceptance criteria and frequencies does not physically modify the plant and does not modify the operation of any existing equipment. Further, the TS LCOs remain unaffected by these changes.

3. The operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The proposed changes do not involve a significant reduction in the margin of safety, nor do they affect a safety limit, an LCO, or the manner in which plant equipment is operated. The NRC letter dated November 2, 1995, recognizes that changes similar to the proposed changes are required to implement Option B of 10CFR50, Appendix J. In NUREG-1493, ''Performance-Based Containment Leak-Test Program,'' which forms the basis for the Appendix J revision, the NRC concludes that adoption of performance-based test intervals for Appendix J testing will not significantly reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esquire, Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: Jocelyn A. Mitchell, Acting

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: May 1, 1996

Description of amendment request: The proposed amendment would modify the definition of ''Core Alteration,'' and the Limiting Condition for Operation, Surveillance conditions and Bases section associated with Technical Specification (TS) 3.7.C, ''Secondary Containment.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Operation of PNPS [Pilgrim Nuclear Power Station] in accordance with the proposed license amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated because of the following:

Proposed Change ι1: Definition of ''Alteration of the Reactor Core≥

The definition, ''Alteration of the Reactor Core'', is being revised so that the term will apply only to those activities that create the potential for a reactivity excursion and, therefore, warrant special precautions or controls in the TS. The proposed definition includes normal control rod movement in the definition, but excludes control rod drive movement (such as rod removal from the core) when all four fuel bundles surrounding a control rod are removed. The proposed change does not increase the probability or consequences of an accident because the proposed definition, by identifying activities with the potential for causing a reactivity excursion, ensures that the additional precautions and controls in the TS are implemented at all appropriate times. In addition, the movement of components excluded by this definition is not assumed in the initiation of any analyzed event. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Proposed Change ι2: Secondary Containment

The current specifications are revised to specify more clearly when secondary containment is required, what actions to take if secondary containment is inoperable, and time frames for completing the actions. These revisions enhance the existing specification and serve to make it more definitive by encompassing the conditions currently specified by TS and supplementing them to specify other conditions when secondary containment is required.

Surveillances 4.7.C.1.a and b were only necessary during initial and Cycle 1 operations. Removing obsolete information from the existing specifications, re-numbering and re-arranging the wording is an administrative change.

These changes are administrative in nature and do not impact initiators of analyzed events, accident mitigation capabilities, or transient events. Therefore, the changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The operation of PNPS in accordance with the proposed license amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated because of the following:

Proposed Change ι1: Definition of ''Alteration of the Reactor Core≥

The definition change specifies more accurately which component movements constitute a ''Core Alteration''. This change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The proposed changes will allow movement of some components (camera, lights, etc.) during times when ''Core Alterations'' have been halted since these components will not affect core reactivity. Removal of a control rod involves unlatching and withdrawal/insertion from over-vessel handling equipment. These activities necessitate, by design, the removal of the adjacent four fuel assemblies. With this configuration (no fuel in the cell; handling the associated control rod), the proposed change will allow movement of a ''reactivity control component'' while not imposing requirements unique to ''Core Alterations'' (note: other requirements, such as those for handling loads over irradiated fuel, will remain applicable). The reactivity effects of this control rod movement are more than compensated for by the initial removal of the fuel assemblies. Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Proposed Change ι2: Secondary Containment

The proposed change does not eliminate or relax any existing TS condition. Rather, it better defines when secondary containment is required, provides action statements for inoperability and removes obsolete

requirements (from first operating cycle). This change does not involve a physical change to structures, systems or components, and the safety design bases for the accident mitigating function of the secondary containment is maintained. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in a margin of safety.

The operation of PNPS in accordance with the proposed license amendment will not involve a significant reduction in a margin of safety because of the following:

Proposed Change ι1: Definition of ''Alteration of the Reactor Core≥

The proposed definition more accurately identifies those activities with the potential for causing a reactivity excursion. The more accurate identification of ''Core Alterations'' will ensure that when there is a potential for reactivity excursions, appropriate precautions are applied. The components now excluded from the proposed definition are those that do not have the capability for adversely impacting core reactivity. The proposed change has no impact on safety analysis assumptions. Therefore, the change will not involve a significant reduction in a margin of safety.

Proposed Change ι2: Secondary Containment

The proposed additions of applicability conditions provide a more precise understanding of when secondary containment integrity is required and what actions to take if it becomes inoperable. The change does not eliminate any existing conditions. The deletion of surveillances applicable only for the first operating cycle and re-numbering and re-arranging the remaining surveillance wording is an administrative change and has no impact on the operation of the plant or mitigation of accidents. Therefore, the operation of the facility in accordance with this proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esquire, Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: Jocelyn A. Mitchell, Acting

Carolina Power & Light Company, et al., Docket No. 50-325, Brunswick Steam Electric Plant, Unit 1, Brunswick County, North Carolina

Date of amendment request: April 8, 1996

Description of amendment request: The licensee has proposed to revise the Technical Specifications (TS) to include the following changes: 1. The Minimum Critical Power Ratio (MCPR) Safety Limit specified in TS 2.1.2 from 1.07 to 1.09 for Unit 1 Cycle 11 operation; TS 5.3.1 to reflect the new fuel type (GE13) that will be inserted during Unit 1 Refueling Outage 10; 2. The acceptable range of sodium pentaborate concentration for the standby liquid control system shown in TS Figure 3.1.5-1 to reflect changes to poison material concentration needed to achieve reactor shutdown based on the new GE13 fuel type.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Proposed Change 1

The proposed amendment will allow the loading and use of GE13 fuel assemblies in the Brunswick Unit 1 reactor core. The use of GE13 fuel assemblies requires that the safety limit minimum critical power ratio value also be revised. The safety limit minimum critical power ratio is established to maintain fuel cladding integrity during operational transients. The GE13 fuel assembly design has been analyzed using methods that have been previously approved by the Nuclear Regulatory Commission and documented in General Electric Nuclear Energy's reload licensing methodology Topical Report (NEDE-24011-P-A-11, ''General Electric Standard Application for Reactor Fuel (GESTAR II)'' dated November 1995).

The proposed revision of the safety limit minimum critical power ratio does not alter any plant safety-related equipment, safety function, or plant operations that could change the probability of an accident. The change does not affect the design, materials, or construction standards applicable to the fuel bundles in a manner that could change the probability of an accident.

A methodology that has been previously reviewed and accepted by the Nuclear Regulatory Commission was used to derive both the existing and updated safety limit minimum critical power ratio value. The same methodology and criteria have been applied to derive the existing safety limit minimum critical power ratio of 1.07 as that used to derive the updated safety limit minimum critical power ratio value of 1.09. The updated safety limit minimum critical power ratio assures that fuel cladding protection equivalent to that provided with the existing safety limit minimum critical power ratio value is maintained. This ensures that the consequences of previously evaluated accidents are not significantly increased.

Proposed Change 2

The standby liquid control system provides a means of reactivity control that is independent of the normal reactivity control system. The standby liquid control system must be capable of assuring that the reactor core can be placed in a subcritical condition at any time during reactor core life. Technical Specification Figure 3.1.5-1 specifies the acceptable range of concentrations and volumes for sodium pentaborate solution used as a neutron absorber (i.e., for reactivity control). The portion of the sodium pentaborate concentration range shown in Technical Specification Figure 3.1.5-1 applicable to the lower range of tank volumes is being revised to increase the required concentration of sodium pentaborate solution. This change is needed to account for the additional shutdown reactivity needed based on the planned use of GE13 fuel assemblies as reload fuel for the Unit 1 reactor core. Since the standby liquid control system is independent from the normal means of controlling reactor core reactivity and not used to control core reactivity during normal plant operations, the proposed revision to the sodium pentaborate concentration curve for the standby liquid control system does not alter any plant safety-related equipment, safety function, or plant operations that could change the probability of an accident.

The current volume-concentration range of sodium pentaborate used in the standby liquid control system will achieve a sufficient concentration of boron in the reactor vessel to ensure reactor shutdown. Based on the increased reactivity of the new GE13 reload fuel assemblies, the required sodium pentaborate volume-concentration range is being revised to ensure sufficient neutron absorbing solution is available to achieve reactor shutdown; therefore, the consequences of an accident previously evaluated are not significantly increased.

2. The proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

Proposed Change 1

The GE13 fuel assembly has been designed and complies with the acceptance criteria contained in General Electric Nuclear Energy's standard application for reactor fuel (GESTAR-II), which provides the latest acceptance criteria for new General Electric fuel designs. The GE13 fuel assembly complies with GESTAR-II acceptance criteria that have been previously reviewed and accepted by the Nuclear Regulatory Commission. The similarity of the GE13 fuel design to the previously accepted GE11 fuel design, in conjunction with the increased critical power capability of the GE13 fuel design, ensure that no new mode or condition of plant operation is being authorized by the loading and use of the

GE13 fuel type. The proposed revision of the safety limit minimum critical power ratio from 1.07 to 1.09 does not modify any plant controls or equipment that will change the plant's responses to any accident or transient as given in any current analysis. Therefore, the proposed change to allow the loading and use of the GE13 fuel type and the revision of the safety limit minimum critical power ratio value from 1.07 to 1.09 will not create the possibility for a new or different kind of accident from any accident previously evaluated.

Proposed Change 2

As discussed above, the standby liquid control system provides a means of reactivity control that is independent of the normal reactivity control system and is capable of assuring that the reactor core can be placed in a subcritical condition at any time during reactor core life. The proposed revision to the sodium pentaborate concentration range does not modify the standby liquid control system or its controls, does not modify other plant systems and equipment, and does not permit a new or different mode of plant operation. As such, the proposed revision to the minimum pentaborate concentration value 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 a margin of safety.

Proposed Change 1

As previously discussed, the GE13 fuel assembly design has been analyzed using methods that have been previously approved by the Nuclear Regulatory Commission and documented in General Electric Nuclear Energy's reload licensing methodology Topical Report (NEDE-24011-P-A-11, ''General Electric Standard Application for Reactor Fuel (GESTAR II)'' dated November 1995). The safety limit minimum critical power ratio value is selected to maintain the fuel cladding integrity safety limit (i.e., that 99.9 percent of all fuel rods in the core are expected to avoid boiling transition during operational transients). Appropriate operating limit minimum critical power ratio values are established, based on the safety limit minimum critical power ratio value, to ensure that the fuel cladding integrity safety limit is maintained. The operating limit minimum critical power ratio values are incorporated in the Core Operating limits Report as required by Technical Specification 6.9.3.1. The new GE13 safety limit minimum critical power ratio value of 1.09 is based on the same fuel cladding integrity safety limit criteria [as] that for the GE11 safety limit minimum critical power ratio value of 1.07 (i.e., that 99.9 percent of all fuel rods in the core are expected to avoid boiling transition during operational transients); therefore, the proposed change does not result in a significant reduction in the margin of safety.

Proposed Change 2

As previously stated, the purpose of the standby liquid control is to inject a neutron absorbing solution into the reactor in the event that a sufficient number of control rods cannot be inserted to maintain subcriticality. Sufficient solution is to be injected such that the reactor will be brought from maximum rated power conditions to subcritical over the entire reactor temperature range from maximum operating to cold shutdown conditions. General Electric methodology establishes a fuel type dependent standby liquid control system shutdown margin to account for calculational uncertainties. General Electric calculations show that an in-vessel concentration of 660 ppm will provide a standby liquid control system minimum shutdown margin in excess of the 3.2%[delta]k value required for the GE13 fuel. To achieve an in-vessel concentration of 660 ppm, the acceptable range of standby liquid control system tank concentrations is being revised for the lower range of tank volumes. Thus, the proposed revision of the standby liquid control system sodium pentaborate volume-concentration range ensures that there will not be a significant reduction in the amount of available shutdown margin and, therefore, not 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: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Eugene V. Imbro

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: February 27, 1996

Description of amendment request: The proposed license amendment would modify the Action Statement of Technical Specification (TS) 3.7.1.1.1. Currently, the TS action statement requires that with the self actuation function on one or more main steam line code safety valves associated with an operating loop inoperable, the licensee must restore the inoperable valve to operable status within 4 hours. Otherwise, the plant must be in hot standby within the next 6 hours and in hot shutdown within the following 30 hours. The proposed change will allow continued power operation at reduced power levels with main steam safety valves inoperable. The proposed change is consistent with the philosophy of the Westinghouse Standard Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. [The proposed change does not involve] a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to the Action Statement of LCO [Limiting Condition for Operation] 3.7.1.1.1 will allow indefinite operation at less than or equal to 75% power in the event that the self actuation function of no more than one safety valve per steam generator is inoperable, and allow indefinite operation at less than or equal to 50% power in the event that the self actuation function of no more than two safety valves per steam generator is inoperable. The requirement to reduce power will ensure that there is no increase in the consequences of a loss of load accident. The proposed change is consistent with the methodology in the Westinghouse Standard Technical Specifications. The methodology is conservative, since the PORVs [power operated relief valves] cannot affect the time of reactor trip on high pressurizer pressure. Thus, it is concluded that the change does not increase the consequences of any previously evaluated accident.

The change only specifies a power reduction in the event that the self actuation function of steam generator safety valves is inoperable. It does not affect the probability of any accident. The change by itself does not affect the likelihood of an inoperable safety valve.

2. [The proposed change does not create] the possibility of a new or different kind of accident from any previously evaluated.

The change only specifies a power reduction in the event that the self actuation function of steam generator safety valves is inoperable. This does not create the potential for a new or different kind of accident. The lower power level assures that peak steam generator pressure and RCS [reactor coolant system] pressure will remain below 110% of design. This provides assurance that no equipment failure will occur due to overpressurization. Thus, the change does not create the possibility for a new or different kind of accident.

3. [The proposed change does not involve] a significant reduction in a margin of safety.

The allowable power levels have been selected, consistent with the Westinghouse Standard Technical Specifications, to assure that steam generator and RCS pressure will remain below 110% of design. Thus, there is no reduction in a margin of safety for overpressure protection.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the

amendment request involves no significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, CT 06457.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141-0270.

NRC Project Director: Phillip F. McKee

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: March 7, 1996

Description of amendment request: The licensee will be replacing a locally operated (manual) containment sump suction isolation valve, RH-V-808A, with a remote manually operated (motor operated) valve, RH-MOV-808A during the upcoming Cycle 19 refueling outage. As a result, changes are being requested to the Haddam Neck Plant Technical Specifications to reflect this design change.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. [The proposed change does not involve] a significant increase in the probability or consequences of an accident previously evaluated.

The proposed technical specification change to Section 3/4.4.6.2 and its bases are the replacement of the designation RH-V-808A with RH-MOV-808A. There are no changes to the requirements of this specification and this change is therefore an administrative change. The changes to Section 3/4.5.1 will make the requirements for RH-MOV-808A identical to those of RH-MOV-22. RH-V-808A is being converted to a motor operated valve (MOV). This MOV will make the ability to establish a suction path from the containment to the Residual Heat Removal (RHR) System single failure proof from the control room. Both RH-MOV-22 and RH-MOV-808A will be opened to establish containment sump recirculation post-loss of coolant accident (LOCA). This will provide added assurance that core cooling will be maintained in the switch from injection to containment sump recirculation following a LOCA. The requirement for RH-MOV-808A to be closed and its hand wheel locked can not cause an accident. The credit for operation of RH-MOV-808A to ensure that the establishment of containment sump recirculation is single failure proof is equivalent to the current crediting of RH-V-808A with the only difference being that operation of the valve can now be performed from the control room. Also, since both RH-MOV-22 and RH-MOV-808A will be procedurally opened during establishment of containment sump recirculation, the elimination of the requirement to lock open the breaker for RH-MOV-22 will not affect the consequences of a LOCA. The proposed changes that reflect the conversion of RH-V-808A to a MOV and the proposed changes in how the valve is used do not increase the consequences of a LOCA.

2. [The proposed change does not create] the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes will require RH-MOV-808A to be closed with the hand wheel locked. This provides assurance that the valve is in the required position. Also, RH-MOV-808A will be capable of remote manual operation during the monthly surveillance which provides assurance that the valve can be repositioned if necessary. The proposed opening of RH-MOV-808A at the same time as RH-MOV-22 is opened, provides greater assurance that a suction path is available to the RHR pumps as well as lowering the total effective piping resistance from the containment sump to the pump suction. Therefore, the proposed changes do not introduce the possibility of a new or different kind of accident.

3. [The proposed change does not involve] a significant reduction in a margin of safety.

The proposed changes make RH-MOV-808A identical to RH-MOV-22 with the exception that RH-MOV-808A will not get a closure signal on Safety Injection Actuation. Both RH-MOV-22 and RH-MOV-808A are containment isolation valves in a closed system. For closed systems, the containment isolation requirement is that the valves be either: a) automatic, b) locked closed, or c) capable of remote manual operation. RH-MOV-808A and RH-MOV-22 are both capable of remote manual operation and therefore do not need automatic closure when they are opened as part of the technical specification required surveillance. Therefore, the proposed changes can not cause 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: Russell Library, 123 Broad Street, Middletown, CT 06457.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141-0270.

NRC Project Director: Phillip F. McKee

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: March 28, 1996

Description of amendment request: The proposed license amendment will add an additional footnote to Limiting Condition for Operation (LCO) 3.4.2.1 and revise an existing footnote for LCO 3.4.2.2. Currently, the footnote for LCO 3.4.2.2 requires the pressurizer code safety valve as-found lift setting to be within +3 percent and -1 percent of the setpoint. The proposed change will relax the negative as-found lift tolerance to -3 percent. The as-left lift tolerance will remain as plus or minus 1 percent. The same footnote will be added to LCO 3.4.2.1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. [The proposed change does not involve] a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will relax the pressurizer safety valve negative as-found lift tolerance to -3 percent. The as-left lift tolerance will remain as plus or minus 1 percent. This proposed technical specification change will allow for the full use of the plus or minus 3 percent as-found acceptance criterion for valve testing consistent with 1989 ASME Section XI, Subsection IWV. The relaxing of the as-found lift tolerance can not cause an accident. The relaxing of the tolerance will allow the safety valve setpoint to be closer to the Power Operated Relief Valve (PORV) setpoint and could result in a slightly lower pressure for overheating events. The analysis that takes credit for the increase in pressure to the PORV setpoint is the Loss of Load analysis. The minimum departure from nucleate boiling ratio (DNBR) was reanalyzed without taking any credit for the transient increase in pressure. The minimum DNBR still remains above the acceptance criterion as well as above the limiting minimum DNBR predicted for all Updated Final Safety Analysis Report Chapter 15 accidents. Also, the relaxed tolerance in conjunction with a lower safety valve blowdown, yet still conservative, results in a slightly higher average pressure for a valve lift/reset cycle. This means that pressurizer overfill will not be predicted for the limiting transient, loss of feedwater. Thus, the proposed relaxation of as-found lift tolerance does not increase the probability or consequences of the design basis accidents previously evaluated.

2. [The proposed change does not create] the possibility of a new or different kind of accident from any previously analyzed.

The proposed relaxation of the lift tolerance still requires the safety valve lift setpoint to be above both the PORV setpoint and the pressurizer high pressure reactor trip setpoint. In addition, the as-left setpoint is not being changed. The relaxed tolerance in combination with a conservative safety valve blowdown still will preclude the prediction of water relief from the pressurizer. This means that the proposed change does not introduce the possibility of a new or different kind of accident.

3. [The proposed change does not involve] a significant reduction in a margin of safety.

The proposed relaxation of the as-found lift tolerance for valve testing is consistent with 1989 ASME Section XI, Subsection IWV. The as-left lift tolerance will remain plus or minus 1 percent. In addition, the design basis analyses still meet their acceptance criteria with the -3 percent lift tolerance. Therefore, the proposed change can not cause a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, CT 06457.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141-0270.

NRC Project Director: Phillip F. McKee

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: April 16, 1996

Description of amendment request: The licensee is proposing to revise the Technical Specifications to permit the Haddam Neck Plant to remain in Mode 1, 2, 3, or 4 with the average water temperature of the ultimate heat sink (UHS) greater than 90° additional action has been added which would require the plant to be placed in at least Hot Standby within 6 hours and in Cold Shutdown within the following 30 hours upon identifying that the average water temperature of the UHS is greater than 95°F. In addition, the licensee is proposing to include a new surveillance requirement for monitoring the average circulating water inlet temperature to be within its limits when the average water temperature of the UHS exceeds 89°F.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. [The proposed change does not] involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed addition to the Action Statement of LCO 3.7.12 of an 8 hour period to monitor the average water temperature of the UHS does not involve an increase in the probability of an accident previously evaluated. The probability of an accident previously evaluated is not increased by a short-term increase in the average water temperature of the UHS. An evaluation of the service water loads associated with the loss-of-offsite power and a coincident worst case single failure of a diesel generator to start (resulting in the loss of two of the four service water pumps) determined that there is adequate margin to accomplish plant cooldown at a service water inlet temperature of 95°F. The recirculation phase of a LOCA [loss-of-coolant accident] was evaluated to verify that adequate flow would be available to the RHR [residual heat removal] heat exchangers. The most limiting assumptions for the recirculation phase are offsite power is available and one RHR heat exchanger service water isolation valve fails to open. The injection phase of a LOCA was evaluated to verify that adequate flow would be available to the CAR [containment air recirculation] fan cooling coils. The most limiting assumption for the injection phase is a loss-of-offsite power. The results of these evaluations determined that there is adequate service water flow to accomplish plant cooldown with average water temperature of the UHS up to 95°F. CYAPCO [Connecticut Yankee Atomic Power Company] also proposes to include an additional surveillance requirement to monitor the average water temperature of the UHS at least once per hour if the average water temperature of the UHS exceeds 89°F. This additional surveillance requirement ensures increased operator awareness as the average water temperature of the UHS approaches the 90°F LCO limit. Based on the above, there is no significant increase in the consequences of any accident previously evaluated.

2. [The proposed change does not] create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed technical specification changes do not create the possibility of a new or different kind of accident from those previously evaluated. The addition of an 8 hour time period to monitor the average water temperature of the UHS increases from 6 to 14 hours the amount of time that is allowed before the plant must proceed to Hot Standby should the average water temperature of the UHS increase above 90°F. This extension of the time allowed for the plant to be in Hot Standby does not change the plant configuration. CYAPCO also proposes to include an additional surveillance requirement to monitor the average water temperature of the UHS at least once per hour if the average water temperature of the UHS exceeds 89°F. This additional surveillance requirement ensures increased operator awareness as the average water temperature of the UHS approaches the 90°F LCO limit.

As such, the changes do not create the possibility of a new or different kind of accident from those previously evaluated.

3. [The proposed change does not] involve a significant reduction in a margin of safety.

The proposed technical specification changes do not involve a significant reduction in any margin of safety. The addition of an 8 hour time period to monitor the average water temperature of the UHS increases from 6 to 14 hours the time required before the plant must proceed to Hot Standby should the average water temperature of the UHS temperature [exceed] 90°F. An evaluation has been performed to demonstrate that the risk significance associated with the increased action time is very low. In addition, safe shutdown capability has been demonstrated for service water inlet temperatures as high as 95°F. The addition of a surveillance requirement to monitor the average water temperature of the UHS at least once per hour if the average water temperature of the UHS exceeds 89°F is an additional requirement, limitation, or restriction not currently within the technical specifications. Therefore, these changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, CT 06457

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141-0270

NRC Project Director: Phillip F. McKee

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: April 22, 1996

Description of amendment request: The proposed amendment will allow the use of the performance-based containment leakage testing requirements described in 10 CFR Part 50, Appendix J, Option B.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The changes involved in this license amendment request revise the testing criteria for the containment penetrations. The revised criteria will be based on the guidance in Regulatory Guide 1.163, ''Performance-Based Containment Leak-Test Program.'' This guidance allows for the use of relaxed testing frequencies for containment penetrations that have performed satisfactorily on a historical basis. The Containment Leakage Rate Testing Program considers the type of service, the design of the penetration, and the safety impact of the penetration in determining the

testing interval of each penetration. The NRC Staff has reviewed the potential impact of performance-based testing frequencies for containment penetrations during the development of the Option B regulation. The NRC Staff review is documented in NUREG-1493, ''Performance-Based Containment Leakage-Test Program.'' The review concluded that reducing the frequency of Type A tests (Integrated Leakage Rate Tests) from three per 10 years to one per 10 years leads to an imperceptible increase in risk. For Type B and C testing (Local Leakage Rate Tests), the change in testing frequency should not have significant impact since this leakage contributes less than 0.1 percent of the overall risk based on the existing regulations. The use of Option B will allow the extension of testing intervals with a minimal impact on the radiological release rates since most penetration leakage is continually well below the specified limits. In the accident risk evaluation, the NRC Staff noted that the accident risk is relatively insensitive to the containment leakage rate because the accident risk is dominated by accident sequences that result in failure of or bypass of the containment. The use of a performance-based testing program will continue to provide assurance that the accident analysis assumptions remain bounding. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously analyzed.

Removal of the surveillance accuracy requirement in Section 4.6.1.2.c will not affect the probability of an accident previously analyzed since a similar requirement is contained in ANSI/ANS-56.8-1994, ''Containment System Leakage Testing Requirements.'' ANSI/ANS-56.8-1994 will be used to develop the technical methods and techniques for the Containment Leakage Rate Test Program as stated in Regulatory Guide 1.163. The technical methods and techniques in ANSI/ANS-56.8-1994 have been determined to be acceptable to the NRC Staff.

Changes to the Administrative Section describe the containment testing program only and cannot increase the probability or consequences of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed license amendment does not change the operation or equipment of the plant. The change in the test frequency is dependent on the establishment of a Containment Leakage Test Program. This test program will ensure the performance history of each penetration is satisfactory prior to the changing of any test frequency. Since the performance history of the penetration will be known, there is no possibility of the implementation of the program creating a new or different kind of accident than previously analyzed. Since there is no change to the equipment or the operation of the plant, there is no possibility of creating a new or different kind of accident than previously analyzed. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously analyzed.

Removal of the surveillance accuracy requirement in Section 4.6.1.2.c will not create the possibility of a new or different kind of accident from those previously analyzed since a similar requirement is contained in ANSI/ANS-56.8-1994, ''Containment System Leakage Testing Requirements.'' ANSI/ANS-56.8-1994 will be used to develop the technical methods and techniques for the Containment Leakage Rate Test Program as stated in Regulatory Guide 1.163. The technical methods and techniques in ANSI/ANS-56.8-1994 have been determined to be acceptable to the NRC staff.

Changes to the Administrative Section describe the containment testing program only and cannot create a different accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety.

During the development of 10 CFR Part 50, Appendix J, Option B, the NRC staff determined the reduction in safety associated with the implementation of the performance-based testing program. The results of this review are documented in NUREG-1493. The review concluded that reducing the frequency of Type A tests (Integrated Leakage Rate Tests) from three per 10 years to one per 10 years leads to an imperceptible increase in risk. For Type B and C testing (Local Leakage Rate Tests), the increase in testing frequency should not have significant impact since this leakage contributes less than 0.1 percent of the overall risk based on the existing regulations. The use of Option B will allow the extension of testing intervals with a minimal impact on the radiological release rates since most penetration leakage is continually well below the specified limits. In the accident risk evaluation, the NRC Staff noted that the accident risk is relatively insensitive to the containment leakage rate because the accident risk is dominated by accident sequences that result in failure of or bypass of the containment. The use of a performance based testing program will continue to provide assurance that the accident analysis assumptions remain bounding. Therefore, this change does not involve a significant reduction in the margin of safety.

Removal of the surveillance accuracy requirement in Section 4.6.1.2.c will not involve a significant reduction in the margin of safety since a similar requirement is contained in ANSI/ANS-56.8-1994, ''Containment System Leakage Testing Requirements.'' ANSI/ANS-56.8-1994 will be used to develop the technical methods and techniques for the Containment Leakage Rate Test Program as stated in Regulatory Guide 1.163. The technical methods and techniques in ANSI/ANS-56.8-1994 have been determined to be acceptable to the NRC Staff.

Changes to the Administrative Section describe the containment testing program only and do not reduce the margin of safety.

Moreover, the Commission has provided guidance concerning the application of standards in 10 CFR 50.92 by providing certain examples (51 FR 7751, March 6, 1986) of amendments that are considered not likely to involve an SHC [significant hazards consideration]. Although the proposed change is not enveloped by a specific example, it has been shown that the proposed change is not an SHC.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, CT 06457.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141-0270.

NRC Project Director: Phillip F. McKee

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: February 6, 1996

Description of amendment request: The proposed amendment would delete the requirement to perform additional operability testing of safety system train components when a required component in the redundant train becomes inoperable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes remove the requirement for testing which is in addition to the normal surveillance interval. The affected equipment is subject to periodic surveillance testing required by the Technical Specifications. Removing the requirement for additional testing cannot alter any plant operating conditions, operating practices, equipment settings, or equipment capabilities. Therefore, changing an AOT [allowable outage time] or a surveillance interval cannot increase the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any previously evaluated?

The proposed changes remove the requirement for testing which is in addition to the normal surveillance interval. The affected equipment is subject to periodic surveillance testing required by the Technical Specifications. Removing the requirement for additional testing cannot alter any plant operating conditions, operating practices, equipment settings, or equipment capabilities. Therefore, changing an AOT or a surveillance interval cannot create the possibility of a new or different

kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

The proposed changes remove the requirement for testing which is in addition to the normal surveillance interval, in effect extending the surveillance interval. An excessive surveillance interval extension could reduce the margin of safety by reducing assurance that required equipment will function as designed; an overly restrictive surveillance interval could also reduce the margin of safety by imposing unnecessary testing wear, equipment manipulations, and system transients on the plant.

The existing requirements to perform cross-train testing were based on the operating experience available when they were added to the TS. Typically this was done during the initial plant licensing in 1971. The recently published Standard Technical Specifications (NUREG 1432) do not include cross-train testing requirements for the Engineered Safety Features components. It has been judged by the NRC and by the industry, that cross-train testing is unnecessary, and that testing at normal surveillance intervals is adequate to assure equipment operability. This recent judgment is based on a much larger accumulation of operating experience than was available at the time Palisades was licensed. There are no special features of the Palisades plant which would invalidate these more recent judgments of optimal testing requirements. Therefore, operation of the facility in accordance with the proposed changes will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 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: Mark Reinhart

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: December 14, 1995, as supplemented by letter dated May 16, 1996.

Description of amendment request: The proposed amendments would change the Technical Specifications (TS) to improve the TS Action Statements and Surveillance Requirements for diesel generators in accordance with the recommendations and guidance in Generic Letter 93-05, Generic Letter 94-01, NUREG-1366, and NUREG-1431. The proposed amendments would also incorporate technical and administrative changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1

Operation of the facilities in accordance with the requested amendments will not involve a significant increase in the probability or consequences of an accident previously evaluated. Improvements to the LCOs [limiting condition for operation] and surveillance requirements for the emergency diesel generators do not affect their capability to provide emergency power to plant vital instruments and safety related equipment. In fact, these improvements make the diesel generators more reliable since they significantly reduce the amount of wear and stress due to excessive and unnecessary testing. The proposed monthly testing of the diesel generator continues to ensure that the system is ready for service when needed. The fast starts and fast loadings continue to ensure that the timing and loading requirements for engineered safety features actuation are met. The proposed changes do not affect any of the design basis accident analyses previously evaluated. Therefore, these proposed changes do not involve any increase in the probability or consequences of any accident previously evaluated. The proposed changes are fully consistent with the recommendations and guidance contained in GL [Generic Letter] 93-05, GL 94-01, NUREG-1366, NUREG-1431, and are compatible with plant operating experience.

Criterion 2

Operation of the facilities in accordance with the requested amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes in fact improve the reliability of the diesel generators by eliminating unnecessary wear and stress. Improved reliability decreases the failure probability which also decreases the probability of an accident not previously evaluated. None of the requested amendments increase the common mode failure probability thus would not increase the chance of both EDG's [emergency diesel generators] for a particular nuclear unit being out of service simultaneously. The proposed changes are fully consistent with the recommendations and guidance contained in GL 93-05, GL 94-01, NUREG-1366, NUREG-1431, and are compatible with plant operating experience.

Criterion 3

Operation of the facilities in accordance with the requested amendments will not involve a significant reduction in a margin of safety. The proposed monthly testing of the diesel generators continues to ensure that the system is ready for service when needed. The fast starts and fast loadings continue to ensure that the timing and loading requirements for engineered safety features actuation are met. The proposed changes improve the reliability of the diesel generators. Implementation of the Maintenance Rule also ensures continued reliability of the diesel generators. No margin of safety is decreased as a result of these TS changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: Herbert N. Berkow

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: April 29, 1996

Description of amendment request: The proposed amendment relocates several cycle specific operating parameters from the technical specifications to the Core Operating Limits Report per Generic Letter 88-16. The parameters being relocated by this change include the variable low reactor coolant system pressure trip (VLPT) and the variable low reactor coolant system pressure-temperature protective limits.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1. Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The removal of the cycle-dependent variable low RCS pressure-temperature protective limits and the VLPT setpoint from technical speciications and placing them into the COLR has no impact on plant safety and is considered to be administrative in nature. The proposed change does not affect the safety analyses, physical design, or operation of the plant. Technical specifications will continue to require operation within the core protective and operational limits for each reload cycle as calculated by the approved reload design methodologies. The appropriate actions required if limits are violated will remain in the technical specifications. The reload report presents the results of cycle-specific evaluations of accident analyses and transients addressed in the ANO-1 Safety Analysis Report. The cycle-specific 10CFR50.59 evaluation of the reload

report demonstrates that changes in fuel cycle design and the corresponding COLR do not involve a significant increase in the probability or consequences of an accident previously evaluated.

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 to relocate the variable low RCS pressure-temperature protective limits and the VLPT setpoint from the technical specifications to the COLR is administrative in nature. No change to the design configuration or method of operation of the plant is made by this proposed change, and therefore, no new transient initiator has been created. Technical specifications will continue to require operation within the required core protective and operating limits and appropriate actions will be taken if the limits are exceeded. Because plant operation will continue to be limited by the cycle-specific COLR limits that are established using NRC-approved methodologies, these relocations will have no impact on plant safety.

Therefore, this change does 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.

Existing technical specification operability and surveillance requirements are not reduced by the proposed change to relocate the variable low RCS pressure-temperature protective limits and the VLPT setpoint to the COLR. The proposed changes are administrative in nature and do not relate to or modify the safety margins defined in and maintained by the technical specifications. The cycle-specific COLR limits for future reload fuel cycles will continue to be developed based on NRC approved methodologies. Each future reload undergoes a 10CFR50.59 evaluation to assure that operation of the plant within the cycle-specific limits will not involve a significant reduction in a margin of safety.

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, AR 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, DC 20005-3502

NRC Project Director: William D. Beckner

Entergy Operations, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: May 6, 1996

Description of amendment request: The amendment would reflect that the name of Mississippi Power & Light Company (MP&L) has been changed to Entergy Mississippi, Inc. The amendment revises Operating License NPF-29 and Antitrust Conditions for the Grand Gulf Nuclear Station, Unit 1 (GGNS) to (1) add the phrase ''(now renamed Entergy Mississippi, Inc.)'' after the name of Mississippi Power & Light Company (MP&L), (2) replace the name of Mississippi Power & Light Company (MP&L) by the name Entergy Mississippi, Inc., and (3) replace a footnote by the statement: ''Amendment —— resulted in a name change for Mississippi Power & Light Company (MP&L) to Entergy Mississippi, Inc.''.The proposed amendment involves only a change in company name. It does not involve any changes to the Technical Specifications for GGNS, or to any requirements or limiting conditions for operation on any equipment or any systems in the plant.

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:

Entergy Operations, Inc. proposes to change the current Grand Gulf Nuclear Station Facility Operating License and Antitrust Conditions. The specific proposed change is to reflect that the name of one of the companies owning Grand Gulf Nuclear Station has legally changed from Mississippi Power & Light Company to Entergy Mississippi, Inc.

The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; 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.

Entergy Operations, Inc. has evaluated the no significant hazards consideration in its request for this license amendment and determined that no significant hazards consideration results from this change. In accordance with 10 CFR 50.91(a), Entergy Operations, Inc. is providing the analysis of the proposed amendment against the three standards in 10 CFR 50.92(c). A description of the no significant hazards consideration determination follows:

I. The proposed change does not significantly increase the probability or consequences of an accident previously evaluated.

The proposed change documents changing the legal name of the company. The proposed change will not affect any other obligations. The company will still own all of the same assets, serve the same customers, and all existing obligations and commitments will continue unaffected.

[The proposed change does not affect any of the existing requirements or commitments on equipment or systems that are designed for the safe operation of the plant. It does not affect the design or operation of the plant.]

Therefore, the proposed change does not significantly increase the probability or consequences of an accident previously evaluated.

II. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The administrative changes to the Operating License [and Antitrust Condition] requirements [to change the name of Mississippi Power & Light] do not involve any change in the design or operation of the plant. The company will still own all of the same assets, serve the same customers, and all existing obligations and commitments will continue unaffected.

[The proposed changes do not affect equipment or systems that could caused an accident at the plant.]

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

III. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change [in name] is administrative in nature, as described above; therefore, this change does not reduce the level of safety imposed by any current requirements. [The proposed changes do not affect any equipment or systems at the plant.] The company will still own all of the same assets, serve the same customers, and all existing obligations and commitments will continue unaffected.

Therefore, the proposed changes do not cause 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. herefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Judge George W. Armstrong Library, 220 S. Commerce Street, Natchez, MS 39120

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., 12th Floor, Washington, DC 20005-3502

NRC Project Director: William D. Beckner

Entergy Operations, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: May 8, 1996

Description of amendment request: The amendment request would replace the current frequency requirements in Surveillance Requirement (SR) 3.6.1.3.5, on the leakage rate testing for each containment purge valve with resilient seals, in the Technical Specifications for Grand Gulf Nuclear Station, Unit 1 (GGNS). The proposed changes would place these purge valves on a performance-based leakage testing frequency, instead of the current once every 184 days and once within 92 days after opening the valve.The proposed changes do not change the limiting conditions for operation, the required actions for inoperability, or the other surveillance requirements on these primary containment isolation valves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with 10 CFR 50.92, Entergy Operations, Inc. has evaluated the proposed change to the Operating License of GGNS and has determined that the operation of the facility in accordance with the proposed amendment would not involve any significant hazards considerations. In accordance with 10 CFR 50.91(a), Entergy Operations, Inc. is providing the following analysis of the proposed amendment against the three [following] standards of 10 CFR 50.92(c):

1) The proposed change does not significantly increase the probability or consequences of an accident previously evaluated.

This change deletes the augmented testing requirement for these containment isolation valves and allows the surveillance intervals to be set in accordance with the Appendix J testing program. [Appendix J to 10 CFR Part 50 defines primary containment leakage testing requirements for water-cooled power reactors as GGNS and these requirements include frequency of testing for the primary containment isolation valves.] This change does not affect the system function or design. The purge valves are not an initiator of any previously analyzed accident. Leakage rates do not affect the probability of the occurrence of any accident. Operating history has demonstrated that these valves do not degrade and cause leakage as previously anticipated. Because these valves have been demonstrated to be reliable, these valves can be expected to perform the containment isolation function as assumed in the accident analyses.

Therefore, there is no significant increase in the consequences of any previously evaluated accident.

2) The proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

Extending the test intervals has no influence on, nor does it contribute in any way to, the possibility of a new or different kind of accident or malfunction from those previously analyzed. No change has been made to the design, function or method of performing leakage testing [or to the design and function of these valves]. Leakage acceptance criteria have not changed. No new accident modes are created by extending the testing intervals. No safety-related equipment or safety functions are altered as a result of this change.

[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 change does not involve a significant reduction in a margin of safety

The only margin of safety that has the potential of being impacted by the proposed changes involves the offsite dose consequences of postulated accidents which are directly related to the containment leakage rate. The proposed change does not alter the method of performing the tests nor does it change the leakage acceptance criteria. Sufficient data has been collected to demonstrate that the resilient seals do not degrade at an accelerated rate.

[Also, the proposed change would test these valves in accordance with the Appendix J testing program at the plant. Appendix J to 10 CFR Part 50 defines primary containment leakage testing requirements for water-cooled power reactors as GGNS and these requirements include frequency of testing for the primary containment isolation valves.]

Because of this demonstrated reliability, this change will provide sufficient surveillance to determine an increase in the unfiltered leakage prior to the leakage exceeding that assumed in the accident analysis.

Therefore, the proposed change does not result in a significant reduction in a margin of safety.

Based on the above evaluation, Entergy Operation, Inc. has concluded that operation in accordance with the proposed amendment involves no significant hazards considerations.

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: Judge George W. Armstrong Library, 220 S. Commerce Street, Natchez, MS 39120

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., 12th Floor, Washington, DC 20005-3502

NRC Project Director: William D. Beckner

Entergy Operations, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: May 9, 1996

Description of amendment request: The amendment request would (1) increase the safety limit minimum critical power ratio (MCPR) for two loop operation and single loop operation to 1.10 and 1.11, respectively, and (2) add a General Electric topical report to the list of documents describing the analytical methods used to determine the core operating limits. The proposed changes are to Section 2.1.1, Reactor Core Safety Limits, and Section 5.6.5, Core Operating Limits Report (COLR), respectively, of the Technical Specifications (TSs).

The licensee also proposed changes to the Bases of the TSs associated with the above proposed changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Entergy Operations, Inc. proposes to change the current Grand Gulf Nuclear Station [GGNS] Technical Specifications. The specific change is to modify the Minimum Critical Power Ratio (MCPR) safety limits reported in Technical Specification 2.1.1.2, the list of references in Technical Specification 5.6.5, and associated Bases changes. The proposed change is necessary in order to switch reload fuel vendors. [General Electric GE11 fuel is being added to the core in place of Siemens Power Corporation (SPC) fuel.]

The Commission has provided standards for determining whether no significant hazards considerations exists as stated in 10 CFR 50.92 (c). A proposed amendment to an operating license involves no significant hazards if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Entergy Operations, Inc. has evaluated the no significant hazards consideration in its request for this license amendment and determined that no significant hazards considerations result from this change. In accordance with 10 CFR 50.91(a), Entergy Operations, Inc. is providing the analysis of the proposed amendment against the three standards in 10 CFR 50.92(c). A description of the no significant hazards consideration determination follows:

I. The proposed change does not significantly increase the probability or consequences of an accident previously evaluated.

The Minimum Critical Power Ratio (MCPR) safety limit is defined in the Bases to Technical Specification 2.1.1 as that limit which ''ensures that during normal operation and during Anticipated Operational Occurrences (AOOs), at least 99.9% of the fuel rods in the core do not experience transition boiling.'' The MCPR safety limit is re-evaluated for each reload and, for GGNS [Operating] Cycle 9, the analyses have concluded that a two-loop MCPR safety limit of 1.10 based on the application of the generic GE MCPR methodology is necessary to ensure that this acceptance criterion is satisfied. For single-loop operation, a MCPR safety limit of 1.11 based on the generic GE MCPR methodology was determined to be necessary. Core MCPR operating limits are developed to support the Technical Specification 3.2 requirements and ensure these safety limits are maintained in the event of the worst-case transient. Since the MCPR safety limit will be maintained at all times, operation under the proposed changes will ensure at least 99.9% of the fuel rods in the core do not experience transition boiling. Therefore, The Minimum Critical Power Ratio (MCPR) safety limit change does not affect the probability or consequences of an accident.

The implementation of GE's GESTAR-II approved methodology has no effect on the probability or consequences of any accidents previously evaluated. One exception to GESTAR is that the mis-oriented and mis-located bundle events will continue to be analyzed as accidents subject to the acceptance criteria in the current licensing basis. The design of the GE11 fuel bundles is such that the bundles are not likely to be mis-oriented or mis-located and the normal administrative controls will be in effect for assuring proper orientation and location. Therefore, the probability of a fuel loading error is not increased. This analysis ensures that postulated dose releases will not exceed a small fraction (10 percent) of 10CFR100 limits.

Therefore, the consequences of accidents previously evaluated are unchanged.

II. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The GE11 fuel to be used in [Operating] Cycle 9 is of a design compatible with fuel present in the core and used in the previous cycle. Therefore, the GE11 fuel will not create the possibility of a new or different kind of accident. The proposed changes do not involve any new modes of operation, any changes to setpoints, or any plant modifications. They introduce revised MCPR safety limits that have been proved to be acceptable for Cycle 9 operation. Compliance with the applicable criterion for incipient boiling transition continues to be ensured. The proposed MCPR safety limits do not result in the creation of any new precursors to an accident.

Therefore, the proposed changes do not create the possibility of a new or different type of accident from any accident previously evaluated.

III. The proposed change does not involve a significant reduction in a margin of safety.

The MCPR safety limits have been evaluated to ensure that during normal operation and during AOOs [abnormal operating occurrences], at least 99.9% of the fuel rods in the core do not experience transition boiling. Therefore, the implementation of the proposed changes in the MCPR safety limit ensure there is no reduction in the margin of safety.

As with the current SPC methodology, GGNS will implement only the NRC-approved revisions to GE's GESTAR methodology. This GE methodology is similar to those SPC reports currently listed in TS 5.6.5 and it will be applied in a similar, conservative fashion. One exception to GESTAR is that the mis-oriented and mis-located bundle events will continue to be analyzed as accidents subject to the acceptance criteria in the current licensing basis. This analysis ensures that postulated dose releases will not exceed a small fraction (10 percent) of 10CFR100 limits. On this basis, the implementation of this GE methodology 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: Judge George W. Armstrong Library, 220 S. Commerce Street, Natchez, MS 39120

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., 12th Floor, Washington, DC 20005-3502

NRC Project Director: William D. Beckner

Entergy Operations Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: February 6, 1996

Description of amendment request: The proposed change will amend the Allowable Values of parameters in Table 3.3-4 of Waterford Steam Electric Station, Unit 3, (Waterford 3) Technical Specifications (TSs) to make it consistent with the identical parameters in Table 2.2-1 of TSs for Waterford 3. The proposed change will add Mode 4 to the surveillance requirements of Table 4.3-2, Item 5.c (Safety Injection System Automatic Actuation Logic) that was inadvertently removed. Finally, the proposed change removes a reference to TS 3.3.3.2 in Surveillance Requirements TS 4.10.2.2 and 4.10.4.2 since Incore Detectors has been removed from the TSs.

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 described herein are administrative changes necessary to correct administrative errors. The proposed changes will have no affect on any design basis accidents nor will these changes affect any material condition of the plant. Therefore, the proposed changes will not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed changes are purely administrative. There are no new system or design changes associated with this proposal. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will have no impact on any protective boundary, safety limit, or margin to safety. The proposed change corrects inconsistencies in the TS and is purely administrative in nature. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn 1400 L Street N.W., Washington, D.C. 20005-3502

NRC Project Director: William D. Beckner

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: May 7, 1996 (TSCR 247)

Description of amendment request: The proposed change to the technical specifications would adopt the provisions of the Standard Technical Specifications (STS), NUREG-1433, Rev. 1, which clarify surveillance requirement applicability and allow a maximum period of 24 hours to complete a surveillance requirement upon discovery that the surveillance has been missed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not

involve a significant increase in the probability of occurrence or consequence of an accident previously evaluated. The proposed changes only affect administrative requirements regarding the applicability and performance of surveillances. This change clarifies surveillance requirement applicability and allows a maximum 24 hour delay period for the performance of a surveillance when it is discovered that the surveillance has not been performed within the required frequency, consistent with the STS. There is minimal safety significance associated with a delay of 24 hours in completing the required surveillance, particularly due to the fact that the most probable result of any particular surveillance performed is the successful verification of conformance with the requirements.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated. The proposed changes only affect administrative requirements regarding the applicability of surveillance requirements and the performance of surveillances to allow a maximum 24 hour delay period when it is discovered that a surveillance has been missed. No changes to plant equipment or operation are affected.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in the margin of safety since the change contained in the proposed amendment does not change any existing safety margins.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753

Attorney for licensee: Ernest L. Blake, Jr., Esquire. Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

GPU Nuclear Corporation, Docket No. 50-320, Three Mile Island Nuclear Station, Unit No. 2 (TMI-2), Dauphin County, Pennsylvania

Date of amendment request: February 16, 1995

Description of amendment request: The proposed amendment would revise TMI-2 Operating License No. DPR-73 by modifying sections 4.02, 4.04, and 4.1.1.3 of the unit technical specifications. The revisions to sections 4.02 and 4.04 would add flexibility to the scheduling of surveillance activities and would allow for a 24 hour period to perform missed surveillances before declaration of a limiting condition for operation, respectively. These changes would make the TMI-2 technical specifications consistent with the Standard Technical Specifications for B&W Plants (NUREG-1430). The revision to section 4.1.1.3 would allow extension of the time interval for surveillance of the containment airlock doors from quarterly to annually. The proposed changes to the TMI-2 technical specifications section 4.1.1.3 would allow a decrease in worker exposure to radiation while maintaining an adequate level of environmental protection at the facility.

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:

10 CFR 50.92 provides the criteria which the Commission uses to perform a no significant hazards consideration. 10 CFR 50.92 states that an amendment to a facility license involves no significant hazards if operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated, or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated, or

3. Involve a significant reduction in a margin of safety.

The proposed changes to the technical specifications sections 4.02 and 4.04 are administrative and do not involve any physical changes to the facility. No changes are made to operating limits or parameters, nor to any surveillance activities. The changes to section 4.1.1.3 extends the interval between surveillance of the containment airlocks; it does not change the operability requirements, test methodology or acceptance criteria. Based on this, GPU Nuclear has concluded that the proposed changes to sections 4.02 and 4.04 do not:

1. Involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated. The changes do not modify any operating parameters or the release of radioactive materials. The clarification of maximum time extensions for surveillance is consistent with the NRC's Standard Technical Specifications for Babcock and Wilcox Plants (NUREG-1430).

2. Create the possibility of a new or different kind of accident since these change are administrative and no plant configuration or operational changes are involved.

3. Involve a change in the margin of safety. These changes are administrative in nature, compatible with standard technical specifications, and do not affect any safety settings or operational limits.

GPU Nuclear has also concluded that the proposed changes to section 4.1.1.3 do not:

1. Involve a significant increase in the probability of occurrence of or consequences of an accident previously evaluated. The change to this section does not change operating parameters, equipment operability requirements, surveillance test methodology, or acceptance criteria.

2. Create the possibility of a new or different kind of accident since the change does not affect plant equipment, plant configuration, or plant operating parameters.

3. Involve a change in the margin of safety since the change does not affect any operational limits.

Based on the above analysis the licensee concluded that the proposed changes involve no significant safety hazards considerations as defined by 10 CFR 50.92.

The NRC staff has reviewed the analysis of the licensee 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: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: Seymour H. Weiss

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: May 1, 1996

Description of amendment request: The proposed amendments would change the Technical Specifications to implement 10 CFR Part 50, Appendix J, Option B, by referring to Regulatory Guide 1.163, ''Performance-Based Containment Leakage-Test Program.''

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:

[South Texas Project] STP has evaluated the proposed Technical Specification Amendment and determined that it does not represent a significant hazards consideration. Based on the criteria for defining a significant hazards consideration established in 10 CFR 50.92, operation of STP in accordance with the proposed amendment will not:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated because of the following:

10 CFR [Part] 50, Appendix J has been amended to include provisions regarding

performance based leakage testing requirements (Option B). Option B allows plants with satisfactory Integrated Leak Rate Testing (ILRT) performance history to extend the Type A testing interval from three tests in ten years to one test in ten years. For Type B and Type C tests, Option B allows extended testing interval[s] based on the leak rate test history of each component. To be consistent with the requirements of 10 CFR [Part] 50, Appendix J, Option B, STP proposes to include appropriate changes to the Technical Specifications that incorporate the necessary revisions associated with 10 CFR [Part] 50, Appendix J, Option B.

The proposed amendment represents the conversion of current Technical Specification requirements to maintain consistency with those requirements specified by 10 CFR [Part] 50, Appendix J, Option B. The proposed changes are consistent with the current safety analyses. Implementation of these changes will provide continued assurance that specified parameters associated with containment integrity will remain within acceptance limits, and will not significantly increase the probability or consequences of a previously evaluated accident.

Some proposed changes represent minor relaxations in current Technical Specification requirements, but are based on the requirements specified by Option B of 10 CFR [Part] 50, Appendix J. Changes are consistent with the current safety analyses and determined to represent sufficient requirements for the assurance and reliability of equipment assumed to operate in the safety analyses, and provide continued assurance that specified parameters associated with containment integrity remain within their acceptance limits. These changes will not significantly increase the probability or consequences of a previously evaluated accident.

The systems affecting containment integrity related to this proposed amendment request are not assumed in any safety analyses to initiate any accident sequence. The probability of any accident previously evaluated is not increased by this proposed amendment. The proposed changes to Technical Specification LCOs or SRs maintain an equivalent level of reliability and availability for all affected systems. The proposed amendment does not increase the consequences of any accident previously evaluated.

There is no change to the consequences of an accident previously evaluated because maintaining leakage within the analyzed limit assumed for any associated accident analyses does not adversely affect either the on-site or off-site dose consequences resulting from an accident. There is no adverse impact on the probability of accident initiators. There is no significant increase in the probability of any previously analyzed accident. A plant specific risk-based analysis of Appendix J performed for STP indicates the containment penetration leakage dose rate contribution to the total dose rate in person-rem is insignificant.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

10 CFR [Part] 50, Appendix J, Option B specifies, in part, that a Type A test which measures both the containment system overall integrated leakage rate at containment pressure and system alignments assumed during a large break LOCA [loss-of-coolant accident], and demonstrates the capability of primary containment to withstand an internal pressure load, may be conducted at an interval based on the performance of the overall containment system. The acceptable leakage rates are specified in the plant's Technical Specifications. For Type B and Type C tests, intervals are proposed based on the performance history of each component. Acceptance criteria for each component is based upon demonstration that the sum leakage rates at design basis pressure conditions for applicable penetrations, is within the limit specified in the Technical Specifications.

The proposed amendment represents the conversion of current Technical Specification requirements to maintain consistency with those requirements specified in 10 CFR [Part] 50, Appendix J, Option B. The proposed changes are consistent with the current safety analyses. Some minor relaxations in current Technical Specification requirements, associated with containment integrity are based on generic guidance provided in Option B, NEI 94-01 and ANSI/ANS 56.8, 1994. These changes do not involve revisions to the design of the station. Some of the changes may involve revision in the testing of components; however, these are in accordance with the STP current safety analyses and provide for appropriate testing or surveillance that are consistent with 10 CFR [Part] 50, Appendix J, Option B. The proposed changes will not introduce new failure mechanisms beyond those already considered in the current safety analyses.

The proposed amendment has been reviewed for acceptability considering similarity of system or component design affecting containment integrity. No new modes of operation are introduced by the proposed changes. Surveillance requirements are changed to reflect corresponding changes associated with Option B of 10 CFR [Part] 50, Appendix J and improvements in technique or interval of leak rate testing performance. The proposed changes maintain, at minimum, the present level of operability of any system that affects containment integrity. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The associated systems that affect leak rate integrity related to the proposed amendment, are not assumed in any safety analysis to initiate any accident sequence. The proposed surveillance requirements for any affected systems are consistent with the current requirements specified within the Technical Specifications and are consistent with the requirements of Option B of 10 CFR [Part] 50, Appendix J. The proposed surveillance requirements maintain an equivalent level of reliability and availability of all affected systems and therefore, does not increase the consequences of any previously evaluated accident.

3) Involve a significant reduction in the margin of safety because:

The provisions specified in Option B of 10 CFR [Part] 50 Appendix J allow changes to Type A, Type B, and Type C test intervals based upon the performance of past leak rate tests. The effect of extending containment leakage rate testing intervals has a corresponding increase in the likelihood of containment leakage. The degree to which intervals can be extended is a direct function of the potential effect to existing safety margins and the public health and safety that can occur due to an increased likelihood of containment leakage. 10 CFR [Part] 50 Appendix J, Option B allows longer intervals between leakage tests based on performance trends but does not increase the leakage acceptance criteria. La [maximum allowable leakage rate] is still limited to 0.3 wt%/day. By referencing the Containment Leakage Rate Testing Program in LCO 3.6.1.2 ACTION, the point at which ACTION is required is increased from .75 La to 1.0 La. This makes the specification consistent with the intent of having margin between an AS-LEFT leakage of less than or equal to .75 La and maintaining operability with less than or equal to 1.0 La.

Changing Appendix J test intervals from those currently provided in the Technical Specification to those provided in 10 CFR [Part] 50, Appendix J, Option B, slightly increases the risk associated with Type A, Type B, and Type C specified accident sequences. Historical data suggests that increasing the Type C test interval can slightly increase the associated risk; however, this is compensated by the corresponding risk reduction benefits associated with reduction in component cycling, stress, and wear associated with increased test intervals. When considering the total integrated risk which includes all analyzed accident sequences, the risk associated with increasing test intervals is negligible. A plant specific risk-based analysis of Appendix J performed for STP indicates the containment penetration leakage dose rate contribution to total dose rate in person-rem is insignificant.

STP proposes to revise the Technical Specifications to be consistent with those provisions specified in Option B of 10 CFR, Appendix J. The proposed changes are consistent with the STP current safety analyses. These proposed changes do not involve revisions to the design of the station. The proposed changes will maintain the same level of reliability of equipment associated with containment integrity assumed to operate in the safety analysis, and provide continued assurance that specified parameters affecting plant leak rate integrity will remain within acceptance limits. The proposed changes provide continued assurance of leakage integrity of containment without adversely affecting the public health and safety and will not significantly reduce existing safety margins. Plant specific risk-based analysis indicates sufficient technical justification exists to further extend the limits beyond those allowed by Option B.

The proposed amendment to the Technical Specifications implements present requirements, or the requirements in accordance with the guidelines set forth in Option B of 10 CFR [Part] 50, Appendix J. NUREG-1493, ''Performance-Based Containment Leak-Test Program,'' served as the technical basis for Option B. STP

performed a plant specific risk-based analysis of containment penetration leakage dose utilizing the same methodology used in NUREG-1493. The analysis indicates the containment penetration leakage dose rate contribution to the total dose rate in person-rem is insignificant. This plant specific analysis serves to validate the applicability of the proposed changes for STP. The proposed changes have been approved by the NRC, are applicable to STP, maintain necessary levels of system or component reliability affecting containment integrity, and do not involve a significant reduction in the margin of safety.

The performance-based approach to leakage rate testing concludes the impact on public health and safety due to revised testing intervals is negligible. The proposed amendment will not reduce availability of systems associated with containment integrity when required to mitigate accident conditions; therefore, the proposed changes do not involve a significant reduction in the margin of safety.

Guidance has been provided in ''Final Procedures and Standards on No Significant Hazards Considerations,'' Final Rule, 51 FR 7744, for the application of standards to license change requests for determination of the existence of significant hazards considerations. This document provides examples of amendments which are and are not considered likely to involve significant hazards considerations.

This proposed amendment does not involve a significant relaxation of the criteria used to establish safety limits, a significant relaxation of the bases for limiting safety system settings or a significant relaxation of the bases for LCOs. Therefore, based on the guidance provided in the Federal Register and criteria established in 10 CFR 50.92(c), the proposed change does not constitute a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488

Attorney for licensee: Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, N.W., Washington, DC 20036-5869

NRC Project Director: William D. Beckner

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of amendment requests: December 14, 1995

Description of amendment requests: The proposed amendments would revise the Administrative Control (Chapter 6) Section and other affected Sections of the Prairie Island Technical Specifications to generally conform with NUREG-1431, Standard Technical Specifications, Westinghouse Plants, Revision 1, dated April 7, 1995.

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.

Operation of the Prairie Island plant in accordance with the proposed changes does not involve a significant increase in the probability or consequences of an accident previously evaluated. None of the proposed changes involve a physical modification to the plant, a new mode of operation or a change to the Updated Safety Analysis Report transient analyses. These proposed amendments generally conform to the guidance of NUREG-1431, Revision 1, Section 5.0 which was previously reviewed, accepted and issued by the NRC.

Some Section 5.0 Specifications in NUREG-1431 were not incorporated in this License Amendment Request. These Specifications were not proposed because they 1) specify requirements not currently in the Prairie Island Technical Specifications or otherwise committed to, 2) are addressed elsewhere in the current Technical Specifications, or 3) the current Technical Specifications level of commitment is maintained. In all these instances, the NRC has previously reviewed and approved the proposed level of commitment through the issuance of the current Prairie Island Technical specifications.

The proposed changes, in themselves, do not reduce the level of qualification or training such that personnel requirements would be decreased.

In total these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes, in themselves, do not introduce a new mode of plant operation, surveillance requirement or involve a physical modification to the plant. These proposed amendments generally conform to the guidance of NUREG-1431, Revision 1, Section 5.0 which was previously reviewed, accepted and issued by the NRC.

Some Section 5.0 Specifications in NUREG-1431 were not incorporated in this License Amendment Request. These Specifications were not proposed because they 1) specify requirements not currently in the Prairie Island Technical Specifications or otherwise committed to, or 2) are addressed elsewhere in the current Technical Specifications. Other features are not fully implemented but rather, the current Technical Specification level of commitment is maintained. In all these instances, the NRC has previously reviewed and approved the proposed level of commitment through the issuance of the current Prairie Island Technical Specifications.

In general, the proposed changes are administrative in nature. The changes propose to revise, delete or relocate Specifications within the Technical Specifications or from the Technical Specifications to the Updated Safety Analysis Report, plant procedures or the Operational Quality Assurance Plan through which adequate control is maintained. The proposed changes do not alter the design, function, or operation of any plant components and therefore, no new accident scenarios are created.

Therefore, the possibility of a new or different kind of accident from any accident previously evaluated would not be created [by] these amendments.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

The proposed changes do not involve a significant reduction in a margin of safety because the Current Technical Specifications requirements for safe operation of the Prairie Island plant are maintained or increased. The proposed changes are administrative in nature and do not involve a physical modification to the plant, a new mode of operation or a change to the Updated Safety Analysis Report transient analyses. The proposed changes do not alter the scope of equipment currently required to be operable or subject to surveillance testing nor does the proposed change affect any instrument setpoints or equipment safety functions.

Therefore, a significant reduction in the margin of safety would not be involved with these amendments.

Based on the evaluation describe above, and pursuant to 10 CFR Part 50, Section 50.91, Northern States Power Company has determined that operation [of] the Prairie Nuclear Generating Plant in accordance with the proposed license amendment request does not involve any significant hazards considerations as defined by Nuclear Regulatory Commission regulations in 10 CFR Part 50, Section 50.92.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: Mark Reinhart (Acting Director)

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: February 15, 1996

Description of amendment requests: The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2 to revise Technical Specification 3.5.2, ''ECCS Subsystems - Tavg Greater Than or Equal to 350°F,'' to change the allowed outage time for any one safety injection pump from 72 hours to 7 days. The specific TS change proposes to add a new footnote that increases the allowed outage time (AOT) for one safety injection (SI) pump from 72 hours to 7 days for performance of non-routine, emergent maintenance and requires review by the Plant Staff Review Committee (PSRC), and requires Plant Manager approval prior to exceeding 72 hours.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed allowed outage time (AOT) extension does not change the operating practices of Diablo Canyon Power Plant (DCPP). Although the proposed change increases the allowed time in which the safety injection (SI) system may be out of service for maintenance or testing, this extended AOT will only be used in emergent circumstances.

Increasing the AOT for the SI pumps does not involve physical alteration of any plant equipment and does not affect analysis assumptions regarding functioning of required equipment designed to mitigate the consequences of accidents. Further, the severity of postulated accidents and resulting radiological effluent releases will not be affected by the increased AOT.

Finally, the probabilistic risk assessment determined that the increase in the core damage probability is not considered significant.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed increase to the SI pump AOTs does not change the method by which DCPP operates. Further, the proposed change would not result in any physical alteration to any plant system, and there would not be a 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.

3. The proposed change does not involve a significant reduction in a margin of safety.

There is no safety analysis impact since the extension of the SI pump AOT interval will have no effect on any safety limit, protection system setpoint, or limiting condition of operation. There is no hardware change that would impact existing safety analysis acceptance criteria.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120

NRC Project Director: William H. Bateman

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

]Date of application request: April 17, 1996

Description of amendment request: The proposed amendment would change Technical Specification (TS) 3/4.3 to support a future modification to replace existing digital portions of the main steam and feedwater isolation system (MSFIS) with digital processor equipment and would authorize revision of the FSAR to include a description of the MSFIS modification. The MSFIS modification is a change to the facility, as described in the safety analysis report, that involves an unreviewed safety question. The modification involves an unreviewed safety questions because: (1) the MSFIS design will use software which could result in a common mode failure, (2) the original NRC review of the MSFIS did not evaluate 2 out of 3 coincidence circuitry, which could introduce new system failure modes, and (3) the MSFIS modification utilizes manual handswitches that could introduce new system failure modes. The NRC will review the modification in accordance with 10 CFR 50.59(a)(2) in conjunction with the review of the proposed TS amendment.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The addition of the MSFIS actuation logic and relays to the TS has no adverse impact on the probability of occurrences or the consequences of an accident. The proposed amendment does not change or alter the design assumptions for the systems or components used to mitigate the consequences of an accident and the methodologies used in the accident analysis remain unchanged. The operating limits will not be changed.

No design basis accidents will be affected by this design change since the logic which currently exists will continue to be performed. Thus, the radiological consequences will not change.

The system response time is enveloped by the current 5 second valve stroke time. The MSFIS response time will be less than 500 msec.

A common mode software failure could exist if both separation groups have their PLCs [programmable logic controllers] (3 per train - six total) malfunction at the same time. However, a diverse means of isolating the feedwater lines exists given the ability of the Main Feed Control Valves to close on a Feedwater Isolation Signal. The MSIVs [main steam isolation valves] do not have a diverse means of isolating their respective steam lines if a common mode software failure occurs. As a result, this modification provides a means to manually fast close the valves at the MSFIS cabinets. The operators will be alerted of the failure conditions of any PLC logic channel via MCB [main control board] annunciators and indicators. This failure mode has a low probability of occurrence based upon the inherent quality of the design provided by the V&V [verification & validation] process. Therefore, the accident consequences are not increased for this failure mode.

The test panel in the MSFIS cabinets has been laid out to provide the same functions as the existing test panel, except that PLC status indication and coincidence logic test functions are provided. The Emergency Override Panel, located below the Test Panel, provides the operator with the ability to bypass the FWIS [feedwater isolation signal] signal and manually fast close each MSIV as required by the Emergency Operating Procedures. The MSIV manual FC [fast close] switch operation is necessary for a diverse means of operation for software common mode failures. The FWIS bypass switch will allow main feedwater flow to be re-established to each Steam Generator.

The replacement system is functionally the same as the current system since it performs the same logic, receives the same inputs, and produces the same outputs. However, the system is more reliable and possesses triple redundant logic. Therefore, the probability of malfunction will not be increased.

The electrical load of the A-B PLC equipment and existing 48 VDC [volts direct current] actuation relays is less than that of the existing equipment so the system will not require any additional cooling over the existing equipment. Proper grounding is provided for the PLC 5 VDC and actuation relay 48 VDC power supplies, which are electrically isolated from each other.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The addition of the MSFIS actuation logic and relays to the TS will not create a new type of accident or malfunction than any previously evaluated in the Safety Analysis Report. The safety functions of the system are not changed in any manner, nor is the reliability of any structure, system or component reduced. All design and performance criteria continue to be met. Since the safety functions and reliability are not adversely affected, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The operator's ability to adequately respond to an accident is not hindered by the man-machine interface added as a result of this modification since the operator interface is similar to the current system and the MCB controls will not change. The operators will be alerted to system malfunctions through annunciation. The current system has a status output for each MSIV and FIV [feedwater isolation valve] valve on the Engineered Safety Feature Status Panel, which will be maintained. In addition, an isolated plant annunciator interface will provide a MSFIS Channel Failure plant annunciator window for both trains. Training will be provided to the technicians, engineers, and operators on the new features of the system prior to installation. Therefore, this modification does not increase the consequential effects due to the man-machine interface.

The system is compatible with the normal and accident environments and will be seismically qualified in accordance with the SNUPPS [standardized nuclear unit power plant system] seismic spectra profile. The equipment will be qualified for Electromagnetic Interference concerns in accordance with EPRI [Electric Power Research Institute] document TR-102323-EPRI Guideline and will meet the EPRI EMI [electromagnetic interference] limiting practices.

The system has the same failure mode upon loss of power as the current system and behaves similarly upon power restoration. A loss of power will not result in a MSFIS actuation.

3. The proposed change does not involve a significant reduction in a margin of safety.

The addition of the MSFIS actuation logic and relays to the TS will not affect or change a safety limit or affect plant operations. This change will not reduce the margin of safety assumed in the accident analysis nor reduce any margin of safety as defined in the basis for any TS.

The system response time for any given valve will not exceed the required valve stroke time. Since the MSFIS does not contain any analog channels, no channel trip accuracies are impacted.

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: 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, D.C. 20037

NRC Project Director: William H. Bateman

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: October 25, 1995

Description of amendment request: The proposed changes would provide an allowed outage time of 14 days for the pressurizer power-operated relief valve (PORV) nitrogen accumulators, as well as provide separate action statements for the PORV depending on the reason for the PORV inoperability during plant operation in power Modes 1, 2, or 3.

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 North Anna Power Station in accordance with the proposed Technical Specifications changes will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The PORVs are assumed to mitigate the consequences of a steam generator tube rupture as described in the North Anna UFSAR [Updated Final Safety Analysis Report] as well as to limit the undesired opening of the pressurizer safety valves for a primary overpressure event. The proposed action statements ensure that the steam generator tube rupture accident analysis requirements are met. The proposed Technical Specification changes require the backup nitrogen supply be available for the PORVs to be consideredoperable and add action statements and surveillance requirements for the nitrogen supply commensurate with its significance. The proposed action statements enhance the availability of the automatic actuation of the PORVs by not requiring the block valves to be closed when the backup nitrogen supplies are inoperable. The proposed surveillance requirements enhance the reliability of the backup nitrogen supply to the PORVs by verifying that there is sufficient nitrogen pressure in the accumulators for the PORVs to perform their design function. The proposed Technical Specification changes do not change any accident analyses, therefore, the probability of any accident and its resulting consequences are not increased.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed Technical Specification changes do not involve any physical modification to the plant or result in a change in a method of operation. The backup nitrogen supply continues to be required for PORV operability. The proposed Technical Specification changes provide operational flexibility and ensure the availability of the PORVs using the normal supply of instrument air while the backup nitrogen supply is being restored. This also prevents undesirable challenges to the pressurizer safety valves. The new surveillance requirements verify that there is sufficient nitrogen pressure in the accumulators for the PORVs to perform their design functions.

3. Involve a significant reduction in a margin of safety.

The proposed Technical Specification changes do not affect any safety limits or limiting safety system settings. The availability of the PORVs will be maintained as required in Generic Letter 90-06. The proposed Technical Specifications will continue to ensure that the PORVs will be capable of performing their intended functions.

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: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219

NRC Project Director: Eugene V. Imbro

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Power Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: April 24, 1996

Description of amendment request: The proposed amendments would revise Technical Specification (TS) Section 15.7, ''Radiological Effluent Technical Specifications (RETS).'' Portions of the RETS would be moved to licensee-controlled documents consistent with Nuclear Regulatory Commission guidance on TS improvements. Changes to other sections of the TSs are also proposed consistent with the removal of portions of the RETS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed amendment simplifies the RETS and implements the recommendations of GL 89-01 and of GL 95-10. The proposed change relocates the operational requirements of RETS but keeps the programmatic controls for these requirements in the Technical Specifications. Therefore, the proposed changes are administrative in nature and do not affect plant operations. Hence, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because no safety-related equipment, safety function, or plant operation will be altered as a result of this proposed change. Also, the changes are unrelated to the initiation and mitigation of accidents and equipment malfunctions addressed in the Final Safety Analysis Report.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

As stated above, the proposed action is the relocation of the RETS procedural details to various manuals while retaining the administrative controls in RETS. The relocation is consistent with the intent of the guidance of GL 89-01 and of GL 95-10. It is administrative and has no impact on plant operation or safety. No safety-related equipment, safety function, or plant operation will be altered as a result of this proposed change. No changes to plant components or structures are introduced which could create new accidents or malfunctions not previously evaluated.

Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated because no new accident scenario is created and no previously evaluated accident scenario is changed by the relocation of the procedural details of RETS from one controlled document to another.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

The proposed change does not include a change to any plant structure, system, component, or operation. The proposed changes do not alter the basic regulatory requirements and do not affect any safety analyses. The proposed change is administrative. The procedural details of the current RETS are relocated while the programmatic controls consistent with regulatory requirements, including controls on revisions to the manuals receiving the RETS procedural details, the Environmental Manual (EM), Radiological Effluent Control Program Manual (RECM), Offsite Dose Calculation Manual (ODCM), and Process Control Program (PCP), remain in RETS.

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: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Gail H. Marcus

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Power Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: April 29, 1996

Description of amendment request: The proposed amendments would revise Technical Specification (TS) Section 15.3.14, ''Fire Protection System,'' and Section 15.4.15, ''Fire Protection System.'' These specifications would be relocated to other licensee-controlled documents in accordance with Nuclear Regulatory Commission generic guidance. Additional administrative changes consistent with the relocation 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. Operation of this facility under the proposed Technical Specifications change will not increase the probability or consequences of an accident previously evaluated.

This change request proposes to remove certain fire protection program requirements from the Point Beach Technical Specifications and incorporate them into the Final Safety Analysis Report (FSAR) and the Fire Protection Evaluation Report (FPER). No requirements are eliminated, modified, or de-emphasized by this change. The proposed amendment ensures that any future changes to the fire protection program will be subject to an appropriate evaluation in accordance with NRC regulations to ensure that there are no unreviewed safety questions.

Therefore, these proposed changes are administrative in nature. There are no proposed changes to the physical plant or the processes which ensure the plant's capability to mitigate fires and achieve safe shutdown. Therefore, there is no potential effect on the probability or consequences of previously evaluated accidents.

2. Operation of this facility under the proposed Technical Specifications change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

New or different accidents can only be created by new or different accident initiators or sequences. Because there are no proposed changes to the physical plant or the processes which ensure the plant's fire protection capability, new or different kinds of accident initiators will not be introduced by this change. The proposed changes are administrative in nature.

3. Operation of this facility under the proposed Technical Specifications change will not create a significant reduction in a margin of safety.

The margins of safety for Point Beach are based on the design and operation of the reactor and containment and the safety systems that provide their protection. Because there are no proposed changes to the physical plant or the processes which ensure the plant's fire protection capability, there will be no effect on the reactor, reactor containment, or the safety systems which provide their protection. Therefore, the proposed changes will not create a reduction in a margin of safety. The proposed changes are administrative in nature.

Additionally, the proposed revision to Point Beach's operating license will not allow Wisconsin Electric to make changes to the approved fire protection program without prior approval of the Nuclear Regulatory Commission should these proposed changes adversely affect the ability to achieve and maintain safe shutdown in the event of a fire. In accordance with NRC Generic Letter 86-10, any proposed change to the approved fire protection program requires the performance of a 10 CFR 50.59 evaluation and a fire hazards analysis. Should these evaluations indicate that the ability to reach and maintain safe shutdown has been adversely affected, prior NRC review and approval will be obtained prior to effecting the changes. Thus, a significant reduction in a margin of safety cannot occur.

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: Joseph P. Mann Library, 1516

Sixteenth Street, Two Rivers, Wisconsin 54241

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Gail H. Marcus

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: May 16, 1996. This supersedes the October 24, 1995, request published in the Federal Register on November 27, 1995 (60 FR 58409).

Description of amendment request: This license amendment request proposes to revise Surveillance Requirement 4.7.6.e.4 to reflect a proposed design change to the output rating, from 15kW to 5kW, of the charcoal filter adsorber unit heater in the pressurization system portion of the control room emergency ventilation system (CREVS). Surveillance Requirements 4.7.6.c.2, 4.7.6.d, and 4.9.13.b and c, are also being revised to reflect a proposed change to the acceptance criteria for the testing of carbon samples from the CREVS charcoal adsorbers and the auxiliary/fuel building emergency exhaust system charcoal adsorbers. Surveillance Requirement 4.7.7.a for the auxiliary building portion of the auxiliary/fuel building emergency exhaust system is also affected by this proposed change. However, since Surveillance Requirement 4.7.7.a refers to Surveillance Requirements 4.9.13.b and c, no changes to 4.7.7.a are required.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The design function of the filter adsorber unit heater in the pressurization system portion of CREVS is to reduce the relative humidity of the air entering the charcoal filter beds to 70% relative humidity. Although the original design specified a heater with a rating of 15 kW, review of the design basis calculation for this system indicates that only about 3.13 kW is actually required (including applicable margins to allow for voltage variations). The proposed change to the CREVS heaters— output rating from 15 kW to 5 kW will not affect the method of operation of the system, and the new heater capacity will still exceed filter operational requirements and safety margin. Neither the heater change nor the charcoal testing protocol changes will affect system operation or performance, nor do they affect the probability of any event initiators. These changes do not affect any Engineered Safety Features actuation setpoints or accident mitigation capabilities. Therefore, the proposed changes will not significantly increase the consequences of an accident or malfunction of equipment important to safety previously evaluated in the USAR [Updated Safety Analysis Report].

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The requested change to the CREVS heaters' output rating and the changes to the charcoal sample testing protocol will not affect the method of operation of the systems, and the new heater capacity will still exceed filter operational requirements and safety margin by a significant amount. The proposed changes only affect the heater size in the system and the testing criteria for the charcoal samples. No new or different accident scenarios, transient precursors, failure mechanisms, or limiting single failures will be introduced as a result of these changes. Therefore, the possibility of a new or different kind of accident other than those already evaluated will not be created by this change.

3. The proposed change does not involve a significant reduction in a margin of safety.

The requested change to the CREVS heaters' output rating will reduce the heater output of the system, but the new heater output will still exceed filter operational requirements and safety margin by a significant amount. In addition, the reduction in heat load output from the heater will increase the design margin between the cooling capacity of the system air conditioning units and the building heat load. The new charcoal adsorber sample laboratory testing protocol is more stringent than the current testing practice and more accurately demonstrates the required performance of the adsorbers following a design basis LOCA [loss-of-coolant accident]. Therefore, these changes will not reduce the margin of safety of the HVAC [heating, ventilation, and air conditioning] systems' operation.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037

NRC Project Director: William H. Bateman

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.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: January 12, 1996, as supplemented March 4, April 3 and April 10, 1996.

Brief description of amendments: The amendments revise the Technical Specification so that the containment integrated leak rate Type A testing will now be performed consistent with the revised 10 CFR Part 50, Appendix J, Option B, by referring to Regulatory Guide 1.163, ''Performance-Based Containment Leak-Test Program.'' No

changes to implement Option B for the Type B and Type C tests were requested by the licensee at this time.

Date of issuance: May 13, 1996

Effective date: As of the date of issuance to be implemented within 30 days

Amendment Nos.: 144 and 138

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: January 21, 1996 (61 FR 3498); and April 10, 1996 (61 FR 15988) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 13, 1996.No significant hazards consideration comments received: No

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: March 5, 1996

Brief description of amendments: These amendments delete the requirement to perform a pressurizer heater surveillance test and change the requirement for containment visual inspection to prevent sump clogging. These changes are in accordance with selected line items from NRC Generic Letter 93-05, ''Line-Item Technical Specification Improvements to Reduce Surveillance Requirements for Testing During Power Operation.''

Date of issuance: May 13, 1996

Effective date: May 13, 1996

Amendment Nos. 184 and 178Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: April 10, 1996 (61 FR15989) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 13, 1996.No significant hazards consideration comments received: No

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199.

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498, South Texas Project, Unit 1, Matagorda County, Texas

Date of amendment request: January 22, 1996, as supplemented by letter dated April 18, 1996.

Brief description of amendment: The amendment modified the steam generator tube plugging criteria in Technical Specification 3/4.4.5, Steam Generators, and the associated Bases, to allow the implementation of alternate steam generator tube plugging criteria for the tube-to-tubesheet joints (known in the industry as F*) for Unit 1.

Date of issuance: May 14, 1996Effective date: May 14, 1996

Amendment No.: 82

Facility Operating License No. NPF-76: The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 28, 1996 (61 FR 7553) The additional information contained in the supplemental letter dated April 18, 1996, was clarifying in nature and thus, within the scope of the initial notice and did not affect the staff's proposed no significant hazards consideration determination.The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 14, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: February 9, 1996, as supplementedMarch 15, 1996, and April 22, 1996.

Brief description of amendment: The amendment revised the Administrative Controls Section 5.6.6 of the Ginna Technical Specifications to incorporate a reference to the methodology for determining pressure/temperature and low-temperature overpressure protection limits.

Date of issuance: May 23, 1996

Effective date: May 23, 1996

Amendment No.: 64

Facility Operating License No. DPR-18: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 28, 1996 (61 FR 7557) The March 15, 1996, and April 22, 1996, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 23, 1996.No significant hazards consideration comments received: No

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: February 9, 1996

Brief description of amendment: This amendment changes the setpoints for the steam generator water level-high feedwater isolation function.Date of issuance: May 20, 1996

Effective date: May 20, 1996

Amendment No.: 63

Facility Operating License No. DPR-18: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 28, 1996 (61 FR 7558) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 20, 1996.No significant hazards consideration comments received: No

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Saxton Nuclear Experimental Corporation (SNEC), Docket No. 50-146, Saxton Nuclear Reactor Facility (SNEF)

Date of application for amendment: November 21, 1995, as supplemented on March 13, 1996.

Brief description of amendment: The amendment adds GPU Nuclear Corporation as a licensee for the SNEF along with SNEC and transfers all management-related responsibilities for the SNEF from SNEC to GPU Nuclear Corporation.

Date of issuance: May 10, 1996

Effective date: May 10, 1996

Amendment No.: 13Amended Facility License No. DPR-4: Amendment changed the Technical Specifications.

Date of initial notice in Federal Register: January 31, 1996 (61 FR 3502). The Commission also published a notice of consideration of transfer of control of license pursuant to 10 CFR 50.80 on March 19, 1996 (61 FR 11231). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 10, 1996.o significant hazards consideration comments received: No

Local Public Document Room Location: Saxton Community Library, 911 Church Street, Saxton, Pennsylvania 16678

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: December 8, 1995

Brief description of amendment: The amendment revises the Technical Specifications (TS) to: 1) add a new surveillance requirement to 4.1.2.2, 2) delete 3.1.2.3 and 3.1.2.4, revise 3.4.9.3 to assure that only one charging pump is capable of injecting water into the primary coolant whenthe reactor is in a shutdown mode, 4) add a new surveillance requirement to 4.4.9.3, 5) revise the Emergency Core Cooling Water System pump testing acceptance criteria, and 6) revise the BASES supporting the above changes.

Date of issuance: May 10, 1996

Effective date: 30 days after issuance

Amendment No.: 134

Facility Operating License No. NPF-12: Amendment revises the TS.

Date of initial notice in Federal Register: January 22, 1996 (61 FR 1635) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 10, 1996.No significant hazards consideration comments received: No

Local Public Document Room location: Fairfield County Library, 300 Washington Street, Winnsboro, SC 29180

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, 1995, as supplemented by letters dated January 5, 1996 and May 3, 1996.

Brief description of amendments: The amendments replace the requirements associated with the control room emergency ventilation system contained in Technical Specification Section 3/4.7.7 with requirements related to the operation of the control room emergency filtration/pressurization system and the control room air conditioning system. In addition, a one-time extension to the allowable outage time for the control room recirculation filtration system is included to facilitate implementation of design modifications.

Date of issuance: May 21, 1996

Effective date: As of the date of issuance to be implemented within 30 days

Amendment Nos.: 119 and 111

Facility Operating License Nos. NPF-2 and NPF-8. Amendments revise the Technical Specifications.

Date of initial notice in Federal Register: January 22, 1996 (61 FR 1637) The January 5, 1996 and May 3, 1996 letters provided clarifying information that did not change the scope of the December 19, 1995, application and initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 21, 1996.No significant hazards consideration comments received: No

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

Southern Nuclear Operating Company, Inc., Docket No. 50-364, Joseph M. Farley Nuclear Plant, Unit 2, Houston County, Alabama

Date of amendment request: April 23, 1996

Brief description of amendment: The amendment would allow steam generator tubes to remain in service with bands of axial degradation in the tube sheet region, for the remainder of Cycle 11, provided sufficient undegraded tubing remains to satisfy the L*-type criteria restrictions established by the licensee.

Date of issuance: May 20, 1996

Effective date: May 20, 1996

Amendment No.: 110

Facility Operating License No. NPF-8. The amendment revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: Yes (61 FR 19092). 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 May 30, 1996, but indicated that if the Commission makes a final no significant hazards consideration determination, any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated May 20, 1996.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

Notice Of Issuance Of Amendments To Facility Operating Licenses And Final Determination Of No Significant Hazards Consideration And Opportunity For A Hearing (Exigent Public Announcement Or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a Federal Register notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an

opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By July 5, 1996, 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. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-001, 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 20555-001, 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 the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: May 15, 1996

Brief description of amendments: The amendment revised Surveillance Requirement (SR) 4.5.2.d.2 in Technical Specification 3/4 5.2 to state that the trisodium phosphate (TSP) contained in the storage baskets in containment is in the form of anhydrous TSP, rather than dodecahydrate TSP, as currently specified.

Date of issuance: May 15, 1996

Effective date: May 15, 1996

Amendment Nos.: Unit 1 - 107; Unit 2 - 99; Unit 3 - 79

Facility Operating License Nos. NPF-41, NPF-51, and NPF-74: The amendment revised the Technical Specifications.Public comments requested as to proposed no significant hazards consideration: No.The Commission's related evaluation of the amendments, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated May 15, 1996.

Local Public Document Room location: Phoenix Public Library, 1221 N. Central Avenue, Phoenix, Arizona 85004

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

NRC Project Director: William H. Bateman

Dated at Rockville, Maryland, this 29th day of May 1996.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects - I/II, Office of Nuclear Reactor Regulation

[Doc. 96–13878 Filed 6–4–96; 8:45 am]

BILLING CODE 7590–01–9

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–87]

Notice of Agreement; Monitoring and Enforcement Pursuant to Sections 301 and 306: Canadian Exports of Softwood Lumber

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of monitoring and determination.

SUMMARY: On May 29, 1996, the United States and Canada entered into an agreement on trade in softwood lumber, with effect form April 1, 1996. This agreement is intended to provide a satisfactory resolution to certain acts, policies and practices of the Government of Canada affecting exports to the United States of softwood lumber that were the subject of an investigation initiated by the United States Trade Representative (''USTR'') under section 302(b)(1)(A) of the Trade Act of 1974 (the Trade Act) and that were found to be unreasonable and to burden or restrict U.S. commerce pursuant to section 304(a) on October 4, 1991. The USTR has determined that this agreement will be subject to the provisions of section 306 of the Trade Act and that USTR will monitor Canadian compliance with this agreement pursuant to section 306 of the Trade Act and will take action under section 301(a) if Canada fails to comply with it.

DATES: The U.S.-Canada agreement on trade in softwood lumber was signed on May 29, 1996.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, NW, Washington, D.C. 20508.

FOR FURTHER INFORMATION CONTACT: Gordana Earp, Deputy Assistant United States Trade Representative for Industry, (202) 395–6160; or William Kane, Associate General Counsel, (202) 395–6800 (for legal issues).

SUPPLEMENTARY INFORMATION: On October 4, 1991, Canada unilaterally terminated a Memorandum of Understanding (MOU) dated December 30, 1986, between the United States and Canada under which, among other things, Canada had imposed a 15 percent export charge on certain softwood lumber products exported to the United States. The MOU had been entered into to settle a pending countervailing duty (CVD) proceeding examining subsidies and injury with respect to imports of Canadian softwood lumber. As of October 4, 1991, Canada ceased collecting export charges under that MOU to offset possible injurious subsidies. In response, on October 4, 1991, (a) the U.S. Department of Commerce announced that it would self-initiate a CVD investigation on softwood lumber from Canada, and (b) the USTR initiated an investigation pursuant to section 302(b)(1)(A) of the Trade Act (19 U.S.C. 2412(b)(1)(A)) and pursuant to section 304(a) of the Trade Act determined that Canada's acts, policies and practices regarding the exportation of softwood lumber to the United States were unreasonable and burdened or restricted U.S. commerce. 56 FR 50738 (October 8, 1991) as amended by 46 FR 58944 (November 22, 1991).

USTR further determined that action was appropriate under section 301 of the Trade Act to restore and maintain the *status quo ante* pending issuance of a preliminary CVD determination, and, if warranted, to impose duties to offset any subsidies found in the investigation. Commerce issued its preliminary CVD determination on March 12, 1992 and its final affirmative CVD determination on May 28, 1992.

Both the domestic industry and affected Canadian parties appealed Commerce's final subsidy determination to binational panels established pursuant to Chapter 19 of the U.S.-Canada Free Trade Agreement (FTA). Following completion of the panel proceedings, and a decision by an Extraordinary Challenge Committee (ECC) established pursuant to FTA Article 1904.13 affirming the results of those proceedings, Commerce—although it expressed disagreement with the panel's findings—on August 16, 1994, revoked the CVD order on softwood lumber from Canada. 59 FR 42029 (Aug. 16, 1994). USTR subsequently terminated the action taken under section 301. 59 FR 52846 (October 19, 1994).

In response to the decisions of the binational panel and the ECC, the domestic industry filed a complaint with the United States Court of Appeals for the District of Columbia Circuit on September 14, 1994, challenging Chapter 19 of the FTA. On December 15, 1994, in order to create a process that could ultimately settle the dispute arising from the unilateral termination in 1991 of the MOU by Canada, and in conjunction with the domestic industry's withdrawal of its challenge to Chapter 19 of the FTA, the United States and Canada agreed to establish a consultative process regarding trade in softwood lumber. The process included the participation of the U.S. Government, Canadian federal and provincial governments, and where appropriate, industries and other interested parties in both countries.

As a result, on May 29, 1996, the United States and Canada entered into an agreement on trade in softwood lumber, with effect from April 1, 1996. During its five-year term, the agreement will foster stable growth in the North American softwood lumber market and ensure fair and competitive trade for U.S. firms and workers by addressing the disruptive effects of unprecedented high levels of Canadian imports previously found by the U.S. Department of Commerce to be subsidized. The agreement requires

Canada to assess fees on any softwood lumber shipped from its four leading producing provinces in excess of 14.7 billion board feet in each of the next five years. The agreement establishes procedures for export licensing and information collection that will greatly facilitate scrutiny of cross-border lumber trade, and for expedited determinations of whether Canada is carrying out its obligations under the agreement. Copies of the agreement are available to the public in the USTR reading room.

The agreement is intended to provide a satisfactory resolution to the acts, policies and practices of Canada regarding the exportation of softwood lumber to the United States that were the subject of the investigation initiated under section 302(b)(1)(A) of the Trade Act and found to be unreasonable and to burden or restrict U.S. commerce pursuant to section 304(a) on October 4, 1991. Section 306 of the Trade Act (19 U.S.C. 2416) requires the USTR to monitor the implementation of each measure undertaken, or agreement that is entered into to provide a satisfactory resolution of a matter subject to a section 301 investigation. Section 306 further requires that, if the USTR considers that a country is not satisfactorily implementing a measure or agreement, the USTR shall determine what further action to take under section 301(a).

Adherence to the terms of the agreement is vital to the achievement of its objectives. USTR, the Department of Commerce, the U.S. Customs Service, and other agencies as appropriate, will carefully monitor and vigorously enforce this agreement. To that end, Customs will provide USTR and Commerce the data that Customs collects on imports (including province of origin and the type of permit) of softwood lumber from Canada. If data, including data provided by the domestic industry, reveal that export fees called for under the agreement are not being collected, or if other information, including information provided by the domestic industry, reveals that Canada is in material non-compliance with any other of its obligations under the agreement, USTR will invoke the dispute settlement provisions of the agreement. I have determined that if: (a) An audit under the agreement confirms that fees have not been collected, and that action has not been taken subsequently to collect the fees, (b) an arbitral panel finds that Canada is otherwise not in conformity with the agreement, such as by offsetting, reducing, or undercutting its obligations under the agreement, and that the situation has not been cured, or (c) Canada unilaterally suspends its performance of, or terminates, the agreement in a manner inconsistent with the agreement, the USTR pursuant to section 306(b) of the Trade Act will consider that Canada is not satisfactorily implementing the agreement. In response, the USTR will take prompt and effective action under section 301(a) of the Trade Act to remedy Canada's failure to comply with the agreement, including, in the case where the required export fees have not been collected and action has not subsequently been taken to collect the fees, the imposition of duties on softwood lumber from Canada commensurate with Canada's failure to collect the fees under the agreement and sufficient to ensure compliance with the agreement and, as appropriate, other action to enforce or ensure compliance with the agreement.

Ira S. Shapiro,

Ambassador, Senior Counselor and Negotiator.

[FR Doc. 96–13993 Filed 6–4–96; 8:45 am]

BILLING CODE 3190–01–M

POSTAL RATE COMMISSION

[Docket No. A96–15; Order No. 1113]

Lewiston, Nebraska 68380 (Lois Tegtmeier, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 29 U.S.C. 404(b)(5)

Issued May 30, 1996.

Docket Number: A96–15.
Name of Affected Post Office: Lewiston, Nebraska 68380.
Name(s) of Petitioner(s): Lois Tegtmeier.
Type of Determination: Consolidate.
Date of Filing of Appeal Papers: May 20, 1996.

Categories of Issues Apparently Raised:

1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].
2. Effect on the community [39 U.S.C. 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission orders:

(a) The Postal Service shall file the record in this appeal by June 4, 1996.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the Federal Register.

By the Commission.

Margaret P. Crenshaw,

Secretary.

Appendix

May 20, 1996
Filing of Appeal letter
May 30, 1996
Commission Notice and Order of Filing of Appeal
June 14, 1996
Last day of filing of petitions to intervene [*see* 39 CFR § 3001.111(b)]
June 24, 1996
Petitioner's Participant Statement or Initial Brief [*see* 39 CFR § 3001.115 (a) and (b)]
July 15, 1996
Postal Service's Answering Brief [*see* 39 CFR § 3001.115(c)]
July 30, 1996
Petitioner's Reply Brief should Petitioner choose to file one [*see* 39 CFR § 3001.115(d)]
August 6, 1996
Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR § 3001.116]
September 17, 1996
Expiration of the Commission's 120-day decisional schedule [*see* 39 U.S.C. § 404(b)(5)]

[FR Doc. 96–14006 Filed 6–4–96; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension

Rule 19b–1—SEC File No. 270–312; OMB Control No. 3235–0354.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is publishing for public comment the following summary of previously approved information collection requirements.

Rule 19b–1 prohibits investment companies from distributing long-term capital gains more than once every twelve months unless certain conditions are met. Rule 19b–1(c) permits unit investment trusts (''Units'') engaged exclusively in the business of investing in certain eligible fixed-income securities to distribute long-term capital gains more than once every twelve months, provided that the capital gains distributions falls within one of the categories in rule 19b–1(c)(1) and provided further that the capital gains distribution is clearly described as such in the report to the unitholder that must accompany the distribution (the ''notice requirement'').

The time required to comply with the notice requirement is estimated to be one hour or less for each additional distribution of long-term capital gains. Since there are approximately 14,175 UIT portfolios that may be eligible to use the rule, the estimated total annual maximum reporting burden would be 14,175 hours.

Rule 19b–1(e) also permits a registered investment company to apply for permission to distribute long-term capital gains more than once a year provided that the investment company did not foresee the circumstances that created the need for the distribution. The time required to prepare an application under rule 19b–1(e) should be approximately four hours. The Commission, however, has not received an application under rule 19b–1(e) in the last five years. Therefore, it estimates no additional annual paperwork burden under this provision.

The estimates of burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study.

Written comments are requested on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: May 29, 1996.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–14016 Filed 6–4–96; 8:45 am]

BILLING CODE 8010–01–M

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension

Rule 17a–22—SEC File No. 270–202; OMB Control No. 3235–0196.

Rule 17Ab2–1 and Form CA–1—SEC File No. 270–203; OMB Control No. 3235–0195.

Rule 17Ac3–1(a) and Form TA–W—SEC File No. 270–96; OMB Control No. 3235–0151.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (''Commission'') is publishing the following summaries of collections for public comment.

Rule 17a–22, which was adopted pursuant to section 17A of the Securities Exchange Act of 1934 (''Act''), requires all registered clearing agencies to file with the Commission three copies of all materials they issue or make generally available to their participants or other entities with whom they have a significant relationship. The filings with the Commission must be made within ten days after the materials are issued, and when the Commission is not the appropriate regulatory agency, the clearing agency must file one copy of the material with its appropriate regulatory agency. The Commission is responsible for overseeing clearing agencies and uses the information filed pursuant to Rule 17a–22 to determine whether a clearing agency is implementing procedural or policy changes. The information filed aides the Commission in determining whether such changes are consistent with the purposes of Section 17A of the Act. Also, the Commission uses the information to determine whether a clearing agency has changed its rules without reporting the actual or prospective change to the Commission as required under Section 19(b) of the Act.

The respondents to Rule 17a–22 generally are registered clearing agencies.[1] The frequency of filings made by clearing agencies pursuant to Rule 17a–22 varies, but on average there are approximately 200 filings per year per clearing agency. Because the filings consist of materials that have been prepared for widespread distribution, the additional cost to the clearing agencies associated with submitting copies to the Commission is relatively small. The Commission staff estimates that the cost of compliance with Rule 17a–22 to all registered clearing agencies is approximately $3500. This represents one dollar per filing in postage, or a total of $2800. The remaining $700 (or 20% of the total cost of compliance) is the estimated cost of additional printing, envelopes, and other administrative expenses.

Rule 17Ab2–1 and Form CA–1 require clearing agencies to register with the Commission and to meet certain requirements with regard to, among other things, a clearing agency's organization, capacities, and rules. The information is collected from the clearing agency upon the initial application for registration on Form CA–1. Thereafter, information is collected by amendment to the initial Form CA–1 when a material change in circumstances necessitates modification of the information previously provided to the Commission.

The Commission uses the information disclosed on Form CA–1 to (i) determine whether an applicant meets the standards for registration set forth in Section 17A of the Act, (ii) enforce compliance with the Act's registration requirement, and (iii) provide information about specific registered clearing agencies for compliance and investigatory purposes. Without Rule 17Ab2–1, the Commission could not perform these duties as statutorily required.

There are currently thirteen registered clearing agencies and one clearing agency that has been granted an exemption from registration. The Commission staff estimates that each initial Form CA–1 requires approximately 130 hours to complete and submit for approval. Hours required for amendments to Form CA–1 that must be submitted to the Commission in connection with material changes to the

[1] Respondents include temporarily registered clearing agencies. Respondents also may include clearing agencies granted exemptions from the registration requirements of Section 17A, conditioned upon compliance with Rule 17a–22.

initial Form CA–1 can vary, depending upon the nature and extent of the amendment. Since the Commission only receives an average of one submission per year, the aggregate annual burden associated with compliance with Rule 17Ab2–1 and Form CA–1 is 130 hours. Based upon the staff's experience, the average cost to clearing agencies of preparing and filing the initial Form CA–1 is estimated to be $15,000.

Subsection (c)(3)(C) of Section 17A of the Act authorizes transfer agents registered with an appropriate regulatory agency (''ARA'') to withdraw from registration by filing with the ARA a written notice of withdrawal and by agreeing to such terms and conditions as the ARA deems necessary or appropriate in the public interest, for the protection of investors, or in furtherance of the purposes of Section 17A.

In order to implement Section 17A(c)(3)(C) of the Act the Commission, on September 1, 1977, promulgated Rule 17Ac3–1(a) and accompanying Form TA–W. Rule 17Ac3–1(a) provides that notice of withdrawal from registration as a transfer agent with the Commission shall be filed on Form TA–W. Form TA–W requires the withdrawing transfer agent to provide the Commission with certain information, including: (1) The locations where transfer agent activities are or were performed; (2) the reasons for ceasing the performance of such activities; (3) disclosure of unsatisfied judgments or liens; and (4) information regarding successor transfer agents.

The Commission uses the information disclosed on Form TA–W to determine whether the registered transfer agent applying for withdrawal from registration as a transfer agent should be allowed to deregister and, if so, whether the Commission should attach to the granting of the application any terms or conditions necessary or appropriate in the public interest, for the protection of investors, or in furtherance of the purposes of Section 17A of the Act. Without Rule 17Ac3–1(a) and Form TA–W, transfer agents registered with the Commission would not have a means for voluntary deregistration when necessary or appropriate to do so.

Respondents file approximately thirty Form TA–Ws with the Commission annually. The filing of a Form TA–W occurs only once, when a transfer agent is seeking deregistration. In view of the ready availability of the information requested by Form TA–W, its short and simple presentation, and the Commission's experience with the Form, we estimate that approximately one-half hour is required to complete Form TA–W, including clerical time. Thus, the total burden of fifteen hours of preparation for all transfer agents seeking deregistration in any one year is negligible.

The Commission estimates a cost of approximately $30 for each half hour required to complete a Form TA–W. Therefore, based upon a total of fifteen hours, transfer agents spend approximately $900 each year to complete thirty Form TA–Ws.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549.

Dated: May 23, 1996.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–14017 Filed 6–4–96; 8:45 am]

BILLING CODE 8010–01–M

[Release Nos. 33–7299; 34–37253; File No. 265–20]

Advisory Committee on the Capital Formation and Regulatory Processes

AGENCY: Securities and Exchange Commission.

ACTION: Change in meeting time.

SUMMARY: This is to give notice that the time for the meeting of the Securities and Exchange Commission Advisory Committee on the Capital Formation and Regulatory Processes scheduled for June 10, 1996 in room 1C30 at the Commission's main offices, 450 Fifth Street, N.W., Washington, D.C., previously scheduled for 1:30 p.m. (61 FR 26940 (5/29/96)), has been changed to 12:30 p.m. The meeting will be open to the public, and the public is invited to submit written comments to the Committee.

FOR FURTHER INFORMATION CONTACT: David A Sirignano, Committee Staff Director, at 202–942–2870; Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

Dated: May 30, 1996.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–14014 Filed 6–4–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37250; International Series Release No. 986; File No. SR–CBOE–96–23]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by Chicago Board Options Exchange, Incorporated and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change Relating to Permits to Trade Options on the Indice de Precios y Cotizaciones

May 29, 1996.

I. Introduction

On April 15, 1996, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') submitted a proposed rule change to the Securities and Exchange Commission (''Commission'') pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] On April 23, 1996, CBOE filed Amendment No. 1 to the proposed rule change (''Amendment No. 1'') [3] deleting certain proposed definitions, making certain non-substantive stylistic and clarifying changes to the proposed rule change and notifying the Commission that the CBOE membership approved the issuance of the IPC Permits (as defined herein).[4] The proposed rule change would adopt new Exchange Rule 3.26 authorizing the issuance of 33 permits (''IPC Permits'')—one to each firm that was a member of the Bolsa Mexicana de Valores (''Bolsa'') as of January 1, 1996 (''Bolsa members'' or ''IPC Permit Holders'')—and setting forth the rights

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] *See* Letter from Timothy Thompson, Senior Counsel, CBOE to Michael Walinskas, Branch Chief, Division of Market Regulation, SEC (April 23, 1996) (available in Commission's Public Reference Room) and attached Certificate.

[4] Section 2.1 of the CBOE's Constitution requires an affirmative vote of the majority of the members present in person or represented by proxy at a special membership meeting to approve the issuance of the IPC Permits. In Amendment No. 1, CBOE reported that 78% of the total votes were cast in favor of issuing the IPC Permits.

and obligations appurtenant to the IPC Permits.[5]

The proposed rule change was noticed for comment in Securities Exchange Act Release No. 37117 (April 16, 1996), 61 FR 17743 (April 22, 1996). No comments were received on the proposed rule change.

II. Description of the Proposal

A. Introduction

CBOE has entered into a license agreement with Bolsa (''License Agreement'') pursuant to which Bolsa has licensed CBOE to trade index options on the Indice de Precios y Cotizaciones (''IPC Options'').[6] In consideration of the grant of this license, CBOE has agreed, among other things, to issue the IPC Permits to the Bolsa members. As discussed below, IPC Permits give Bolsa members limited rights with respect to the trading of IPC Options on the CBOE.

B. Rights of Permit Holders and Permit Exercisers

The IPC Permits, which will be non-leasable and non-transferable, may be used in one of two alternative ways. First, an IPC Permit Holder who wants direct access to the CBOE trading floor in respect of IPC Options could apply, either on its own or on behalf of a subsidiary, to become an IPC Permit Exerciser. If the IPC Permit Holder is qualified for membership on CBOE and its application is approved in accordance with CBOE rules,[7] it will become an IPC Permit Exerciser and will have specified rights and privileges of CBOE membership under CBOE rules with respect to IPC Options—including the right to have a nominee appointed as a market maker or floor broker with respect to such options. The IPC Permit Exerciser will have all of the obligations of CBOE members, including the obligation to comply with CBOE rules and federal securities laws, and will be subject to CBOE's enforcement jurisdiction. For example, nominees of an IPC Permit Exerciser would be required to complete CBOE member firm orientation and would be required to comply with the requirements set forth in Chapter IX of CBOE rules in order to conduct a public customer business. IPC Permit Exercisers would also be subject to CBOE's limitation of liability rules—Rule 6.7, Rule 7.11, and Rule 24.12—to the same extent as regular members.

IPC Permit Exercisers would not have certain rights of membership and would be subject to certain limitations that do not apply to regular Exchange members. IPC Permit Exercisers would not be deemed to be members of CBOE for purposes of the General Corporation Law of Delaware, CBOE's Certificate of Incorporation, or CBOE's Constitution. Thus, IPC Permit Exercisers will have no property interest in CBOE, no voting rights, and will not be eligible as members for election to CBOE's Board of Directors (although they will be eligible for membership on the committees established pursuant to CBOE Rule 2.1). IPC Permit Exerciser would also not be permitted to enter into transactions or to enter orders for any CBOE product other IPC Options while on the floor of CBOE.[8]

An IPC Permit Holder which does not directly or indirectly become an IPC Permit Exercisers would not have the rights or obligations of CBOE membership. Accordingly, such IPC Permit Holders, in contrast to IPC Permit Exercisers, as described above, have no right of access to the CBOE floor to enter into transactions or enter orders for IPC Options. However, CBOE has agreed, as part of the consideration given by it in order to obtain the license of IPC from Bolsa, that if an IPC Permit Holder traded IPC Options for its own account through a CBOE member (including an IPC Permit Exerciser), that IPC Permit Holder would be charged transaction fees for those trades at the same rates as the transaction fees for CBOE member firm proprietary trades.

III. Commission Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Sections 6(b)(2), 6(b)(4) and 6(b)(5) thereunder.[9] Specifically, the Commission believes that liquidity may be enhanced in IPC Options by the grant of the IPC Permits to Bolsa members. At the same time, the CBOE's proposal only gives limited access for Bolsa members to trade IPC Options on its trading floor on the same terms and regulatory conditions for membership as applies to any other applicant for membership.[10] Accordingly, the proposal is consistent with the requirements in Section 6(b)(5) of the Act that rules of an exchange be designed to promote just and equitable principles of trade, facilitate transactions in securities, remove impediments to a free and open market and in general, to protect investors and the public interest as well as the requirements of Section 6(b)(2) of the Act.[11] For the reasons discussed in more detail below, the Commission also believes that the portion of the filing permitting IPC Permit Holders (those who do not exercise the permit) to be charged CBOE member firm proprietary transaction fees for their proprietary trades in IPC Options is consistent with Section 6(b)(4) of the Act which requires the equitable allocation of reasonable dues and fees among members and person using its facilities.

First, the Commission believes that the proposed rules concerning IPC Permit Exercisers that allow direct access to the CBOE trading floor for the limited purpose of trading, or entering transactions in, IPC Options, ensure that only those IPC Permit Exercisers that meet the Exchange's requirements for membership on the Exchange and the requirements of the Act, and that actually have been approved by the CBOE for membership, will have access to CBOE IPC Options on the trading floor.

The rules further ensure that IPC Permit Exercisers and their associated persons are obligated to comply with all CBOE rules and the federal securities laws just as any other CBOE member and its associated persons. This includes, among other things, the obligation to comply with CBOE rules concerning conducting a public customer business, taking required

[5] The Commission separately approved the listing and trading of IPC Options by the Exchange. *See* Securities Exchange Act Release No. 37189 (May 9, 1996), International Series Release No. 977, 61 FR 24982 (May 17, 1996) (approving SR–CBOE–96–09).

[6] *See id.*

[7] Such applications will be subject to the same approval procedures as applicable under the CBOE's rules to applications for membership.

[8] The Exchange will issue IPC Permit Exercisers with badges of a distinctive color so that the limited authority of these traders will be evident on the floor to other market participants and Floor Officials. The Exchange expects, therefore, that these market participants and Floor Officials will be able to ensure that IPC Permit Exercisers do not engage in activity prohibited by Exchange rules. In addition, the Exchange intends to issue distinctive acronyms to IPC Permit Exercisers to facilitate surveillance of illegal activity through a review of trade reports. Telephone conversation between Timothy Thompson, Senior Counsel, CBOE and Ethan Corey, Special Counsel, Division of Market Regulation, SEC (May 28, 1996).

[9] 15 U.S.C. §§ 78f(b) (2), (4), (5).

[10] These requirements include, among other things, that a member be a U.S. registered broker-dealer.

[11] Section 6(b)(2) of the Act requires the rules of a national securities exchange to permit any registered broker or dealer to become a member of that exchange (subject to limitations on the aggregate number of registered brokers or dealers who may become members of that exchange) unless it is subject to a statutory disqualification, does not meet standards of financial responsibility or operational capacity or has engaged and is reasonably likely to continue to engage in acts or practices inconsistent with just and equitable principles of trade.

examinations, maintaining and filing all required records under CBOE rules and being subject to the Exchange's disciplinary and arbitration jurisdiction. Thus IPC Permit Exercisers and their transactions will be subject to complete oversight and surveillance by the CBOE as well as subject fully to CBOE's enforcement jurisdiction.

Despite these obligations, IPC Permit Exercisers are not entitled to full membership rights and will not be permitted to effect transactions on the floor of the CBOE in any product other than IPC Options. To ensure compliance with this limitation, the CBOE has developed special distinctive color badges. The Exchange intends to issue distinctive acronyms to IPC Permit Exercisers to facilitate surveillance of illegal activity through a review of trade reports.[12]

Based on the above, the Commission believes that the rules governing IPC Permit Exercisers have been carefully drafted to allow limited access that should aid liquidity in IPC index options while ensuring compliance with CBOE rules and the federal securities laws consistent with Sections 6(b)(2) and 6(b)(5) of the Act.

The Commission also has carefully reviewed for consistency with the Act the other portion of the CBOE proposal that would set fees on proprietary transactions in IPC Options effected by IPC Permit Holders through CBOE members at the same rate as transaction fees for CBOE member firm proprietary trades. In order to approve the preferential fees for IPC Permit Holders, the Commission must determine, among other things, that the proposed fee is not designed to permit unfair discrimination between customers, issuers, brokers or dealers and that it provides for the equitable allocation of fees and charges among members, issuers and other persons using its facilities.[13]

The Commission notes that the Act ''prohibits 'unfair discrimination,' not 'discrimination' simpliciter . . .''[14] The Commission believes, for the reasons stated below, that the preferential rates to be offered to IPC Permit Holders executing proprietary transactions in IPC Options through CBOE members do not constitute unfair discrimination in violation of the Act or an inequitable allocation of fees among persons using CBOE facilities.

The Commission has not previously approved another proposed rule change presenting precisely the same issues as those presented by this proposal. However, the Commission did approve a New York Stock Exchange (''NYSE'') proposal to permit members of other securities or commodities exchanges to apply to the NYSE for one-year free options trading rights.[15] Unlike CBOE's proposed rule change, the NYSE did not propose to charge transaction fees at member rates to persons who did not apply for options trading rights.

The Commission viewed the NYSE proposal as a form of operational subsidization that is difficult, if not impossible, to avoid when developing a market for a new financial product.[16]

The Commission believes that CBOE's efforts similarly are properly viewed as a form of operational subsidization. In addition, the Commission notes that Bolsa specifically required the preferential fees established by this proposed rule change as consideration for granting CBOE a license to list and trade options on the IPC Index.

The proposed rule change also is similar to the NYSE proposal in that both were designed chiefly to ease access to facilities to encourage the development of an active and liquid trading market.[17] The Commission found that the NYSE proposal, by easing access, furthered the purposes of § 6(b)(2) of the Exchange Act, and, by helping to create a viable trading market for its new options product, furthered the purposes of § 6(b)(5) of the Exchange Act.[18]

The Commission notes that the instant proposed rule change differs from the NYSE proposal in that it provides preferential treatment to parties who do not choose to access the CBOE trading floor. However, the Commission believes that this distinction is not sufficient to negate the benefits to be obtained from a more liquid trading market for IPC Options.

Moreover, the IPC Permits have been issued under very limited and special circumstances. First, Bolsa required the preferential fees established by this proposed rule change as consideration for permitting CBOE to list and trade IPC Options. Second, the preferential rates are limited to Bolsa members and solely to trading in an index option based on stocks traded on the Bolsa. Third, the preferential rate is designed to enhance liquidity to ensure sufficient trading volume in IPC Options. Fourth, the reduced fees do not give any Bolsa member an unfair advantage in seeking to obtain the business of customers, as the reduced fees are limited to Bolsa members' proprietary transactions in IPC Options. Fifth, the IPC Permits are not transferable and cannot be sold or leased to give preferential access to other persons. Based on these factors, the Commission believes that it is not unreasonable for the CBOE to grant IPC Permit Holders a reduced proprietary transaction rate and that such a provision does not permit unfair discrimination or an inequitable allocation of fees in violation of the Act.

In summary, and based on the above, the Commission finds that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) of the Act by helping to create a viable trading market for its new options product by granting preferential access and reduced fees for IPC Option trading to a group of persons (*i.e.*, the Bolsa members) who are likely to provide increased liquidity for the market in IPC Options.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. As noted above, Amendment No. 1 deletes certain proposed definitions, makes certain non-substantive stylistic and clarifying changes to the proposed rule change and notifies the Commission that CBOE has received the requisite member approval for the proposal. None of these amendments affect the substance of the proposed rule change. Accordingly, the Commission believes the amendment raises no new or unique regulatory issues. Therefore, the Commission believes it is consistent with sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment No. 1 to the CBOE's proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the Exchange's proposal. 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

[12] Telephone conversation between Timothy Thompson, Senior Counsel, CBOE and Ethan Corey, Special Counsel, Division of Market Regulation, SEC (May 28, 1996).

[13] 15 U.S.C. 78f(b) (4)–(5).

[14] *Timpinaro* v. *S.E.C.*, 2F.3d 453, 456 (D.C. Cir. 1993).

[15] Securities Exchange Act Release No. 20202 (Sept. 20, 1983), 48 FR 43752 (Sept. 26, 1983).

[16] *Id.* at 43753.

[17] *See id.*

[18] *Id.*

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, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–96–23 and should be submitted by June 26, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that SR–NASD–96–23, as amended is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[19]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–14015 Filed 6–4–96; 8:45 am]

BILLING CODE 8010–01–M

[19] 17 CFR 200.30–3(a)(12) (1993).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2855]

Ohio (And Contiguous Counties in Indiana, Kentucky, and Michigan); Declaration of Disaster Loan Area

Hamilton, Paulding, Scioto, and Williams Counties and the contiguous counties of Adams, Butler, Clermont, Defiance, Fulton, Henry, Jackson, Lawrence, Pike, Putnam, Van Wert, and Warren in the State of Ohio; the contiguous counties of Allen, De Kalb, Dearborn, Franklin, and Steuben in the State of Indiana; Boone, Campbell, Greenup, Kenton, and Lewis in the State of Kentucky; and Hillsdale County in the State of Michigan constitute a disaster area as a result of damages caused by severe thunderstorms and flash flooding on May 15–17, 1996. Applications for loans for physical damage may be filed until the close of business on July 29, 1996 and for economic injury until the close of business on February 28, 1997 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308 or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	7.625
Homeowners Without Credit Available Elsewhere	3.875
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	7.125
For Economic Injury: Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The numbers assigned to this disaster for physical damage are 285506 for Ohio, 285606 for Indiana, 285706 for Kentucky, and 285806 for Michigan. For economic injury the numbers are 890500 for Ohio, 890600 for Indiana, 890700 for Kentucky, and 890800 for Michigan.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 28, 1996.

Philip Lader,

Administrator.

[FR Doc. 96–14060 Filed 6–4–96; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending June 24, 1996

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–96–1398.

Date filed: May 23, 1996.

Parties: Members of the International Air Transport Association.

Subject: TC31 Reso/P 1118 dated May 21, 1996, South Pacific Expedited Reso 002s, (Editorial Changes), Intended effective date: expedited July 1, 1996.

Docket Number: OST–96–1399.

Date filed: May 23, 1996.

Parties: Members of the International Air Transport Association

Subject: TC3 Telex Mail Vote 802, Korea-South Asian subcontinent amendments, r-1-070d r-2-074n r-3-085h, Intended effective date; June 1, 1996.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 96–14003 Filed 6–4–96; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending May 24, 1996

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–96–1389.

Date filed: May 21, 1996.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 18, 1996.

Description: Application of United Air Lines, Inc., pursuant to 49 U.S.C. Section 41101 and Subpart Q of the Regulations, for renewal of authority to serve Spain on segment 6 of its amended Certificate of Public Convenience and Necessity for Route 603.

Docket Number: OST–96–1391.

Date filed: May 22, 1996.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 19, 1996.

Description: Application of Haiti Trans Air, S.A., pursuant to 49 U.S.C. Section 41305 and Subpart Q of the Regulations, for renewal of the Foreign Air Carrier Permit that it presently holds to serve between a point or points in Haiti and the terminal points Miami and Fort Lauderdale, Florida; New York, New York; and San Juan, Puerto Rico.

Docket Number: OST–96–1393.

Date filed: May 23, 1996.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 20, 1996.

Description: Application of American Airlines, Inc., pursuant to 49 U.S.C. Section 41108 and Subpart Q of the Regulations, applies for renewal of its certificate of public convenience and necessity for Route 517, authorizing foreign air transportation of persons, property, and mail between Dallas/Ft. Worth, Texas and Tokyo, Japan.

Docket Number: OST–96–1394.

Date filed: May 23, 1996.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 20, 1996.

Description: Application of American Airlines, Inc., pursuant to 49 U.S.C. Section 41108 and Subpart Q of the Regulations, for renewal of segment 4 of its certificate of public convenience and necessity for Route 602, authorizing foreign air transportation of persons, property, and mail between the coterminal points Dallas/Ft. Worth, Texas and Miami, Florida; the intermediate points the Azores and Lisbon, Portugal; and the coterminal points Madrid, Barcelona, Malaga and Palma de Mallorca, Spain.

Docket Number: OST–96–1395.

Date filed: May 23, 1996.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 20, 1996.

Description: Application of American Airlines, Inc., pursuant to 49 U.S.C. 41108, 14 CFR Part 377, and Subpart Q of the Regulations, for renewal of segment 2 of its certificate of public convenience and necessity for Route 656, authorizing foreign air transportation of persons, property, and mail between Miami, Florida and Toronto, Ontario, Canada.

Docket Number: OST–96–1400.

Date filed: May 24, 1996.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 21, 1996.

Description: Application of Maverick Airways Corporation, pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Regulations requests authority to engage in scheduled air transportation of persons, property, and mail: Between a State, territory, or possession of the United States and a place in the District of Columbia or another State, territory or possession of the United States.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 96–14004 Filed 6–4–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Issues—New Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of new task assignment for the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: Notice is given of a new task assigned to and accepted by the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of ARAC.

FOR FURTHER INFORMATION CONTACT: Michael H. Borfitz, Manager, Engine and Propeller Standards Staff, Engine and Propeller Directorate, ANE–110, FAA, Aircraft Certification Service, 12 New England Executive Park, Burlington, MA 01803, telephone (617) 238–7110.

SUPPLEMENTARY INFORMATION:

Background

The FAA has established an Aviation Rulemaking Advisory Committee to provide advice and recommendations to the FAA Administrator, through the Associate Administrator for Regulation and Certification, on the full range of the FAA's rulemaking activities with respect to aviation-related issues. This includes obtaining advice and recommendations on the FAA's commitment to harmonize its Federal Aviation Regulations (FAR) and practices with its trading partners in Europe and Canada.

One area ARAC deals with is Transport Airplane and Engine issues. These issues involve the airworthiness standards for transport category airplanes in 14 CFR parts 25, 33, and 35 and parallel provisions in 14 CFR parts 121 and 135.

The Task

This notice is to inform the public that the FAA has asked ARAC to provide advice and recommendation on the following harmonization task:

Auxiliary Power Unit (APU) Approval Procedures: (1) Examine the adequacy of existing APU approval procedures; (2) Resolve technical differences in approval procedures between Joint Aviation Regulation APU and Technical Standard Order C–77, and review the adequacy of requirements in the light of possible APU usages, e.g., ETOPS; (3) Coordinate these tasks, as appropriate, with other relevant bodies, e.g., the Powerplant Installation Harmonization Working Group; (4) Technical agreement should be reached within 24 months following publication of the notice of task in the Federal Register.

The FAA also has asked that ARAC determine if rulemaking action (e.g., NPRM, supplemental NPRM, final rule, withdrawal) should be taken, or advisory material should be issued. If so, ARAC has been asked to prepare the necessary documents, including economic analysis, to justify and carry out its recommendation(s).

ARAC Acceptance of Task(s)

ARAC has accepted the task(s) and has chosen to assign it to the existing Propulsion Harmonization Working Group. The working group will serve as staff to ARAC to assist ARAC in the analysis of the assigned task. Working group recommendations must be reviewed and approved by ARAC. If ARAC accepts the working group's recommendations, it forwards them to the FAA as ARAC recommendations.

Working Group Activity

The Propulsion Harmonization Working Group is expected to comply with the procedures adopted by ARAC. As part of the procedures, the working group is expected to:

1. Recommend a work plan for completion of the task, including the rationale supporting such a plan, for consideration at the meeting of ARAC to consider Transport Airplane and Engine Issues held following publication of this notice.
2. Give a detailed conceptual presentation of the proposed recommendations, prior to proceeding with the work stated in item 3 below.
3. For each task, draft appropriate regulatory documents with supporting economic and other required analyses, and/or any other related guidance material or collateral documents the working group determines to be appropriate; or, if new or revised requirements or compliance methods are not recommended, a draft report stating the rationale for not making such recommendations.
4. Provide a status report at each meeting of ARAC held to consider Transport Airplane and Engine Issues.

Participation in the Working Group

The Propulsion Harmonization Working Group is composed of experts having an interest in the assigned task. A working group member need not be a representative of a member of the full committee.

An individual who has expertise in the subject matter and wishes to become a member of the working group should write to the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the tasks, and stating the expertise he or she would bring to the working group. The request will be reviewed by the assistant chair, the assistant executive director, and the working group chair, and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the formation and use of ARAC are necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of ARAC will be open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the

Propulsion Harmonization Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on May 30, 1996

Chris Christie,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 96–14042 Filed 6–4–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application (#96–02–C–00–TEX) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Telluride Regional Airport, Submitted by the Telluride Regional Airport Authority, Telluride, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rules and invites public comment on the application to impose and use PFC revenue at Telluride Regional Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before July 5, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan Wiechmann, Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 5440 Roslyn Street, Suite 300; Denver, CO 80216–6026.

In addition, one copy of any comment submitted to the FAA must be mailed or delivered to Mr. Richard W. Nuttall, Airport Manager, at the following address: Telluride Regional Airport, 1500 Last Dollar Road, P.O. Box 1807, Telluride, CO 81435.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Telluride Regional Airport, under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Schaffer, (303) 286–5525; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 5440 Roslyn Street, Suite 300; Denver, CO 80216–6026. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (#96–02–C–00–TEX) to impose and use PFC revenue at Telluride Regional Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On May 29, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Telluride Regional Airport Authority, Telluride, Colorado, was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 28, 1996.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: November 1, 1996.

Proposed charge expiration date: August 31, 2011.

Total requested for use approval: $1,300,000,00.

Brief description of proposed project: Acquire existing 16,852 sq. ft. terminal building and expand; Construct portion of Taxiway ''A''; Acquire Index ''A'' aircraft rescue and fire fighting (ARFF) vehicle; Acquire snow removal equipment; Install taxiway guidance signs; Reconstruct and expand general aviation and commercial service apron; Reconstruct and widen Taxiway ''A3''; Develop plans and specifications for terminal building and associated utilities.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Telluride Regional Airport.

Issued in Renton, Washington on May 29, 1996.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 96–14043 Filed 6–4–96; 8:45 am]

BILLING CODE 4910–13–M

Maritime Administration

OMB No. 2133–0525

Public Comments on Extension of Information Collection

ACTION: Agency response and request for further comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, as implemented by regulations at 5 CFR part 1320), this notice reviews comments in response to an earlier notice of the Maritime Administration's (MARAD) intention to request the Office of Management and Budget (OMB) for extension of approval of a currently approved information collection. Comments to OMB are invited on this request.

DATES: Comments should be submitted on or before July 5, 1996. Comments should be submitted to OMB as indicated below:

FOR FURTHER INFORMATION CONTACT: James E. Caponiti, Associate Administrator for National Security, Maritime Administration, MAR–630, Room 7300, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2323 or fax 202–493–2180. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Background

Currently, Title VI of the Merchant Marine Act, 1936, as amended (Act), 46 App. U.S.C. 1171 *et seq.*, authorizes the Secretary of Transportation (Secretary) to provide operating-differential subsidy (ODS) to U.S.-flag ship operators for the operation of their vessels in essential services in the foreign commerce of the United States. Eligibility for the ODS program is limited to citizens of the United States, as defined in Section 2 of the Shipping Act, 1916, as amended, 46 App. U.S.C. 802, and MARAD regulations at 46 CFR part 355. Section 801 of the Act requires extensive recordkeeping for ODS contractors and related parties pursuant to MARAD regulations. In promulgating such regulations, MARAD created Form MA–172, which contains requests for specific information.

The Maritime Security Program (MSP), contained in legislation currently pending in the Congress, H.R. 1350, the Maritime Security Act of 1995, will replace the current ODS program and provides financial assistance for U.S.-flag operators and vessels that meet certain qualifications. It will require the Secretary of Transportation to encourage the establishment of a fleet of active,

militarily useful, privately owned vessels to meet the national defense and other security requirements, while also maintaining a presence in international commercial shipping. Participation in the MSP will not be limited to Section 2 U.S. citizens.

On March 7, 1996, MARAD published in the Federal Register a Notice and Request for Comments to MARAD on its request for extension of OMB approval of the information collection relating to applications to participate in the MSP pursuant to H.R. 1350 (OMB Control No. 2133–0525), with a 60-day public comment period (61 FR 9223).

Description of Collection

Title of Collection: Applications and Amendments for Participation under new Section 651 of Title VI, Subtitle B, Merchant Marine Act, 1936, as amended, and amendments thereto.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0525.

Form Number: No form number is assigned to the application.

Expiration Date of Approval: May 31, 1996.

Summary of Collection of Information: The information collected includes an initial application for participation in the program as well as amendments of maritime security program operating agreements.

Need and Use of the Information: When enacted, H.R. 1350 will amend Title VI of the Act and will require MARAD to accept applications for enrollment in a Maritime Security Fleet no later than 30 days after the date of enactment. Receipt of an application will indicate intent on the part of the applicant to enter its vessel(s) in the MSP. MARAD will analyze the information according to prescribed priorities and select vessels for participation in the program. Over the life of an agreement amendments may be necessary to include additional vessels and for changes to existing vessels or status of the applicant.

Description of Respondents and Frequency of Collection: It is estimated that 10 carriers would submit one-time initial applications to participate in the program and it is estimated that five amendments would be required over a ten year period (average 0.5 per year) of an MSP operating agreement.

Annual Responses: 10 one-time applications, 0.5 amendments.

Annual Burden: 60 hours for one-time applications, 1 hour for amendments.

Comments: Send all comments regarding this information collection to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for, Department of Transportation, Maritime Administration.

Discussion of Comments and Summary of Requirements in the Final Application and Rule

This section includes a discussion of the significant issues raised by public comment and how they were addressed. One comment letter from a research and educational organization was received on the proposed application. The organization supported the proposed application, while disagreeing with certain components of the financial requirements section. On May 21, 1996, a meeting was held between the commentor and MARAD during which some of the comments were clarified.

Summary of Comments

1. Need for Financial Data and Expected Benefit

Comment. The commentor stated that there was no practical need or policy basis for MARAD to require the extensive financial data required by the Form MA–172. The commentor noted that the MA–172 contained 29 financial schedules and statements in addition to the 18 single spaced pages of financial requirements contained in MARAD's regulations at 46 CFR part 232. The commentor noted that the Notice required information as it related to applications under the proposed statute and that the Notice stated that MARAD will analyze the information according to prescribed priorities to select vessels for participation in the program. The commentor believed that new Section 651(b) of the Act, ''*Vessel Eligibility*,'' has a number of clear objective standards regarding vessel eligibility for the program, none of which require the type of information requested by MARAD in Form MA–172.

Response. MARAD is not requiring the submission of Form MA–172. In the alternative, an applicant may submit an audited financial statement. The proposed submission of Form MA–172 (separate approval under OMB Control No. 2133–0005) is intended to (1) apply only to the applicant, not to any parent company, affiliate or subsidiary; and (2) simplify the process as most anticipated applicants have a current Form MA–172 on file with MARAD. The financial reporting burden would therefore be significantly reduced for a vast majority of the applicants.

In connection with the Notice for Application to participate in the MSP, MARAD published a Notice and Request for Comments on changes to the Form MA–172. The commentor did not address the proposed changes contained in that Notice in their comment. The revised Form MA–172 has been reduced by 50 percent in an effort to lessen the burden on respondents. In response to the 18 pages of financial requirement of MARAD's regulations mentioned above, it was determined in the subsequent meeting that this was a misunderstanding between the agency and the commentor. The section on financial data submission states ''For applicants which have not completed a Form MA–172 in conjunction with other MARAD assistance programs, complete that form as described at 46 CFR part 232.'' MARAD's intention is to give the respondents a format or guide to use (such as the one contained in its regulations at 46 CFR part 232), and not to actually suggest adherence to the letter of part 232. The reference to part 232 has been removed and the section has been reworded to read: ''Applicant must submit an audited financial statement or have a Form MA–172 already on file with MARAD.''

With respect to the selection criteria contained in new section 652 of the Act, added by section 2 of H.R. 1350, MARAD believes it is within its administrative purview, and in the public interest, to consider the financial viability of a company prior to choosing it for participation in the program.

2. Authority To Collect Data

Comment. The commentor stated that MARAD failed to identify that it did not have the authority to collect the information as section 801 of the Act is specifically exempted under new section 652(c) of the Act and therefore would not apply.

Response. Section 801 of the Merchant Marine Act, 1936, as amended, applies to contracts executed by the Secretary of Transportation under Title VI or VII of the Act and therefore does not pertain specifically to application for such contracts. The pending legislation does not address information collection prior to the grant of MSP contracts. In the absence of specific direction from the Congress, it is appropriate for MARAD to exercise its discretion as to what information is necessary to process MSP applications, provided that it is not inconsistent with the express provisions of the legislation or with its legislative history. Since the proposed legislation is silent on the collection of information prior to the award of an MSP contract, MARAD, acting under general rulemaking authority for the Act derived from section 204(b) of the Act, 46 App. U.S.C. 1114, can collect appropriate information. MARAD believes it is good

administrative practice to require, at a minimum, the information requested as a condition for payment of financial assistance.

3. Subsidiaries and Affiliates

Comment. The commentor stated MARAD lacked authority to obtain information concerning all contractors' parent companies, affiliates, and subsidiaries together with an indication of the business transacted by each.

Response. In the meeting held between MARAD and the commentor, the issue was clarified and it was agreed that the request for information should be applicable only to parent companies, affiliates, and subsidiaries that are involved in the maritime industry for non-section 2 citizen applicants. Section 2 citizen applicants will be required to provide information on affiliated relationships necessary to document status as a section 2 citizen.

4. Citizenship

Comment. The commentor stated that, with respect to the extensive disclosure required with respect to stock ownership, shareholders, voting trusts and agreements whereby control of an applicant is in any way held or exercised by any person not the holder of legal title to such shares, it found the request to be too intrusive. The commentor suggested that MARAD on an *ad hoc* basis continue its practice of requiring citizenship affidavits from some applicants.

Response. MARAD conceptually agrees with the commentor's suggestion and will require the submission of such extensive information only from those applicants requesting to apply as citizens of the United States. Other applicants need only prove lesser levels of citizenship.

5. Current or Anticipated Agreements

Comment. The commentor stated that the requested information regarding current agreements with other carriers was already available and, with respect to anticipated agreements, that request was intrusive and unnecessary for the administration of the MSP.

Response. During the meeting between MARAD and the commentor, the issue was clarified and it was agreed that current information on operations and agreements was needed to assist the agency in identifying potential sealift capacity available for use in accordance with an Emergency Preparedness Program. As a result, the section on agreements would read: ''Describe any current agreements and or relationships with other carriers.'' All reference to anticipated agreements will be deleted.

6. Certification of Citizenship

Comment. The commentor stated that the application required the applicant to be a citizen of the United States within the meaning of Section 2, Shipping Act, 1916, as amended, and that requirement was wrong.

Response. The requirement to certify Section 2 citizenship as part of the application was an error and has been corrected by adding a provision for applicants who are not applying as Section 2 citizens which reads: ''* * * or is eligible to document a vessel under 46 U.S.C. 121 * * *''.

Dated: May 30, 1996.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 96–14092 Filed 6–4–96; 8:45 am]

BILLING CODE 4910–81–M

National Highway Traffic Safety Administration

[Docket No. 94–86; Notice 2]

Establishment of Working Groups to Assist NAFTA Automotive Standards Council

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of intent to establish working groups to assist NAFTA Automotive Standards Council.

SUMMARY: The Automotive Standards Council, a subcommittee under the Committee on Standards Related Measures established by the North American Free Trade Agreement, has decided to establish working groups to assist it in facilitating the attainment of compatibility among, and review the implementation of, national standards-related measures of Canada, Mexico, and the United States that apply to automotive goods. This notice identifies the United States government co-chairs for each of the four working groups the United States will establish. This notice also solicits interested persons from outside the government to serve on the four working groups.

DATES: Requests for membership must be received not later than July 5, 1996.

ADDRESSES: Requests for membership should be submitted to the government co-chair for the appropriate working group indicated below.

FOR FURTHER INFORMATION CONTACT: For the Working Group on Emissions/Engines/Fuels: Mr. Thomas M. Baines, Senior Technical Advisor, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105. Mr. Baines can be reached by fax at (313) 741–7816.

For the Working Group on Light Vehicle Safety Standards: Mr. Stephen R. Kratzke, Chief, Planning and Review Division, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Mr. Kratzke can be reached by telephone at (202) 366–5203 or by fax at (202) 366–4329.

For the Working Group on Heavy Vehicle Safety Standards and the Working Group on Parts and Equipment: Mr. Clive Van Orden, Chief, Equipment and Imports Division, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Mr. Van Orden can be reached by telephone at (202) 366–5311 or by fax at (202) 366–1024.

SUPPLEMENTARY INFORMATION: The North American Free Trade Agreement (NAFTA) is a trilateral trade agreement among the Governments of Canada, Mexico, and the United States. Article 913 of NAFTA establishes a Committee on Standards-Related Measures, comprising representatives of each of the three parties. Paragraph 5 of Article 913 requires the Committee on Standards-Related Measures to establish four subcommittees, one of which is the Automotive Standards Council. The purpose of the Automotive Standards Council is ''to the extent practicable, to facilitate the attainment of compatibility among, and review the implementation of, national standards-related measures of the [three Nations] that apply to automotive goods, and to address other related matters.'' See NAFTA Annex 913.5.a–3. The NAFTA includes non-road engines as well. Thus, the term ''automotive,'' as used in this notice, includes non-road engines.

Annex 913.5.a.–3.3 gives the Automotive Standards Council authority to establish consultation procedures and appropriate operational mechanisms. At the initial meeting of the Automotive Standards Council in Ottawa, the representatives of the three governments agreed to solicit input from interested parties in their respective countries to identify incompatibilities that have created, or could create, needless barriers to trade. Pursuant to this agreement, NHTSA published a notice asking the public for comments about regulatory incompatibilities and barriers to trade on December 23, 1994 (59 FR 66402).

At the second meeting in Mexico City, each of the three Nations reported on the inputs from their respective

countries. The Automotive Standards Council concluded that it should seek help from outside the governments to complete the task of eliminating needless barriers to trade caused by incompatibilities in automotive-related standards and regulations among the three countries. These outside parties may be in the best position to judge the extent to which an incompatibility constitutes a barrier to trade. In addition, many parties outside the governments had asked that the Council try to involve the public to a greater extent in the Council's activities.

At the third meeting in Washington, D.C. on April 30–May 1, 1996, the Council agreed to establish working groups to assist it. Based on the public comments identifying what are believed to be incompatibilities and experience in regulating motor vehicles, the Council will form working groups to address four different areas. These would be:

- Emissions/Engines/Fuels
- Light Vehicle Safety Standards
- Heavy Vehicle Safety Standards, and
- Parts and Equipment (both original equipment and replacement)

The Council also agreed on Terms of Reference to provide an outline for how the working groups will function. The complete text of the Terms of Reference follows this notice as an appendix.

The United States has decided to establish four working groups, one in each of these areas. The United States has also identified the following government co-chairs for each of the four working groups:

- Mr. Thomas M. Baines (Emissions/Engines/Fuels)
- Mr. Stephen R. Kratzke (Light Vehicle Safety Standards)
- Mr. Clive Van Orden (Heavy Vehicles Safety Standards and Parts and Equipment).

The United States is now soliciting interested parties from outside the government to participate in the four working groups. Interested parties should write or fax the government co-chair for the working group(s) they would like to participate in by July 5, 1996. The government co-chair will then contact all respondents to announce the time and place for an organizational meeting for each working group. At the initial meeting, each working group will decide upon the internal procedures it wants to follow and select a co-chair from outside the government.

Issued on May 30, 1996.

Francis J. Turpin,

Director, Office of International Harmonization.

Appendix—Terms of Reference for Working Groups Under The NAFTA Automotive Standards Council

Objectives

The Automotive Standards Council (''the Council'') has agreed under Annex 913.5.a–3.3 of the North American Free Trade Agreement to establish working groups of interested persons to pursue the following objectives:

- Facilitate the attainment of compatibility among, and review the implementation of, national standards-related measures of the Parties that apply to automotive goods; and
- Suggest recommendations the Council could make that would facilitate the attainment of such compatibility.

Structure of Working Groups

a. Subject Areas To Be Addressed by Working Groups

1. The Council will initially address four areas by means of working groups in the Parties. These four areas are:

i. Emissions/Engines/Fuels
ii. Light Vehicle Safety Standards
iii. Heavy Vehicle Safety Standards and
iv. Parts and Equipment (both Original Equipment and Replacement)

2. The Council may specify additional areas to be addressed by working groups, as needed.

b. General Structure of Working Groups

1. Each Party will establish one or more working groups to address these four areas.

2. Each working group will be co-chaired by a representative of the government and a person not employed by the government. The government co-chair will serve as a liaison between the Council and the working group.

3. Members of the working groups not employed by the government will not be compensated by the government for their work on the working groups.

4. Each Party may use whatever procedures it deems appropriate to decide the membership of its working groups.

c. General Responsibilities of Working Groups

1. The working groups will have the primary responsibility for identifying incompatibilities among the national standards-related measures of the Parties that apply to automotive goods, providing an assessment of the extent to which such incompatibilities represent a barrier to trade, and for offering suggestions to the Council about ways to remove those incompatibilities.

2. Each working group will be responsible for informing other working groups, including the counterpart working groups in the other Parties and other working groups established by the same Party, of its planned and current activities. The Council will be responsible for ensuring that information it receives from any working group is passed on to all other working groups through the government co-chairs.

3. Each working group shall report annually on its activities to the Council. Such reports shall briefly indicate the activities in which the working group has been engaged for the preceding year and the activities the working group plans for the upcoming year, any priorities on which the working group has agreed, and provide a status report on the current projects of the working group.

4. Each working group may develop its own internal rules and priorities consistent with the objectives set forth in these Terms of Reference.

5. Working groups may hold trilateral meetings with the working groups in the other Parties if deemed necessary.

d. Working Group Presentations to the Council

1. The Council will give the working groups as much notice as possible of upcoming Council meetings to allow the working groups to request some time on the agenda to make presentations to the full Council.

2. Before any working group asks to make a presentation to the full Council, it must coordinate the presentation with the appropriate working groups in the other Parties. For the purposes of this document, ''coordinate'' means the working group must inform the appropriate working groups in other Parties of the planned presentation and discuss the presentation with those other working groups. For instance, if the Canadian working group addressing Light Vehicle Safety Standards wants to make a presentation to the Council, it must first inform the working groups addressing Light Vehicle Safety Standards in Mexico and the United States of the presentation and discuss it with those working groups. Working groups will, to the maximum extent possible, make a single presentation that represents the views of the appropriate working groups in all Parties, including a statement of any differing views. This requirement does not mean that the working groups in the other Parties must agree to the presentation before the Council will hear it. Instead, it means that the working groups in the other Parties must be fully informed of the details of the presentation and the intention to present it to the full Council.

3. The Council encourages working groups to make joint presentations when possible. Nongovernment representatives of the presenting working group or groups would be permitted to present the suggestions to a meeting of the full Council.

4. As soon as possible after the Council completes its internal consideration of the presentation, the Council will inform the presenters of the Council's decision on the working group recommendations to the Council.

Amendments

These terms of reference may be amended at any time with the unanimous consent of all Parties.

[FR Doc. 96–14063 Filed 5–31–96; 12:25 pm]

BILLING CODE 4910–59–P

Saint Lawrence Seaway Development Corporation

Advisory Board; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation, to be held at 2:00 p.m., June 20, 1996, at the Corporation's Washington, D.C. office, 400 7th Street, S.W., Suite 5424, Washington, D.C. 20590. The agenda for this meeting will be as follows: Opening Remarks; Consideration of Minutes of Past Meeting; Review of Programs; Business; and Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than June 17, 1996, Marc C. Owen, Advisory Board Liaison, Saint Lawrence Seaway Corporation, 400 Seventh Street, S.W., Washington, D.C. 20590; 202–366–0091.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, D.C. on May 29, 1996.

Marc C. Owen,

Advisory Board Liaison.

[FR Doc. 96–14012 Filed 6–4–96; 8:45 am]

BILLING CODE 4910–61–M

Surface Transportation Board [1]

[STB Ex Parte No. 523 (Sub-No. 1)]

Railroad Cost of Capital—1995

AGENCY: Surface Transportation Board.

ACTION: Notice of decision.

SUMMARY: On June 5, 1996, the Board served a decision to update its estimate of the railroad industry's cost of capital for 1995. The composite cost of capital rate for 1995 is found to be 11.7%, based on a current cost of debt of 7.4%, a cost of common equity capital of 13.4%, a cost of preferred equity capital of 3.2%, and a 26.0% debt, 72.8% common equity, 1.2% preferred equity capital structure mix. The cost of capital finding made in this proceeding will be used in a variety of Board proceedings.

EFFECTIVE DATE: This action is effective June 6, 1996.

FOR FURTHER INFORMATION CONTACT: Leonard J. Blistein, (202) 927–6171. (TDD for the hearing impaired: (202) 927–5721.)

SUPPLEMENTARY INFORMATION: The cost of capital finding in this decision shall be used to evaluate the adequacy of railroad revenues for 1995 under the standards and procedures promulgated in *Standards for Railroad Revenue Adequacy,* 3 I.C.C.2d 261 (1986). This finding may also be used in other Board proceedings involving, for example, the prescription of maximum reasonable rate levels and proposed abandonments of rail lines. Additional information is contained in the Board's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., Room 2229, 1201 Constitution Avenue, NW., Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927–5721.)

Environmental and Energy Considerations

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. 605(b), we conclude that our action in this proceeding will not have a significant economic impact on a substantial number of small entities. The purpose and effect of this action are to update the annual railroad industry cost of capital finding by the Board. No new reporting or other regulatory requirements are imposed, directly or indirectly, on small entities.

Authority: 49 U.S.C. 10704(a).

Decided: May 22, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–14088 Filed 6–4–96; 8:45 am]

BILLING CODE 4915–00–P

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of ICCTA provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by ICCTA. This decision relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10704.

Surface Transportation Board [1]

[STB Finance Docket No. 32968]

Luxapalila Valley Railroad, Inc.—Acquisition and Operation Exemption—Rail Lines of Norfolk Southern Railway Co. and Columbus and Greenville Railway Co.

Luxapalila Valley Railroad, Inc. (LVR), a noncarrier, filed a verified notice of exemption under 49 CFR 1150.31 to acquire and to operate approximately 34.2 miles of connecting, separately owned main rail lines in Mississippi and Alabama. The lines to be acquired are currently owned by Norfolk Southern Railway Company (NS) and Columbus and Greenville Railway Company (C&G).[2] The trackage lies between NS milepost 884.9 at Belk, AL, and NS milepost 919.1 at Columbus, MS. NS currently owns and operates the 24.5-mile Alabama portion, lying between NS milepost 884.9 at Belk and NS milepost 909.4 at the Mississippi-Alabama state line. The 9.7-mile Mississippi portion, lying between NS milepost 909.4 and NS milepost 919.1 at Columbus, is owned by C&G but has been operated by NS since 1926 under a lease that expired in 1995.

The transaction was intended to be consummated shortly after May 30, 1996.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to reopen will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32968, must be filed with

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10901.

[2] LVR and C&G are owned by CAGY Industries, Inc., a noncarrier that controls several class III rail carriers. Because CAGY Industries owns other carriers, it would require the prior approval of this Board under 49 U.S.C. 11323(a)(5) and 11324(d), or exemption therefrom under 49 U.S.C. 10502, to continue in control of these other carriers when LVR becomes a carrier by its acquisition of the line in question. In STB Finance Docket No. 32968 (Sub-No. 1), CAGY Industries has filed a petition for exemption to permit such continuance in control. Because LVR will connect with another carrier controlled by CAGY Industries (C&G), CAGY Industries cannot invoke the class exemption at 49 CFR 1180.2(d)(2) for continuance-in-control transactions. Prior to closure of this transaction and pending approval of the exemption sought in the (Sub-No. 1) proceeding, LVR's stock will be place into an independent voting trust.

the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, NW., Washington, DC 20423. In addition, a copy of each pleading must be served on Patricia E. Kolesar, Esq., Slover & Loftus, 1224 Seventeenth Street, NW., Washington, DC. 20036.

Decided: May 29, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–14086 Filed 6–4–96; 8:45 am]

BILLING CODE 4915–00–P

[Finance Docket No. 32691] [1]

North Charleston Terminal Company—Lease Exemption—South Carolina Division of Public Railways, Cosgrove Yard, North Charleston, SC

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: The Board, under 49 U.S.C. 10505, exempts from the prior approval requirements of 49 U.S.C. 11343–45 the lease by North Charleston Terminal Company of South Carolina Division of Public Railways' Cosgrove Yard, consisting of approximately 9.3 miles of yard track and other railroad facilities, in North Charleston, Charleston County, SC, subject to standard labor protective conditions.

DATES: This exemption will be effective July 5, 1996. Petitions to stay must be filed by June 20, 1996, and petitions to reopen must be filed by July 1, 1996.

ADDRESSES: Send pleadings referring to Finance Docket No. 32691 to: (1) Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, NW., Washington, DC 20423, and (2) Petitioner's representative: Robert J. Cooney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–7513. (TDD for the hearing impaired: (202) 927–5721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC News & Data, Inc., Room 2229, 1201 Constitution Ave., NW., Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927–5721.)

Decided: May 21, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–14087 Filed 6–4–96; 8:45 am]

BILLING CODE 4915–00–P

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (the ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the ICCTA provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the ICCTA. This notice relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10902 and 49 U.S.C. 11323–25. Therefore, this notice applies the law in effect prior to the ICCTA, and citations are to the former sections of the statute, unless otherwise indicated.

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 96–47]

Petroleum Refineries in Foreign Trade Subzones

AGENCY: Customs Service, Department of the Treasury.

ACTION: General notice; modification of T.D. 66–16.

SUMMARY: This document publishes an attribution schedule approved in accordance with the foreign trade zone regulations for use by the Valero Refining Company, operating as Foreign Trade Subzone No. 122j, in Corpus Christi, Texas, covering three feedstocks not otherwise covered by a published schedule, for the purpose of calculating the amount of selected feedstock which would be required to produce a given category of product in the subzone, with inventory accounting for feedstock and product, as well as duty assessment for any such product removed from or consumed within the subzone, being determined accordingly.

FOR FURTHER INFORMATION CONTACT: Louis Hryniw, Office of Regulatory Audit, (202) 927–0677.

SUPPLEMENTARY INFORMATION:

BACKGROUND

By a final rule document published in the Federal Register as T.D. 95–35 (60 FR 20628) on April 27, 1995, Customs amended its foreign trade zone regulations (19 CFR part 146) to add special procedures and requirements governing the operation of petroleum refineries approved as foreign trade subzones, in implementation of § 9002 of the Technical and Miscellaneous Revenue Act of 1988, codified as 19 U.S.C. 81c(d). These regulations, issued as a new subpart H to part 146 (§§ 146.91–146.96), essentially establish procedures to account for the various products refined in a subzone as well as the feedstocks that are used therein in such refining operations, with duty assessment being determined accordingly.

Specifically in this connection, § 146.93(a) requires that all final product refined in, and either removed from or consumed within, a petroleum refinery subzone, be attributed to feedstock admitted into the subzone in the current or prior manufacturing period.

One method of attribution permits a quantity of product to be attributed as having been refined from a given quantity of feedstock to the extent that the quantity of such product was producible (could have been produced) from the stated quantity of feedstock. 19 CFR 146.95(a) (1) and (2). This method, known as producibility, calls for the establishment of objective production standards to govern its application. Such standards, called industry standards of potential production on a practical operating basis, have already been established, adopted and published in T.D. 66–16. 19 CFR 146.95(a)(2). In this regard, T.D. 66–16 lists several categories of products as well as a number of different feedstocks, together with the noted industry standards expressed in percentages.

Section 146.95(a)(3)(i) deals with the attribution of product to feedstock not listed in T.D. 66–16, and requires in this situation that the operator submit a proposed attribution schedule, supported by a technical memorandum, to the appropriate port director. The port director must refer the request to the Director, Office of Regulatory Audit, who is responsible for reviewing and verifying the refiner's records and approving or denying the request, following due coordination with the Director, Office of Laboratories and Scientific Services.

In the present case, Valero Refining Company, operating as Foreign Trade Subzone No. 122j, in Corpus Christi, Texas, has submitted such a request, which has since been evaluated by Customs as described, and approved, concerning the establishment of a verified attribution schedule for heretofore unlisted residual cracking feedstocks of classes I, II, and III, respectively. Section 146.95(a)(3)(i)

requires that such a modification of T.D. 66–16 be published.

Consequently, this document informs the public that, pursuant to the approval granted to it under § 146.95(a)(3)(i), the refinery subzone in question may use the attribution schedule hereinafter published in calculating the amount of selected feedstock which would be required to produce a quantity of a given petroleum product, with inventory recordkeeping and control for both feedstock and product in the subzone, and duty assessment for any product removed from or consumed within the subzone, being determined accordingly.

INDUSTRY STANDARDS OF POTENTIAL PRODUCTION ON A PRACTICAL OPERATING BASIS APPROVED FOR VALERO REFINING COMPANY

Product	Residual Cracking Feedstock Class I, percent	Residual Cracking Feedstock Class II, percent	Residual Cracking Feedstock Class III, percent
Motor gasoline	86	77	86
Aviation gasoline.			
Special naphthas	11	16	9
Jet fuels.			
Kerosene and range oil	.....	4	4
Distillate oils	4	24	3
Residual oils	100	100	100
Lubricating oils.			
Paraffin wax.			
Petroleum coke	8	6	7
Asphalt.			
Road oil.			
Still gas	10	10	10
Liquified refinery gas	12	20	23
Petroleum synthetic rubbers.			
Petrochemical plastics and resins.			
All other petrochemical products	3	4	1

George J. Weise,

Commissioner of Customs.

Approved: May 8, 1996.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc 96–14126 Filed 6–4–96; 8:45 am]

BILLING CODE 4820–02–P

federal register

Wednesday
June 5, 1996

Part II

Environmental Protection Agency

Department of Transportation

Coast Guard

Research and Special Programs Administration

Department of the Interior

Minerals Management Service

Department of Labor

Occupational Safety and Health Administration

The National Response Team's Integrated Contingency Plan Guidance; Notice

ENVIRONMENTAL PROTECTION AGENCY

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[FRL–5512–8]

The National Response Team's Integrated Contingency Plan Guidance

AGENCY: Environmental Protection Agency (EPA), U.S. Coast Guard (USCG), Minerals Management Service (MMS), Research and Special Programs Administration (RSPA), Occupational Safety and Health Administration (OSHA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency, as the chair of the National Response Team (NRT), is announcing the availability of the NRT's Integrated Contingency Plan Guidance (''one plan''). This guidance is intended to be used by facilities to prepare emergency response plans. The intent of the NRT is to provide a mechanism for consolidating multiple plans that facilities may have prepared to comply with various regulations into one functional emergency response plan or integrated contingency plan (ICP). This notice contains the suggested ICP outline as well as guidance on how to develop an ICP and demonstrate compliance with various regulatory requirements. The policies set out in this notice are intended solely as guidance.

ADDRESSES: Additional copies of this one-plan guidance can be obtained by writing to the following address: William Finan, U.S. Environmental Protection Agency, Mail Code 5101, 401 M Street SW, Washington, DC 20460. Copies of the ICP Guidance are also available by calling the EPCRA/RCRA/Superfund Hotline at (800) 424–9346 (in the Washington, DC, metropolitan area, (703) 412–9810). In addition, this guidance is available electronically at the home page of EPA's Chemical Emergency Preparedness and Prevention Office (http://www.epa.gov/swercepp/).

FOR FURTHER INFORMATION CONTACT: William Finan, U.S. Environmental Protection Agency, Mail Code 5101, 401 M Street, SW., Washington, DC 20460, at (202) 260–0030 (E-Mail homepage.ceppo@epamail.epa.gov—please include ''one plan'' in the subject line). In addition, the EPCRA/RCRA/Superfund Hotline can answer general questions about the guidance.

For further information and guidance on complying with specific regulations, contact: for EPA's Oil Pollution Prevention Regulation: Bobbie Lively-Diebold, U.S. Environmental Protection Agency, Mail Code 5203G, 401 M Street, SW., Washington, DC 20460, at (703) 356–8774 (E-Mail Lively.Barbara@epamail.epa.gov), or the SPCC Information Line at (202) 260–2342); for the U.S. Coast Guard's Facility Response Plan Regulation: LCDR Mark Hamilton, U.S. Coast Guard, Commandant (G–MOR), 2100 2nd Street, SW., Washington, DC 20593, at 202–267–1983 (E-Mail M.Hamilton/G-M03@CGSMTP.uscg.mil); for DOT/RSPA's Pipeline Response Plan Regulation: Jim Taylor, U.S. Department of Transportation, Room 2335, 400 7th Street, SW., Washington, DC 20590 at (202) 366–8860 (E-Mail OPATEAM@RSPA.DOT.GOV); for pertinent OSHA regulations, contact either your Regional or Area OSHA office; for DOI/MMS' Facility Response Plan Regulation: Larry Ake, U.S. Department of the Interior—Minerals Management Service, MS 4700, 381 Elden Street, Herndon, VA 22070–4817 at (703) 787–1567 (E-Mail Larry_Ake@SMTP.MMS.GOV); for EPA's Risk Management Program Regulation: William Finan (see above); and for RCRA's Contingency Planning Requirements, contact the EPCRA/RCRA/Superfund Hotline (see above).

The NRT welcomes comments on specific implementation issues related to this guidance. Please provide us with information about the successful use of this guidance, about problems with using this guidance, as well as suggestions for improving the guidance. Send comments to William Finan (see above) or to any of the other people listed in the previous paragraph.

SUPPLEMENTARY INFORMATION:

Presidential Review Findings

Section 112(r)(10) of the Clean Air Act required the President to conduct a review of federal release prevention, mitigation, and response authorities. The Presidential Review was delegated to EPA, in coordination with agencies and departments that are members of the National Response Team (NRT). The Presidential Review concluded that, while achieving its statutory goals to protect public safety and the environment, the current system is complex, confusing, and costly. It identified several key problem areas and recommended a second phase to address these issues. One of the issues identified by the Presidential Review is the multiple and overlapping federal requirements for facility emergency response plans.

NRT Policy Statement

This one-plan guidance is intended to be used by facilities to prepare emergency response plans for responding to releases of oil and non-radiological hazardous substances. The intent of NRT is to provide a mechanism for consolidating multiple plans that facilities may have prepared to comply with various regulations into one functional emergency response plan or integrated contingency plan (ICP). A number of statutes and regulations, administered by several federal agencies, include requirements for emergency response planning. A particular facility may be subject to one or more of the following federal regulations:

- EPA's Oil Pollution Prevention Regulation (SPCC and Facility Response Plan Requirements)—40 CFR part 112.7(d) and 112.20–.21;
- MMS's Facility Response Plan Regulation—30 CFR part 254;
- RSPA's Pipeline Response Plan Regulation—49 CFR part 194;
- USCG's Facility Response Plan Regulation—33 CFR part 154, Subpart F;
- EPA's Risk Management Programs Regulation—40 CFR part 68;
- OSHA's Emergency Action Plan Regulation—29 CFR 1910.38(a);
- OSHA's Process Safety Standard—29 CFR 1910.119;
- OSHA's HAZWOPER Regulation—29 CFR 1910.120; and
- EPA's Resource Conservation and Recovery Act Contingency Planning Requirements—40 CFR part 264, Subpart D, 40 CFR part 265, Subpart D, and 40 CFR 279.52.

In addition, facilities may also be subject to state emergency response planning requirements that this guidance does not specifically address. Facilities are encouraged to coordinate development of their ICP with relevant state and local agencies to ensure compliance with any additional regulatory requirements.

Individual agencies' planning requirements and plan review procedures are not changed by the advent of the ICP format option. This one-plan guidance has been developed

to assist facilities in demonstrating compliance with the existing federal emergency response planning requirements referenced above. Although it does not relieve facilities from their current obligations, it has been designed specifically to help meet those obligations. Adherence to this guidance is not required in order to comply with federal regulatory requirements. Facilities are free to continue maintaining multiple plans to demonstrate federal regulatory compliance; however, the NRT believes that an integrated plan prepared in accordance with this guidance is a preferable alternative.

The NRT realizes that many existing regulations pertaining to contingency planning require review by a specific agency to determine compliance with applicable requirements. It is not the intent of the NRT to modify existing agency review procedures or to supersede the requirements of a regulation.

This one-plan guidance was developed through a cooperative effort among numerous NRT agencies, state and local officials, and industry and community representatives. The NRT and the agencies responsible for reviewing and approving federal response plans to which the ICP option applies agree that integrated response plans prepared in the format provided in this guidance will be acceptable and be the federally preferred method of response planning. The NRT realizes that alternate formats for integrating multiple plans already exist and that others likely will be developed. Certain facilities may find those formats more desirable than the one proposed here. The NRT believes that a single functional plan is preferable to multiple plans regardless of the specific format chosen. While they are acceptable, other formats may not allow the same ease of coordination with external plans. In any case, whatever format a facility chooses, no individual NRT agency will require an integrated response planning format differing from the ICP format described here. The NRT anticipates that future development of all federal regulations addressing emergency response planning will incorporate use of the ICP guidance. Also, developers of state and local requirements will be encouraged to be consistent with this document.

The ICP guidance does not change existing regulatory requirements; rather, it provides a format for organizing and presenting material currently required by the regulations. Individual regulations are often more detailed than the ICP guidance. To ensure full compliance, facilities should continue to read and comply with all of the federal regulations that apply to them. Furthermore, facilities submitting an ICP (in whatever format) for agency or department review will need to provide a cross-reference to existing regulatory requirements so that plan reviewers can verify compliance with these requirements. The guidance contains a series of matrices designed to assist owners and operators in consolidating various plans and documenting compliance with federal regulatory requirements. (See Attachments 2 and 3.) The matrices can be used as the basis for developing a cross-reference to various regulatory requirements.

This guidance also provides a useful contingency planning template for owners and operators of facilities not subject to the federal regulations cited previously.

Integrated Contingency Plan Philosophy

The ICP will minimize duplication in the preparation and use of emergency response plans at the same facility and will improve economic efficiency for both the regulated and regulating communities. Facility expenditures for the preparation, maintenance, submission, and update of a single plan should be much lower than for multiple plans.

The use of a single emergency response plan per facility will eliminate confusion for facility first responders who often must decide which of their plans is applicable to a particular emergency. The guidance is designed to yield a highly functional document for use in varied emergency situations while providing a mechanism for complying with multiple agency requirements. Use of a single integrated plan should also improve coordination between facility response personnel and local, state, and federal emergency response personnel.

The adoption of a standard plan format should facilitate integration of plans within a facility, in the event that large facilities may need to prepare separate plans for distinct operating units. The ICP concept should also allow coordination of facility plans with plans that are maintained by local emergency planning committees (LEPCs),[1] Area Committees,[2] co-operatives, and mutual aid organizations. In some cases, there are specific regulatory requirements to ensure that facility plans are consistent with external planning efforts. Industry use of this guidance along with active participation on local and Area Committees will improve the level of emergency preparedness and is therefore highly encouraged.

In some areas, it may be possible to go beyond simple coordination of plans and actually integrate certain information from facility plans with corresponding areas of external plans. The adoption of a single, common ICP outline such as the one proposed in this guidance would facilitate a move toward integration of facility plans with local, state, and federal plans.

The projected results described above will ultimately serve the mutual goal of the response community to more efficiently and effectively protect public health, worker safety, the environment, and property.

Scope

This one-plan guidance is provided for any facility subject to federal contingency planning regulations and is also recommended for use by other facilities to improve emergency preparedness through planning. In this context, the term ''facility'' is meant to have a wide connotation and may include, but is not limited to, any mobile or fixed onshore or offshore building, structure, installation, equipment, pipe, or pipeline.

Facility hazards need to be addressed in a comprehensive and coordinated manner. Accordingly, this guidance is broadly constructed to allow for facilities to address a wide range of risks in a manner tailored to the specific needs of the facility. This includes both physical and chemical hazards associated with events such as chemical releases, oil spills, fires, explosions, and natural disasters.

Organizational Concepts

The ICP format provided in this one-plan guidance (See Attachment 1) is organized into three main sections: an introductory section, a core plan, and a series of supporting annexes. It is important to note that the elements contained in these sections are not new concepts, but accepted emergency response activities that are currently addressed in various forms in existing contingency planning regulations. The goal of the NRT is not to create new planning requirements, but to provide a mechanism to consolidate existing concepts into a single functional plan structure. This approach would provide a consistent basis for addressing

[1] LEPC plans are developed by LEPCs in coordination with facility emergency response coordinators under section 303 of the Emergency Planning and Community Right-to-Know Act.

[2] Area Contingency Plans are developed by Area Committees pursuant to section 4202(a)(6) of the Oil Pollution Act of 1990 (OPA).

emergency response concerns as it gains widespread use among facilities.

The introduction section of the plan format is designed to provide facility response personnel, outside responders, and regulatory officials with basic information about the plan and the entity it covers. It calls for a statement of purpose and scope, a table of contents, information on the current revision date of the plan, general facility information, and the key contact(s) for plan development and maintenance. This section should present the information in a brief factual manner.

The structure of the sample core plan and annexes in this guidance is based on the structure of the National Interagency Incident Management System (NIIMS) Incident Command System (ICS). NIIMS ICS is a nationally recognized system currently in use by numerous federal, state, and local organizations (e.g., some Area Committees under OPA). NIIMS ICS is a type of response management system that has been used successfully in a variety of emergency situations, including releases of oil or hazardous substances. NIIMS ICS provides a commonly understood framework that allows for effective interaction among response personnel. Organizing the ICP along the lines of the NIIMS ICS will allow the plan to dovetail with established response management practices, thus facilitating its ease of use during an emergency.

The core plan is intended to contain essential response guidance and procedures. Annexes would contain more detailed supporting information on specific response management functions. The core plan should contain frequent references to the response critical annexes to direct response personnel to parts of the ICP that contain more detailed information on the appropriate course of action for responders to take during various stages of a response. Facility planners need to find the right balance between the amount of information contained in the core plan versus the response critical annexes (Annexes 1 through 3). Information required to support response actions at facilities with multiple hazards will likely be contained in the annexes. Planners at facilities with fewer hazards may choose to include most if not all information in the core plan. Other annexes (e.g., Annexes 4 through 8) are dedicated to providing information that is non-critical at the time of a response (e.g., cross-references to demonstrate regulatory compliance and background planning information). Consistent with the goal of keeping the size of the ICP as manageable as practicable, it is not necessary for a plan holder to provide its field responders with all the compliance documentation (e.g., Annexes 4 through 8) that it submits to regulatory agencies. Similarly, it may not be necessary for a plan holder to submit all annexes to every regulatory agency for review.

Basic headings are consistent across the core plan and annexes to facilitate ease of use during an emergency. These headings provide a comprehensive list of elements to be addressed in the core plan and response annexes and may not be relevant to all facilities. Planners should address those regulatory elements that are applicable to their particular facilities. Planners at facilities with multiple hazards will need to address most, if not all, elements included in this guidance. Planners at facilities with fewer hazards may not need to address certain elements. If planners choose to strictly adopt the ICP outline contained in this guidance but are not required by regulation to address all elements of the outline, they may simply indicate ''not applicable'' for those items where no information is provided. A more detailed discussion of the core plan and supporting annexes follows.

Core Plan

The core plan is intended to reflect the essential steps necessary to initiate, conduct, and terminate an emergency response action: recognition, notification, and initial response, including assessment, mobilization, and implementation. This section of the plan should be concise and easy to follow. A rule of thumb is that the core plan should fit in the glovebox of a response vehicle. The core plan need not detail all procedures necessary under these phases of a response but should provide information that is time critical in the earliest stages of a response and a framework to guide responders through key steps necessary to mount an effective response. The response action section should be convenient to use and understandable at the appropriate skill level.

The NRT recommends the use of checklists or flowcharts wherever possible to capture these steps in a concise easy-to-understand manner. The core plan should be constructed to contain references to appropriate sections of the supporting annexes for more detailed guidance on specific procedures. The NRT anticipates that for a large, complex facility with multiple hazards the annexes will contain a significant amount of information on specific procedures to follow. For a small facility with a limited number of hazard scenarios, the core plan may contain most if not all of the information necessary to carry out the response thus obviating the need for more detailed annexes. The checklists, depending on their size and complexity, can be in either the core or the support section.

The core plan should reflect a hierarchy of emergency response levels. A system of response levels is commonly used in emergency planning for classifying emergencies according to seriousness and assigning an appropriate standard response or series of response actions to each level. Both complex and simple industrial facilities use a system of response levels for rapidly assessing the seriousness of an emergency and developing an appropriate response. This process allows response personnel to match the emergency and its potential impacts with appropriate resources and personnel. The concept of response levels should be considered in developing checklists or flowcharts designed to serve as the basis for the core plan. Note that for those facilities subject to planning requirements under OPA, response levels in the core plan may not necessarily correspond to discharge planning amounts (e.g., average most probable discharge, maximum most probable discharge, and worst case discharge).

Facility owners and operators should determine appropriate response levels based on 1) the need to initiate time-urgent response actions to minimize or prevent unacceptable consequences to the health and safety of workers, the public, or the environment; and 2) the need to communicate critical information concerning the emergency to offsite authorities. The consideration and development of response levels should, to the extent practicable, be consistent with similar efforts that may have been taken by the LEPC, local Area Committee, or mutual aid organization. Response levels, which are used in communications with offsite authorities, should be fully coordinated and use consistent terminology.

Annexes

The annexes are designed to provide key supporting information for conducting an emergency response under the core plan as well as document compliance with regulatory requirements not addressed elsewhere in the ICP. Annexes are not meant to duplicate information that is already contained in the core plan, but to augment core plan information. The annexes should relate to the basic

headings of the core plan. To accomplish this, the annexes should contain sections on facility information, notification, and a detailed description of response procedures under the response management system (i.e, command, operations, planning, logistics, and finance). The annexes should also address issues related to post accident investigation, incident history, written follow-up reports, training and exercises, plan critique and modification process, prevention, and regulatory compliance, as appropriate.

The ICP format contained in this guidance is based on the NIIMS ICS. If facility owners or operators choose to follow fundamental principles of the NIIMS ICS, then they may adopt NIIMS ICS by reference rather than having to describe the system in detail in the plan. The owner or operator should identify where NIIMS ICS documentation is kept at the facility and how it will be accessed if needed by the facility or requested by the reviewing agency. Regardless of the response management system used, the plan should include an organization chart, specific job descriptions,[3] a description of information flow ensuring liaison with the on-scene coordinator (OSC), and a description of how the selected response management system integrates with a Unified Command.[4] If a system other than NIIMS ICS is used, the plan should also identify how it differs from NIIMS or provide a detailed description of the system used.

The NRT anticipates that the use of linkages (i.e., references to other plans) when developing annexes will serve several purposes. Linkages will facilitate integration with other emergency plans within a facility (until such plans can be fully incorporated into the ICP) and with external plans, such as LEPC plans and Area Contingency Plans (ACPs). Linkages will also help ensure that the annexes do not become too cumbersome. The use of references to information contained in external plans does not relieve facilities from regulatory requirements to address certain elements in a facility-specific manner and to have information readily accessible to responders. When determining what information may be linked by reference and what needs to be contained in the ICP, response planners should carefully consider the time critical nature of the information. If instructions or procedures will be needed immediately during an incident response, they should be presented for ready access in the ICP. The following information would not normally be well-suited for reference to documents external to the ICP: core plan elements, facility and locality information (to allow for quick reference by responders on the layout of the facility and the surrounding environment and mitigating actions for the specific hazard(s) present), notification procedures, details of response management personnel's duties, and procedures for establishing the response management system. Although linkages provide the opportunity to utilize information developed by other organizations, facilities should note that many LEPC plans and ACPs may not currently possess sufficient detail to be of use in facility plans or the ICP. This information may need to be developed by the facility until detailed applicable information from broader plans is available.

In all cases, referenced materials must be readily available to anticipated plan users. Copies of documents that have been incorporated by reference need not be submitted unless it is required by regulation. The appropriate sections of referenced documents that are unique to the facility, those that are not nationally recognized, those that are required by regulation, and those that could not reasonably be expected to be in the possession of the reviewing agency, should be provided when the plan is submitted for review and/or approval. Discretion should be used when submitting documents containing proprietary data. It is, however, necessary to identify in the ICP the specific section of the document being incorporated by reference, where the document is kept, and how it will be accessed if needed by the facility or requested by the reviewing agency. In addition, facility owners or operators are reminded to take note of submission requirements of specific regulations when determining what materials to provide an agency for review as it may not be necessary to submit all parts of an ICP to a particular agency.

As discussed previously, this guidance contains a series of matrices designed to assist owners and operators in the plan consolidation process and in the process of ensuring and documenting compliance with regulatory requirements. The matrix in Attachment 2 to this guidance displays areas of current regulations that align with the suggested elements contained in this guidance document. When addressing each element of the ICP outline, plan drafters can refer to this matrix to identify specific regulatory requirements related to that element. The matrices in Attachment 3 to this guidance display regulatory requirements as contained in each of the regulations listed in the NRT policy statement above (which are applicable to many facilities) along with an indication of where in the suggested ICP outline these requirements should be addressed. If a facility chooses to follow the ICP outline, these matrices can be included as Annex 8 to a facility's ICP to provide the necessary cross-reference for plan reviewers to document compliance with various regulatory requirements. To the extent that a plan deviates from the suggested ICP outline, plan drafters will have to alter the matrices to ensure that the location of regulatory requirements within the ICP is clearly identified for plan reviewers.

Integrated Contingency Plan Elements

Presented below is a list of elements to be addressed in the ICP and a brief explanation, displayed in italicized text, of the nature of the information to be contained in that section of the ICP. Attachment 1 presents the complete outline of the ICP without the explanatory text. As discussed previously, the elements are organized into three main sections: plan introduction, core plan, and response annexes.

Section I—Plan Introduction Elements

1. Purpose and Scope of Plan Coverage

This section should provide a brief overview of facility operations and describe in general the physical area, and nature of hazards or events to which the plan is applicable. This brief description will help plan users quickly assess the relevancy of the plan to a particular type of emergency in a given location. This section should also include a list of which regulation(s) are being addressed in the ICP.

[3] OPA 90 planning requirements for marine transfer facilities (33 CFR 154.1035) require job descriptions for each spill management team member regardless of the response management system employed by the facility.

[4] Under NIIMS ICS, the command module has traditionally been represented by a single incident commander (supported by a command staff) who directs efforts of and receives input from the four supporting functional areas (planning, logistics, operations, and finance). More recently, a Unified Command System as described in the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) found at 40 CFR part 300 has been used for larger spill responses where the command module is comprised of representatives from the federal government (i.e., federal on-scene coordinator), state government (state on-scene coordinator), and the responsible party working in a cooperative manner. Unified Command allows all parties who have jurisdictional or functional responsibility for the incident to jointly develop a common set of incident objectives and strategies. Such coordination should be guided by procedures found in the NCP (see figure 1a at 40 CFR 300.105(e)(1)) and the applicable Area Contingency Plan.

2. Table of Contents

This section should clearly identify the structure of the plan and include a list of annexes. This will facilitate rapid use of the plan during an emergency.

3. Current Revision Date

This section should indicate the date that the plan was last revised to provide plan users with information on the currency of the plan. More detailed information on plan update history (i.e., a record of amendments) may be maintained in Annex 6 (Response Critique and Plan Review and Modification Process).

4. General Facility Identification Information

a. Facility name
b. Owner/operator/agent (include physical and mailing address and phone number)
c. Physical address of the facility (include county/parish/borough, latitude/longitude, and directions)
d. Mailing address of the facility (correspondence contact)
e. Other identifying information (e.g., ID numbers, SIC Code, oil storage start-up date)
f. Key contact(s) for plan development and maintenance
g. Phone number(s) for key contact(s)
h. Facility phone number
i. Facility fax number

This section should contain a brief profile of the facility and its key personnel to facilitate rapid identification of key administrative information.

Section II - Core Plan Elements

1. Discovery

This section should address the initial action the person(s) discovering an incident will take to assess the problem at hand and access the response system. Recognition, basic assessment, source control (as appropriate), and initial notification of proper personnel should be addressed in a manner that can be easily understood by everybody in the facility. The use of checklists or flowcharts is highly recommended.

2. Initial Response

a. Procedures for internal and external notifications (i.e., contact, organization name, and phone number of facility emergency response coordinator, facility response team personnel, federal, state, and local officials)
b. Establishment of a response management system
c. Procedures for preliminary assessment of the situation, including an identification of incident type, hazards involved, magnitude of the problem, and resources threatened
d. Procedures for establishment of objectives and priorities for response to the specific incident, including:
(1) Immediate goals/tactical planning (e.g., protection of workers and public as priorities)
(2) Mitigating actions (e.g., discharge/release control, containment, and recovery, as appropriate)
(3) Identification of resources required for response
e. Procedures for implementation of tactical plan
f. Procedures for mobilization of resources

This section should provide for activation of the response system following discovery of the incident. It should include an established 24-hour contact point (i.e., that person and alternate who is called to set the response in motion) and instructions for that person on who to call and what critical information to pass. Plan drafters should also consider the need for bilingual notification. It is important to note that different incident types require that different parties be notified. Appropriate federal, State, and local notification requirements should be reflected in this section of the ICP. Detailed notification lists may be included here or in Annex 2, depending upon the variety of notification schemes that a facility may need to implement. For example, the release of an extremely hazardous substance will require more extensive notifications (i.e., to State Emergency Response Commissions (SERCs) and LEPCs) than a discharge of oil. Even though no impacts or awareness are anticipated outside the site, immediate external notifications are required for releases of CERCLA and EPCRA substances. Again, the use of forms, such as flowcharts, checklists, call-down lists, is recommended.

This section should instruct personnel in the implementation of a response management system for coordinating the response effort. More detailed information on specific components and functions of the response management system (e.g., detailed hazard assessment, resource protection strategies) may be provided in annexes to the ICP.

This part of the plan should then provide information on problem assessment, establishment of objectives and priorities, implementation of a tactical plan, and mobilization of resources. In establishing objectives and priorities for response, facilities should perform a hazard assessment using resources such as Material Safety Data Sheets (MSDSs) or the Chemical Hazard Response Information System (CHRIS) manual. Hazardous Materials Emergency Planning Guide (NRT–1), developed by the NRT to assist community personnel with emergency response planning, provides guidance on developing hazard analyses. If a facility elects to provide detailed hazard analysis information in a response annex, then a reference to that annex should be provided in this part of the core plan.

Mitigating actions must be tailored to the type of hazard present. For example, containment might be applicable to an oil spill (i.e., use of booming strategies) but would not be relevant to a gas release. The plan holder is encouraged to develop checklists, flowcharts, and brief descriptions of actions to be taken to control different types of incidents. Relevant questions to ask in developing such materials include:

- *What type of emergency is occurring?*
- *What areas/resources have been or will be affected?*
- *Do we need an exclusion zone?*
- *Is the source under control?*
- *What type of response resources are needed?*

3. Sustained Actions

This section should address the transition of a response from the initial emergency stage to the sustained action stage where more prolonged mitigation and recovery actions progress under a response management structure. The NRT recognizes that most incidents are able to be handled by a few individuals without implementing an extensive response management system. This section of the core plan should be brief and rely heavily on references to specific annexes to the ICP.

4. Termination and Follow-Up Actions

This section should briefly address the development of a mechanism to ensure that the person in charge of mitigating the incident can, in coordination with the federal or state OSC as necessary, terminate the response. In the case of spills, certain regulations may become effective once the ''emergency'' is declared over. The section should describe how the orderly demobilization of response resources will occur. In addition, follow-up actions associated with termination of a response (e.g., accident investigation, response critique, plan review, written follow-up reports) should also be outlined in this section. Plan drafters

may reference appropriate annexes to the ICP in this section of the core plan.

Section III—Annexes

Annex 1. Facility and Locality Information

a. Facility maps
b. Facility drawings
c. Facility description/layout, including identification of facility hazards and vulnerable resources and populations on and off the facility which may be impacted by an incident

This annex should provide detailed information to responders on the layout of the facility and the surrounding environment. The use of maps and drawings to allow for quick reference is preferable to detailed written descriptions. These should contain information critical to the response such as the location of discharge sources, emergency shut-off valves and response equipment, and nearby environmentally and economically sensitive resources and human populations (e.g., nursing homes, hospitals, schools). The ACP and LEPC plan may provide specific information on sensitive environments and populations in the area. EPA Regional Offices, Coast Guard Marine Safety Offices, and LEPCs can provide information on the status of efforts to identify such resources. Plan holders may need to provide additional detail on sensitive areas near the facility. In addition, this annex should contain other facility information that is critical to response and should complement but not duplicate information contained in part 4 of the plan introduction section containing administrative information on the facility.

Annex 2. Notification

a. Internal notifications
b. Community notifications
c. Federal and state agency notifications

This annex should detail the process of making people aware of an incident (i.e., who to call, when the call must be made, and what information/data to provide on the incident). The incident commander is responsible for ensuring that notifications are carried out in a timely manner but is not necessarily responsible for making the notifications. ACPs, Regional Contingency Plans (RCPs), and LEPC plans should be consulted and referenced as a source of information on the roles and responsibilities of external parties that are to be contacted. This information is important to help company responders understand how external response officials fit into the picture. Call-down lists must be readily accessible to ensure rapid response. Notification lists provided in the core plan need not be duplicated here but need to be referenced.

Annex 3. Response Management System

This annex should contain a general description of the facility's response management system as well as contain specific information necessary to guide or support the actions of each response management function (i.e., command, operations, planning, logistics, and finance) during a response.

a. General

If facility owners or operators choose to follow the fundamental principles of NIIMS ICS (see discussion of annexes above), then they may adopt NIIMS ICS by reference rather than having to describe the response management system in detail in the plan. In this section of Annex 3, planners should briefly address either 1) basic areas where their response management system is at variance with NIIMS ICS or 2) how the facility's organization fits into the NIIMS ICS structure. This may be accomplished through a simple organizational diagram.

If facility owners or operators choose not to adopt the fundamental principles of NIIMS ICS, this section should describe in detail the structure of the facility response management system. Regardless of the response management system used, this section of the annex should include the following information:

- *Organizational chart;*
- *Specific job description for each position;*[5]
- *A detailed description of information flow; and*
- *Description of the formation of a unified command within the response management system.*

b. Command

(1) List facility Incident Commander and Qualified Individual (if applicable) by name and/or title and provide information on their authorities and duties.

This section of Annex 3 should describe the command aspects of the response management system that will be used (i.e., reference NIIMS ICS or detail the facility's response management system). The location(s) of predesignated command posts should also be identified.

(2) Information (i.e., internal and external communications).

This section of Annex 3 should address how the facility will disseminate information internally (i.e., to facility/response employees) and externally (i.e., to the public). For example, this section might address how the facility would interact with local officials to assist with public evacuation and other needs. Items to consider in developing this section include press release statement forms, plans for coordination with the news media, community relations plan, needs of special populations, and plans for families of employees.

(3) Safety.

This section of Annex 3 should include a process for ensuring the safety of responders. Facilities should reference responsibilities of the safety officer, federal/state requirements (e.g., HAZWOPER), and safety provisions of the ACP. Procedures for protecting facility personnel should be addressed (i.e., evacuation signals and routes, sheltering in place).

(4) Liaison—Staff Mobilization.

This section of Annex 3 should address the process by which the internal and external emergency response teams will interact. Given that parallel mobilization may be occurring by various response groups, the process of integration (i.e., unified command) should be addressed. This includes a process for communicating with local emergency management especially where safety of the general public is concerned.

c. Operations

(1) Operational response objectives
(2) Discharge or release control
(3) Assessment/monitoring
(4) Containment
(5) Recovery
(6) Decontamination
(7) Non-responder medical needs, including information on ambulances and hospitals
(8) Salvage plans

This section of Annex 3 should contain a discussion of specific operational procedures to respond to an incident. It is important to note that response operations are driven by the type of incident. That is, a response to an oil spill will differ markedly from a response to a release of a toxic gas to the air. Plan drafters should tailor response procedures to the particular hazards in place at the facility. A facility with limited hazards may have relatively few procedures. A larger more complex facility with numerous hazards is likely to have a series of procedures

[5] OPA 90 planning requirements for marine transfer facilities (33 CFR 154.1035) require job descriptions for each spill management team member regardless of the response management system employed by the facility.

designed to address the nuances associated with each type of incident.

d. Planning

(1) Hazard assessment, including facility hazards identification, vulnerability analysis, prioritization of potential risks.

This section of Annex 3 should present a detailed assessment of all potential hazards present at the facility, an analysis of vulnerable receptors (e.g., human populations, both workers and the general public, environmentally sensitive areas, and other facility-specific concerns) and a discussion of which risks deserve primary consideration during an incident. NRT–1 contains guidance on conducting a hazard analysis. Also, ACPs and LEPC plans may provide information on environmentally sensitive and economically important areas, human populations, and protection priorities. Plan drafters should address the full range of risks present at the facility. By covering actions necessary to respond to a range of incident types, plan holders can be prepared for small, operational discharges and large catastrophic releases. One approach that is required by certain regulations, such as the Clean Air Act (CAA) and OPA is to develop planning scenarios for certain types and sizes of releases (i.e., worst case discharge). Facilities may address such planning scenarios and associated calculations in this section of Annex 3 or as part of a separate annex depending on the size and complexity of the facility.

(2) Protection

This section of Annex 3 should present a discussion of strategies for protecting the vulnerable receptors identified through the hazard analysis. Primary consideration should be given to minimizing those risks identified as a high priority. Activities to be considered in developing this section include: population protection; protective booming; dispersant use, in-situ burning, bioremediation; water intake protection; wildlife recovery/rehabilitation; natural remediation; vapor suppression; and monitoring, sampling, and modeling. ACPs and LEPC plans may contain much of this information.

(3) Coordination with natural resource trustees.

This section should address coordination with government natural resource trustees. In their role as managers of and experts in natural resources, trustees assist the federal OSC in developing or selecting removal actions to protect these resources. In this role, they serve as part of the response organization working for the federal OSC. A key area to address is interaction with facility response personnel in protection of natural resources.

Natural resource trustees are also responsible to act on behalf of the public to present a claim for and recover damages to natural resources injured by an oil spill or hazardous substance release. The process followed by the natural resource trustees, natural resource damage assessment (NRDA), generally involves some data collection during emergency response. NRDA regulations provide that the process may be carried out in cooperation with the responsible party. Thus, the facility may wish to plan for how that cooperation will occur, including designation of personnel to work with trustees in NRDA.

(4) Waste management.

This section should address procedures for the disposal of contaminated materials in accordance with federal, state, and local requirements.

e. Logistics

(1) Medical needs of responders
(2) Site security
(3) Communications (internal and external resources)
(4) Transportation (air, land, water)
(5) Personnel support (e.g., meals, housing, equipment)
(6) Equipment maintenance and support

This section of the Annex 3 should address how the facility will provide for the operational needs of response operations in each of the areas listed above. For example, the discussion of personnel support should address issues such as: volunteer training; management; overnight accommodations; meals; operational/administrative spaces; and emergency procedures. The NRT recognizes that certain logistical considerations may not be applicable to small facilities with limited hazards.

f. Finance/procurement/administration

(1) Resource list
(2) Personnel management
(3) Response equipment
(4) Support equipment
(5) Contracting
(6) Claims procedures
(7) Cost documentation

This section of Annex 3 should address the acquisition of resources (i.e., personnel and equipment) for the response and monitoring of incident-related costs. Lists of available equipment in the local and regional area and how to procure such equipment as necessary should be included. Information on previously established agreements (e.g., contracts) with organizations supplying personnel and equipment (e.g., oil spill removal organizations) also should be included. This section should also address methods to account for resources expended and to process claims resulting from the incident.

Annex 4. Incident Documentation

a. Post accident investigation
b. Incident history

This annex should describe the company's procedures for conducting a follow-up investigation of the cause of the accident, including coordination with federal, State, and local officials. This annex should also contain an accounting of incidents that have occurred at the facility, including information on cause, amount released, resources impacted, injuries, response actions, etc. This annex should also include information that may be required to prove that the facility met its legal notification requirements with respect to a given incident, such as a signed record of initial notifications and certified copies of written follow-up reports submitted after a response.

Annex 5. Training and Exercises/Drills

This annex should contain a description of the training and exercise program conducted at the facility as well as evidence (i.e., logs) that required training and exercises have been conducted on a regular basis. Facilities may follow appropriate training or exercise guidelines (e.g., National Preparedness for Response Exercise Program Guidelines) as allowed under the various regulatory requirements.

Annex 6. Response Critique and Plan Review and Modification Process

This annex should describe procedures for modifying the plan based on periodic plan review or lessons learned through an exercise or a response to an actual incident. Procedures to critique an actual or simulated response should be a part of this discussion. A list of plan amendments (i.e., history of updates) should also be contained in this annex. Plan modification should be viewed as a part of a facility's continuous improvement process.

Annex 7. Prevention

Some federal regulations that primarily address prevention of accidents include elements that relate to contingency planning (e.g., EPA's RMP and SPCC regulations and OSHA's Process Safety Standard). This annex is designed to allow facilities to include

prevention-based requirements (e.g., maintenance, testing, in-house inspections, release detection, site security, containment, fail safe engineering) that are required in contingency planning regulations or that have the potential to impact response activities covered in a contingency plan. The modular nature of the suggested plan outline provides planners with necessary flexibility to include prevention requirements in the ICP. This annex may not need to be submitted to regulatory agencies for review.

Annex 8. Regulatory Compliance and Cross-Reference Matrices

This annex should include information necessary for plan reviewers to determine compliance with specific regulatory requirements. To the extent that plan drafters did not include regulatory required elements in the balance of the ICP, they should be addressed in this annex. This annex should also include signatory pages to convey management approval and certifications required by the regulations, such as certification of adequate response resources and/or statements of regulatory applicability as required by regulations under OPA authority. Finally, this annex should contain cross-references that indicate where specific regulatory requirements are addressed in the ICP for each regulation covered under the plan. As discussed previously, Attachment 3 contains a series of matrices designed to fulfill this need in those instances where plan drafters adhere to the outline contained in this guidance.

Attachment 1—ICP Outline

Section I—Plan Introduction Elements

1. Purpose and Scope of Plan Coverage
2. Table of Contents
3. Current Revision Date
4. General Facility Identification Information
   a. Facility name
   b. Owner/operator/agent (include physical and mailing address and phone number)
   c. Physical address of the facility (include county/parish/borough, latitude/longitude, and directions)
   d. Mailing address of the facility (correspondence contact)
   e. Other identifying information (e.g., ID numbers, SIC Code, oil storage start-up date)
   f. Key contact(s) for plan development and maintenance
   g. Phone number for key contact(s)
   h. Facility phone number
   i. Facility fax number

Section II—Core Plan Elements

1. Discovery
2. Initial Response
   a. Procedures for internal and external notifications (i.e., contact, organization name, and phone number of facility emergency response coordinator, facility response team personnel, federal, state, and local officials)
   b. Establishment of a response management system
   c. Procedures for preliminary assessment of the situation, including an identification of incident type, hazards involved, magnitude of the problem, and resources threatened
   d. Procedures for establishment of objectives and priorities for response to the specific incident, including:
   (1) Immediate goals/tactical planning (e.g., protection of workers and public as priorities)
   (2) Mitigating actions (e.g., discharge/release control, containment, and recovery, as appropriate)
   (3) Identification of resources required for response
   e. Procedures for implementation of tactical plan
   f. Procedure for mobilization of resources
3. Sustained Actions
4. Termination and Follow-Up Actions

Section III-Annexes

Annex 1. Facility and Locality Information

a. Facility maps
b. Facility drawings
c. Facility description/layout, including identification of facility hazards and vulnerable resources and populations on and off the facility which may be impacted by an incident

Annex 2. Notification

a. Internal notifications
b. Community notifications
c. Federal and state agency notifications

Annex 3. Response Management System

a. General
b. Command
   (1) List facility Incident Commander and Qualified Individual (if applicable) by name and/or title and provide information on their authorities and duties
   (2) Information (i.e., internal and external communications)
   (3) Safety
   (4) Liaison—Staff mobilization
c. Operations
   (1) Operational response objectives
   (2) Discharge or release control
   (3) Assessment/monitoring
   (4) Containment
   (5) Recovery
   (6) Decontamination
   (7) Non-responder medical needs including information on ambulances and hospitals
   (8) Salvage plans
d. Planning
   (1) Hazard assessment, including facility hazards identification, vulnerability analysis, prioritization of potential risks
   (2) Protection
   (3) Coordination with natural resource trustees
   (4) Waste management
e. Logistics
   (1) Medical needs of responders
   (2) Site security
   (3) Communications (internal and external resources)
   (4) Transportation (air, land, water)
   (5) Personnel support (e.g., meals, housing, equipment)
   (6) Equipment maintenance and support
f. Finance/procurement/administration
   (1) Resource list
   (2) Personnel management
   (3) Response equipment
   (4) Support equipment
   (5) Contracting
   (6) Claims procedures
   (7) Cost documentation

Annex 4. Incident Documentation

a. Post accident investigation
b. Incident history

Annex 5. Training and Exercises/Drills

Annex 6. Response Critique and Plan Review and Modification Process

Annex 7. Prevention

Annex 8. Regulatory Compliance and Cross-Reference Matrices

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Attachment 2: ICP Development Matrix

ICP Elements	RCRA (40 CFR part 264, Subpart D, 40 CFR part 265, Subpart D, and 40 CFR 279.52)	EPA's Oil Pollution Prevention Regulation (40 CFR part 112)	USCG-FRP (33 CFR part 154)	DOT/RSPA-FRP (49 CFR part 194)	OSHA Emergency Action Plans (29 CFR 1910.38(a)) and Process Safety (29 CFR 1910.119)	OSHA HAZWOPER (29 CFR 1910.120)	CAA RMP (40 CFR part 68)
Section I - Plan Introduction Elements							
1. Purpose and scope of plan coverage	264.51 265.51 279.52(b)(1) 264.52(a) 265.52(a) 279.52(b)(2)(i)				38(a)(1)[1] 119(n) 272(d)	(l)[2] (p)(8) (q)(1)	
2. Table of contents		112.20(h) **Appendix F**	1035(a)(4)[3] 1030(b)	**Appendix A**			
3. Current revision date		**F1.2**	1035(a)(6)				
4. General facility identification information		**F1.2** **F1.9**		194.107(d)(1)(i) 194.113 194.113(b)(1)			
a. Facility name		**F1.2**	1035(a)(1)				
b. Owner/operator/ agent		112.20(h)(2) **F1.2** **F2.0**	1035(a)(3)	194.113(a)(1) **A-1**			
c. Physical address and directions		112.20(h)(2) **F1.2** **F2.0**	1035(a)(1) 1035(a)(2) 1035(e)	194.113(a)(2) 194.113(b)(3),(4) **A-1**			
d. Mailing address		112.20(h)(2)	1035(a)(1)	194.113(a)(1)			
e. Other identifying information							

[1] All citations refer to part 1910 unless otherwise noted.
[2] All citations refer to 29 CFR 1910.120 unless otherwise noted.
[3] All citations refer to part 154 unless otherwise noted.

ICP Elements	RCRA (40 CFR part 264, Subpart D, 40 CFR part 265, Subpart D, and 40 CFR 279.52)	EPA's Oil Pollution Prevention Regulation (40 CFR part 112)	USCG-FRP (33 CFR part 154)	DOT/RSPA-FRP (49 CFR part 194)	OSHA Emergency Action Plans (29 CFR 1910.38(a)) and Process Safety (29 CFR 1910.119)	OSHA HAZWOPER (29 CFR 1910.120)	CAA RMP (40 CFR part 68)
f. Key contact(s) for plan development and maintenance					38(a)(2)(vi)	(l)(2)(i),(ii) (p)(8)(ii)(A),(B) (q)(2)(i),(ii)	
g. Phone number for key contact(s)							
h. Facility phone number		**F1.2** **F2.1**	1035(a)(1)				
i. Facility fax number			1035(a)(1)				
Section II - Core Plan Elements							
1. Discovery		112.20(h)(6) **F1.6.1, F1.6.2**	1035(b)(3)(i)	194.107(d)(1)(iii) **A-3**	119(n)	(l)(2)(iii) (p)(8)(ii)(C) (q)(2)(iii)	68.95(a)(1)(iii)
2. Initial response		112.20(h)(7)(i) **F1.3.6** **F1.7**	1035(b)(2)(ii) 1035(b)(3)(i) 1035(b)(3)(ii)	**A-2**	38(a)(2)(i) 38(a)(2)(ii) 119(n)	(l)(2)(ix) (p)(8)(ii)(I) (q)(2)(ix)	68.95(a)(1)(iii)
a. Procedures for internal and external notifications	264.52(d) 265.52(d) 279.52(b)(2)(iv) 264.55 265.55 279.52(b)(5) 264.56(a)(1),(2) 265.56(a)(1),(2) 279.52(b)(6)(i)(A),(B) 264.56(d)(1),(2) 265.56(d)(1),(2) 279.52(b)(6)(iv)(A),(B)	112.20(h)(1)(iii) 112.20(h)(3)(iii) 112.20(h)(3)(iii) 112.20(h)(3)(iv) **F1.2** **F1.3.1**	1026 1035(a)(3) 1035(b)(1)(i) 1035(e)(2)	194.107(d)(1)(ii) 194.113(b)(2) **A-1, A-1(b)(2)** **A-2** **A-5**	38(a)(2)(v) 38(a)(2)(vi) 38(a)(3)(i) 38(a)(3)(ii) 165	(l)(2)(ix) (p)(8)(ii)(I) (q)(2)(ix)	68.95(a)(1)(i)
b. Establishment of a response management structure	264.37 265.37 279.52(a)(6) 264.52(c) 265.52(c) 279.52(b)(2)(iii)	112.20(h)(1)(v) 112.20(h)(3)(v) **F1.3.4**	1035(b)(3)(iii)	194.107(d)(1)(v) **A-4** **A-9**		(l)(2)(i),(ii) (p)(8)(ii)(A),(B) (q)(2)(i),(ii) (q)(3)(i)	
c. Preliminary assessment	264.56(b),(c) 265.56(b),(c) 279.52(b)(6)(ii),(iii)	112.20(h)(3)(ix) 112.20(h)(4) **F1.4, F1.4.2**	1035(b)(3) 1035(b)(4)(i)	194.107(d)(1)(ii)	38(a)(2)(i) 38(a)(2)(ii)	(l)(2)(i) (l)(3)(vii) (p)(8)(ii)(A) (q)(2)(i) (q)(3)(ii),(iii)	

ICP Elements	RCRA (40 CFR part 264, Subpart D, 40 CFR part 265, Subpart D, and 40 CFR 279.52)	EPA's Oil Pollution Prevention Regulation (40 CFR part 112)	USCG-FRP (33 CFR part 154)	DOT/RSPA-FRP (49 CFR part 194)	OSHA Emergency Action Plans (29 CFR 1910.38(a)) and Process Safety (29 CFR 1910.119)	OSHA HAZWOPER (29 CFR 1910.120)	CAA RMP (40 CFR part 68)
d. Establishment of objectives and priorities for response, including: **(1) Immediate goals/ tactical planning** **(2) Mitigating actions** **(3) Response resources**	264.52(e) 265.52(e) 279.52(b)(2)(v)	112.20(h)(1)(iv) 112.20(h)(1)(vii) 112.20(h)(3)(vi) 112.20(h)(3)(ix) 112.20(h)(7) **F1.3.2** **F1.7.1, F1.7.3**	1035(b)(2) 1035(b)(3)(iv),(v)	194.107(d)(1)(iii) 194.107(d)(1)(v)	38(a)(4) 119(n)	(l)(2)(vi),(viii) (p)(8)(ii)(F),(H) (q)(2)(vi),(viii) (p)(8)(iv)(F) (q)(3)(ii),(iii),(iv),(vi),(vii)	
e. Implementation of tactical plan	264.52(e) 265.52(e) 279.52(b)(2)(v)	112.20(h)(3)(ix) 112.20(h)(7)	1035(b)(2)(iii) 1035(b)(3) 1035(b)(4)(iii)	194.107(d)(1)(v) **A-3**	38(a)(2)(ii)	(l)(3)(vii) (p)(8)(iv)(F) (q)(3)(iii)	
f. Mobilization of resources	264.52(e) 265.52(e) 279.52(b)(2)(v)	112.20(h)(7) **F1.7.1**	1035(b)(2)(iii) 1035(b)(3) 1035(b)(4)(iii)	194.115 194.107(d)(1)(v) **A-1** **A-3**		(l)(2)(ix) (p)(8)(ii)(I) (q)(2)(ix)	
3. Sustained actions		112.20(h)(7)	1035(b)(3)	194.107(d)(1)(v) **A-9**	38(a)(2)(iii)	(l)(2)(x) (p)(8)(ii)(J) (q)(2)(x)	68.95(a)(1)(iii)
4. Termination and follow-up actions	264.56(i) 265.56(i)	112.20(h)(7)	1035(b)(3)			(l)(2)(ix) (p)(8)(ii)(I) (q)(2)(ix)	68.95(a)(1)(iii)
Section III - Annexes							
1. Facility and locality information		112.20(h)(2) **F1.2** **F2.0**	1035(a) 1035(e)(1)	194.107(d)(1)(i) 194.113 194.113(b)(1)			
a. Facility maps		112.20(h)(1)(viii) **F1.9**		194.113(b)(2) **A-9**			
b. Facility drawings		112.20(h)(1)(viii) 112.20(h)(9) **F1.9**	1035(e)	**A-9**			
c. Facility description/ layout		**F1.9**	1035(b)(4)	**A-9**		(l)(3)(i)(A) (p)(8)(iv)(A)(1)	

ICP Elements	RCRA (40 CFR part 264, Subpart D, 40 CFR part 265, Subpart D, and 40 CFR 279.52)	EPA's Oil Pollution Prevention Regulation (40 CFR part 112)	USCG-FRP (33 CFR part 154)	DOT/RSPA-FRP (49 CFR part 194)	OSHA Emergency Action Plans (29 CFR 1910.38(a)) and Process Safety (29 CFR 1910.119)	OSHA HAZWOPER (29 CFR 1910.120)	CAA RMP (40 CFR part 68)
2. Notification	264.52(d) 265.52(d) 279.52(b)(2)(iv) 264.56(a)(1),(2) 265.56(a)(1),(2) 279.52(b)(6)(i)(A),(B) 264.56(d)(1),(2) 265.56(d)(1),(2) 279.52(b)(6)(iv)(A),(B)	112.20(h)(1)(ii)		194.107(d)(1)(ii) **A-2**	119(n) 165(b)(1) 165(b)(4) 272(d)	(l)(3)(i)(B) (l)(2)(ix) (p)(8)(ii)(I) (p)(8)(iv)(A)(2) (q)(2)(ix)	68.95(a)(1)(i)
a. Internal		112.20(h)(3)(iii) **F1.3.1**	1035(b)(1)(i) 1035(b)(1)(ii) 1035(e)(2)	194.107(d)(1)(iv)	119(n) 165(b)(1)	(l)(2)(ix) (q)(2)(ix) (p)(8)(ii)(I)	
b. Community		112.20(h)(3)(iii) 112.20(h)(3)(ix) **F1.3.1**	1035(b)(1)(i) 1035(b)(1)(ii) 1035(e)(2)		119(n)	(l)(2)(i),(ii),(ix) (p)(8)(ii)(A),(B), (I) (q)(2)(i),(ii),(ix)	
c. Federal and state agency		112.20(h)(3)(iii) 112.20(h)(3)(ix) **F1.3.1**	1035(b)(1)(i) 1035(b)(1)(ii) 1035(e)(2)	194.107(d)(1)(vi)		(l)(2)(i),(ii),(ix) (p)(8)(ii)(A),(B),(I) (q)(2)(i),(ii),(ix)	
3. Response management structure		112.20(h)(1)(v) 112.20(h)(3)(v) **F1.3.4**	1035(b)(3)(iii)	194.107(d)(1)(v) **A-9**		(q)(3)(i)	
a. General	264.52(c) 265.52(c) 279.52(b)(2)(iii)		1035(b)(3)(iii)			(q)(3)(i)	
b. Command		112.20(h)(3)(iv)				(q)(3)(i)	
(1) Facility incident commander and qualified individual	264.55 265.55 279.52(b)(5)	112.20(h)(1)(i) **F1.2.5**	1026	**A-4**		(q)(3)(i)	
(2) Information	264.56(a)(1),(2) 265.56(a)(1),(2) 279.52(b)(6)(i)(A),(B)	112.20(h)(3)(iii)	1035(b)(3)(iii) 1035(e)(4)	194.107(d)(1)(v) **A-2**	38(a)(2)(vi) 38(a)(5)(iii)	(q)(3)(i)	
(3) Safety	264.52(f) 265.52(f) 279.52(b)(2)(vi)	112.20(h)(1)(vi) 112.20(h)(3)(vii) 112.20(h)(3)(viii) **F1.3.5**	1035(b)(3)(iii) 1035(e)(5)		38(a)(2)(i) 38(a)(2)(iii) 38(a)(2)(iv) 38(a)(4)	(l)(2)(iv),(vi) (p)(8)(ii)(D),(F) (q)(2)(iv),(vi) (q)(3)(vii),(viii)	
(4) Liaison			1035(b)(3)(iii)		38(a)(2)(vi)	(l)(2)(i),(ii) (p)(8)(ii)(A),(B) (q)(2)(i),(ii)	

ICP Elements	RCRA (40 CFR part 264, Subpart D, 40 CFR part 265, Subpart D, and 40 CFR 279.52)	EPA's Oil Pollution Prevention Regulation (40 CFR part 112)	USCG-FRP (33 CFR part 154)	DOT/RSPA-FRP (49 CFR part 194)	OSHA Emergency Action Plans (29 CFR 1910.38(a)) and Process Safety (29 CFR 1910.119)	OSHA HAZWOPER (29 CFR 1910.120)	CAA RMP (40 CFR part 68)
c. Operations			1035(b)(3)(iii)	194.107(d)(1)(v)	38(a)(2)(i)-(iv)	(q)(3)(iii),(v)	
(1) Response objectives			1035(b)(2)(iii) 1035(b)(4)(iii)		38(a)(1)	(q)(3)(iii)	
(2) Discharge or release control	264.56(e) 265.56(e) 279.52(b)(6)(v)	112.20(h)(3)(i) 112.20(h)(7)(iv) 112.20(h)(1)(vii)	1035(b)(2) 1035(b)(2)(iii) 1035(b)(4)(iii)	194.107(d)(1)(v) **A-3**			
(3) Assessment/ monitoring	264.56(b),(c),(d),(f) 265.56(b),(c),(d),(f) 279.52(b)(6)(ii),(iii), (iv),(vi)	112.20(h)(3)(ix) **F1.7.1**	1035(b)(2)(iii) 1035(b)(3) 1035(b)(4)(iii)		38(a)(3)(ii) 38(a)(4)	(q)(3)(ii)	
(4) Containment	264.56(e) 265.56(e) 279.52(b)(6)(v)	112.20(h)(1)(vii) 112.20(h)(3)(i) 112.20(h)(7)(iv) **F1.7.3**	1035(b)(2)(iii) 1035(b)(3)(iv) 1035(b)(4)(iii)	194.107(d)(1)(v)			
(5) Recovery		112.20(h)(3)(i) 112.20(h)(7)(iii) **F1.7.2**	1035(b)(2)(iii) 1035(b)(3)(iv) 1035(b)(4)(iii)	194.107(d)(1)(v)			
(6) Decontamination	264.56(h)(2) 265.56(h)(2) 279.52(b)(6)(viii)(B)	112.20(h)(7)(iii) **F1.7.2**		194.107(d)(1)(v)		(k) (l)(2)(vii) (p)(8)(ii)(G) (q)(2)(vii) (q)(3)(ix)	
(7) Non-responder medical needs			1035(e)(5)		38(a)(2)(iv)	(l)(2)(viii) (p)(8)(ii)(H) (q)(2)(viii)	68.95(a)(1)(ii)
(8) Salvage plans				194.107(d)(1)(v)			
d. Planning				194.107(a) 194.115	38(a)(1) 38(a)(4)	(l)(2)(i),(ix) (p)(8)(ii)(A),(I) (q)(1) (q)(2)(i),(ix)	
(1) Hazard assessment		112.20(h)(3)(ix) 112.20(h)(4) 112.20(h)(5) 112.20(h)(7)(ii) **F1.4.1-F1.4.3** **F1.5.1, F1.5.2**	1029 1035(b)(4)(ii)	194.105 194.113(b)(6)	38(a)(4)	(l)(1)(ii)(C),(D) (p)(8)(iv)(A)(1),(F) (q)(3)(iii)	68.20-36 68.50 68.67
(2) Protection		112.20(h)(7)(i) 112.20(h)(7)(iv) **F1.7.1, F1.7.3**	1035(b)(4)			(l)(2)(iv),(v),(vi) (p)(8)(ii)(D),(E),(K) (q)(2)(iv),(v),(vi) (q)(3)(iii)	

ICP Elements	RCRA (40 CFR part 264, Subpart D, 40 CFR part 265, Subpart D, and 40 CFR 279.52)	EPA's Oil Pollution Prevention Regulation (40 CFR part 112)	USCG-FRP (33 CFR part 154)	DOT/RSPA-FRP (49 CFR part 194)	OSHA Emergency Action Plans (29 CFR 1910.38(a)) and Process Safety (29 CFR 1910.119)	OSHA HAZWOPER (29 CFR 1910.120)	CAA RMP (40 CFR part 68)
(3) Coordination with natural resource trustees		112.20(g)	1030(f)	194.107(c)			
(4) Waste management	264.56(h)(1) 265.56(h)(1) 279.52(b)(6)(viii)(A) 264.56(g) 265.56(g) 279.52(b)(6)(vii)	112.20(h)(7)(iv) **F1.7.2**	1035(b)(5)	194.107(d)(1)(v)			
e. Logistics			1035(b)(3)(iii)			(l)(3)(iii) (p)(8)(iv)(B) (q)(2)(xii)	
(1) Medical needs			1035(e)(5)		38(a)(2)(iv)	(l)(2)(viii) (p)(8)(ii)(H) (q)(2)(viii)	68.95(a)(1)(ii)
(2) Site security		112.20(h)(10) **F1.10**				(l)(2)(v) (p)(8)(ii)(E) (q)(2)(v)	
(3) Communications		112.20(h)(1)(iv) 112.20(h)(3)(vi) **F1.3.2**	1035(e)(3)	194.107(d)(1)(v) **A-2**	38(a)(3) 119(e)(3)(iii) 165(b)	(q)(3)(i)	
(4) Transportation							
(5) Personnel support		112.20(h)(1)(v) 112.20(h)(1)(vi) 112.20(h)(3)(i-ii) 112.20(h)(3)(v) 112.20(h)(3)(vii) **F1.3.5**			38(a)(5)(i)	(l)(2)(ii) (p)(8)(ii)(B) (q)(2)(ii) (q)(3)(v),(vi)	
(6) Equipment maintenance and support		112.20(h)(1)(iv) 112.20(h)(3)(vi) 112.20(h)(8) **F1.3.3** **F1.8.1**	1035(b)(3)(iv) 1035(e)(3) 1057	194.107(d)(1)(viii)	119(j)(4) 119(j)(5) 165(d)	(l)(2)(xi) (p)(8)(ii)(K) (q)(2)(xi)	68.95(a)(2)
f. Finance/procurement/ administration		112.20(h)(3)(ix)	1028 1035(b)(3)(iii)				
(1) Resource list	264.52(e) 265.52(e) 279.52(b)(2)(v)	112.20(h)(1)(iv) 112.20(h)(3)(vi) **F1.3.2** **F1.7.1**	1035(b)(3)(iv) 1035(e)(3)				
(2) Personnel		112.20(h)(1)(v) 112.20(h)(3)(v) **F1.3.4**	1035(b)(3)(iv)				

ICP Elements	RCRA (40 CFR part 264, Subpart D, 40 CFR part 265, Subpart D, and 40 CFR 279.52)	EPA's Oil Pollution Prevention Regulation (40 CFR part 112)	USCG-FRP (33 CFR part 154)	DOT/RSPA-FRP (49 CFR part 194)	OSHA Emergency Action Plans (29 CFR 1910.38(a)) and Process Safety (29 CFR 1910.119)	OSHA HAZWOPER (29 CFR 1910.120)	CAA RMP (40 CFR part 68)
(3) Response equipment	264.52(e) 265.52(e) 279.52(b)(2)(v)	112.20(h)(1)(iv) 112.20(h)(3)(vi) **F1.3.2** **F1.7.1**	1035(b)(2)(ii) 1035(b)(4)(iii) 1035(e)(3) **Appendix C**			(l)(2)(xi) (p)(8)(ii)(K) (q)(2)(xi)	
(4) Support equipment	264.52(e) 265.52(e) 279.52(b)(2)(v)	**F1.3.2** **F1.7.1**	1035(e)(3)				
(5) Contracting		112.20(h)(3)(ii)	1028(a)(1) 1035(e)(3)	194.115			
(6) Claims procedures							
(7) Cost documentation							
4. Incident documentation					38(a)(2)(iii) 119(e)(3)(ii)	(l)(2)(x) (p)(8)(ii)(J) (q)(2)(x)	
a. Post-accident investigation	264.56(j) 265.56(j) 279.52(b)(6)(ix)				119(m)	(l)(2)(x) (p)(8)(ii)(J) (q)(2)(x)	68.60 68.81
b. Incident history		112.20(h)(4) **F1.4.4**			119(e)(3)(ii)		68.42
5. Training and exercises/drills		112.20(h)(8) 112.21 **F1.8.2, F1.8.3**	1035(c) 1050 1055 **Appendix D**	194.107(d)(1)(vii) 194.107(d)(1)(ix) 194.117 **A-6** **A-7**	38(a)(5) 119(g)(1)(i)	(l)(3)(iv) (p)(8)(iii) (q)(6)	68.95(a)(3)
6. Response critique and plan review and modification process	264.54 265.54 279.52(b)(4)	112.20(g)	1035(a)(6) 1035(d) 1065	194.107(d)(1)(x) 194.111 194.119 194.121 **A-8**	119(l) 119(o)(1)	(l)(2)(x) (p)(8)(ii)(J) (q)(2)(x)	68.95(a)(4)
7. Prevention						(l)(2)(iii) (p)(8)(ii)(C) (q)(2)(iii)	

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ATTACHMENT 3: REGULATORY CROSS-COMPARISON MATRICES

	ICP Citation(s)
RCRA (40 CFR Part 264 Subpart D[1], 40 CFR Part 265 Subpart D[2], 40 CFR Part 279.52(b)[3])	
264.52 Content of contingency plan:	
(a) Emergency response actions.[4]	
(b) Amendments to SPCC plan.	
(c) Coordination with State and local response parties[5]	II.2.b;III.3.a.
(d) Emergency coordinator(s)	II.2.a; III.2.
(e) Detailed description of emergency equipment on-site	II.2.d.(3); II.2.e; II.2.f; III.3.f.(1); III.3.f.(3); III.3.f.(4).
(f) Evacuation plan if applicable	III.3.b.(3).
264.53 Copies of contingency plan.	
264.54 Amendment of contingency plan	III.6.
264.55 Emergency coordinator	II.2.a; III.3.b.(1).
264.56 Emergency procedures:	
(a) Notification	II.2.a; III.2; III.3.b.(2).
(b) Emergency identification/characterization	II.2.c; III.3.c.(3).
(c) Health/environmental assessment	II.2.c; III.3.c.(3).
(d) Reporting	II.2.a; III.2; III.3.c.(3).
(e) Containment	III.3.c.(2); III.3.c.(4).
(f) Monitoring	III.3.b.(3); III.3.c.(3).
(g) Treatment, storage, or disposal of wastes	III.3.d.(4).
(h) Cleanup procedures:.	
(1) Disposal	III.3.d.(4).
(2) Decontamination	III.3.c.(6).
(i) Follow-up procedures	II.4.
(j) Follow-up report	III.4.a.
265.52 Content of contingency plan:	
(a) Emergency response actions.[6]	
(b) Amendments to SPCC plan.	
(c) Coordination with State and local response parties[7]	II.2.b; III.3.a.
(d) Emergency coordinator(s)	II.2.a; III.2.
(e) Detailed description of emergency equipment on-site	II.2.d.(3); II.2.e; II.2.f; III.3.f.(1); III.3.f.(3); III.3.f.(4).
(f) Evacuation plan if applicable	III.3.b.(3).
265.53 Copies of contingency plan.	
265.54 Amendment of contingency plan	III.6.
265.55 Emergency coordinator	II.2.a; III.3.b.(1).
265.56 Emergency procedures:	
(a) Notification	II.2.a; III.2; III.3.b.(2).
(b) Emergency identification/characterization	II.2.c; III.3.c.(3).
(c) Health/environmental assessment	II.2.c; III.3.c.(3).
(d) Reporting	II.2.a; III.2; III.3.c.(3).
(e) Containment	III.3.c.(2); III.3.c.(4).
(f) Monitoring	III.3.b.(3); III.3.c.(3).
(g) Treatment, storage, or disposal of wastes	III.3.d.(4).
(h) Cleanup procedures:	
(1) Disposal	III.3.d.(4).
(2) Decontamination	III.3.c.(6).
(i) Follow-up procedures	II.4.
(j) Follow-up report	III.4.a.
279.52(b)(2) Content of contingency plan:	
(i) Emergency response actions[8]	
(ii) Amendments to SPCC plan.	
(iii) Coordination with State and local response parties[9]	II.2.b; III.3.a.
(iv) Emergency coordinator(s)	II.2.a; III.2.
(v) Detailed description of emergency equipment on-site	II.2.d.(3); II.2.e; II.2.f; III.3.f.(1); III.3.f.(3); III.3.f(4).
(vi) Evacuation plan if applicable	III.3.b.(3).
(3) Copies of contingency plan.	
(4) Amendment of contingency plan	III.6.
(5) Emergency coordinator	II.2.a; III.3.b.(1).
(6) Emergency procedures:	
(i) Notification	II.2.a; III.2; III.3.b.(2).
(ii) Emergency identification/characterization	II.2.c; III.3.c.(3).
(iii) Health/environmental assessment	II.2.c; III.3.c.(3).
(iv) Reporting	II.2.a; III.2; III.3.c.(3).
(v) Containment	III.3.c.(2); III.3.c.(4).
(vi) Monitoring	III.3.b.(3); III.3.c.(3).
(vii) Treatment, storage, or disposal of wastes	III.3.d.(4).
(viii) Cleanup procedures:	
(A) Disposal	III.3.d.(4).
(B) Decontamination	III.3.c.(6).

ATTACHMENT 3: REGULATORY CROSS-COMPARISON MATRICES—Continued

	ICP Citation(s)
(ix) Follow-up report	III.4.a.
EPA's Oil Pollution Prevention Regulation (40 CFR 112)	
112.7(d)(1) Strong spill contingency plan and written commitment of manpower, equipment, and materials.[10,11]	
112.20(g) General response planning requirements	III.3.d.(3); III.6.
112.20(h) Response plan elements	I.2; III.8.
(1) Emergency response action plan (Appendix F1.1):	
(i) Identity and telephone number of qualified individual (F1.2.5)	III.3.b.(1).
(ii) Identity of individuals/organizations to contact if there is a discharge (F1.3.1)	III.2.
(iii) Description of information to pass to response personnel in event of a reportable spill (F1.3).	II.2.a.
(iv) Description of facility's response equipment and its location (F1.3.2)	II.2.d.(3); III.3.e.(3); III.3.e.(6); III.3.f.(1); III.3.f.(3).
(v) Description of response personnel capabilities (F1.3.4)	II.2.b; III.3; III.3.e.(5); III.3.f.(2);
(vi) Plans for evacuation of the facility and a reference to community evacuation plans (F1.3.5).	III.3.b.(3); III.3.e.(5)
(vii) Description of immediate measures to secure the source (F1.7.1)	II.2.d.(2); III.3.c.(2); III.3.c.(4).
(viii) Diagram of the facility (F1.9)	III.1.a–b.
(2) Facility information (F1.2, F2.0)	I.4.b–d; III.1.
(3) Information about emergency responses:	
(i) Identity of private personnel and equipment to remove to the maximum extent practicable a WCD or other discharges (F1.3.2, F1.3.4).	III.3.c.(2); III.3.c.(4)–(5); III.3.e.(5).
(ii) Evidence of contracts or other approved means for ensuring personnel and equipment availability.	III.3.e.(5); III.3.f.(5)
(iii) Identity and telephone of individuals/organizations to be contacted in event of a discharge (F1.3.1).	II.2.a; III.2.b–d; III.3.b.(2).
(iv) Description of information to pass to response personnel in event of a reportable spill (F1.3.1).	II.2.a.
(v) Description of response personnel capabilities (F1.3.4)	II.2.b; III.3; III.3.e.(5); III.3.f.(2).
(vi) Description of a facility's response equipment, location of the equipment, and equipment testing (F1.3.2, F1.3.3).	II.2.d.(3); III.3.e.(3); III.3.e.(6); III.3.f.(1); III.3.f.(3).
(vii) Plans for evacuation of the facility and a reference to community evacuation plans as appropriate (F1.3.5).	III.3.b.(3); III.3.e.(5).
(viii) Diagram of evacuation routes (F1.9).	III.3.b.(3).
(ix) Duties of the qualified individual (F1.3.6)	II.2.c; II.2.d.(1); I.2.e; III.2.b–c; III.3.c.(3); III.3.d.(1); III.3.f.
(4) Hazard evaluation (F1.4)	II.2.c; III.3.d.(1); III.4.b.
(5) Response planning levels (F1.5, F1.5.1, F1.5.2)	II.3.d.(1).
(6) Discharge detection systems (F1.6, F1.6.1, F1.6.2)	II.1.
(7) Plan implementation (F1.7)	II.2.d–f; II.3; II.4.
(i) Response actions to be carried out (F1.7.1.1)	II.2; III.3.d.(2).
(ii) Description of response equipment to be used for each scenario (F1.7.1.1)	III.3.d.(1).
(iii) Plans to dispose of contaminated cleanup materials (F1.7.2)	III.3.c.(5)–(6)
(iv) Measures to provide adequate containment and drainage of spilled oil (F1.7.3)	III.3.c.(2); III.3.c.(4); III.3.d.(2); III.3.d.(4).
(8) Self-inspection, drills/exercises, and response training (F1.8.1–F1.8.3.2)	III.3.e.(6); III.5.
(9) Diagrams (F1.9)	III.1.b.
(10) Security systems (F1.10)	III.3.e.(2).
(11) Response plan cover sheet (F2.0).	
112.21 Facility response training and drills/exercises (F1.8.2, F1.8.3)	III.5.
Appendix F Facility-Specific Response Plan:[12]	I.2.
1.0 Model Facility-Specific Response Plan.	
1.1 Emergency Response Action Plan.	
1.2 Facility Information	I.3; I.4.a; I.4.b–c; I.4.h; II.2.a; III.1.
1.3 Emergency Response Information:	
1.3.1 Notification	II.2.a; III.2.a–c.
1.3.2 Response Equipment List	II.2.d.(3); III.3.e.(3); III.3.f.(1); III.3.f.(3)–(4).
1.3.3 Response Equipment Testing/Deployment	III.3.e.(6).
1.3.4 Personnel	II.2.b; III.3; III.3.f.(2).
1.3.5 Evacuation Plans	III.3.b.(3); III.3.e.(5).
1.3.6 Qualified Individual's Duties	II.2.
1.4 Hazard Evaluation	II.2.c.
1.4.1 Hazard Identification	III.1.c; III.3.d.(1).
1.4.2 Vulnerability Analysis	II.2.c; III.3.d.(1).
1.4.3 Analysis of the Potential for an Oil Spill	III.3.d.(1).
1.4.4 Facility Reportable Oil Spill History	III.4.b.
1.5 Discharge Scenarios:	
1.5.1 Small and Medium Discharges	III.3.d.(1).
1.5.2 Worst Case Discharge	III.3.d.(1).
1.6 Discharge Detection Systems:	
1.6.1 Discharge Detection By Personnel	II.1.

ATTACHMENT 3: REGULATORY CROSS-COMPARISON MATRICES—Continued

	ICP Citation(s)
1.6.2 Automated Discharge Detection	II.1.
1.7 Plan Implementation	II.2.
1.7.1 Response Resources for Small, Medium, and Worst Case Spills	II.2.d.(3); II.2.f; III.3.c.(3); III.3.d.(2); III.3.f.(1); III.3.f.(3)–(4).
1.7.2 Disposal Plans	III.3.c.(5)–(6); III.3.d.(4).
1.7.3 Containment and Drainage Planning	II.2.d; III.3.c.(4); III.3.d.(2).
1.8 Self-Inspection, Drills/Exercises, and Response Training:	
1.8.1 Facility Self-Inspection	III.3.e.(6).
1.8.2 Facility Drills/Exercises	III.5.
1.8.3 Response Training	III.5.
1.9 Diagrams	I.4; III.1.a–c.
1.10 Security	III.3.e.(2).
2.0 Response Plan Cover Sheet	I.4.b; I.4.c; I.4.h; III.1.
USCG FRP (33 CFR part 154)	
154.1026 Qualified individual and alternate qualified individual	II.2.a; III.3.b.(1).
154.1028 Availability of response resources by contract or other approved means	III.3.f or III.8; III.3.f.(5).
154.1029 Worst case discharge	III.3.d.(1).
154.1030 General response plan contents:.	
(a) The plan must be written in English.	
(b) Organization of the plan [13]	I.2.
(c) Required contents.	
(d) Sections submitted to COTP.	
(e) Cross-references	III.8.
(f) Consistency with NCP and ACPs	III.3.d.(3).
154.1035 Significant and substantial harm facilities:	
(a) Introduction and plan content	III.1.
(1) Facility's name, physical and mailing address, county, telephone, and fax	I.4.a; I.4.c–d; I.4.h–i
(2) Description of a facility's location in a manner that could aid in locating the facility	I.4.c.
(3) Name, address, and procedures for contacting the owner/operator on 24-hour basis.	I.4.b; II.2.a
(4) Table of contents	I.2.
(5) Cross index, if appropriate	III.8.
(6) Record of change(s) to record information on plan updates	I.3; III.6.
(b) Emergency Response Action Plan:	
(1) Notification procedures:	
(i) Prioritized list identifying person(s), including name, telephone number, and role in plan, to be notified in event of threat or actual discharge.	II.2.a; III.2.a–c.
(ii) Information to be provided in initial and follow-up notifications to federal, state, and local agencies.	III.3.b; III.2.a–c.
(2) Facility's spill mitigation procedures [14]	II.2.d.(2); III.3.c.(2).
(i) Volume(s) of persistent and non-persistent oil groups.	
(ii) Prioritized procedures/task delegation to mitigate or prevent a potential or actual discharge or emergencies involving certain equipment/scenarios.	II.2.
(iii) List of equipment and responsibilities of facility personnel to mitigate an average most probable discharge.	II.2.e–f; III.3.f.(3); III.3.c.(1)–(5).
(3) Facility response activities [15]	II.2.c; II.2.e–f; II.3; II.4; III.3.c.(3).
(i) Description of facility personnel's responsibilities to initiate/supervise response until arrival of qualified individual.	II.1; II.2.
(ii) Qualified individual's responsibilities/authority	II.2.
(iii) Facility or corporate organizational structure used to manage response actions	II.2.b; II.3; III.3.a; III.3.b.(2)–(4); III.3.c; III.3.d.(1); III.3.e–f.
(iv) Oil spill response organization(s)/spill management team available by contract or other approved means.	II.2.d.(3); III.3.c.(4)–(5); III.3.e.(6); III.3.f.(1)–(2); III.3.f.(5).
(v) For mobile facilities that operate in more than one COTP, the oil spill response organization(s)/spill management team in the applicable geographic-specific appendix.	II.2.d.(3).
(4) Fish and wildlife sensitive environments	III.1.c; III.3.d.(1)–(2).
(i) Areas of economic importance and environmental sensitivity as identified in the ACP that are potentially impacted by a WCD.	II.2.c.
(ii) List areas and provide maps/charts and describe response actions.	
(iii) Equipment and personnel necessary to protect identified areas	II.2.e–f; III.3.f.(3); III.3.c.(1)–(5).
(5) Disposal plan	III.3.d.(4).
(c) Training and exercises	III.5.
(d) Plan review and update procedures	III.6.
(e) Appendices	I.4.c; III.1.b.
(1) Facility specific information	III.1.
(2) List of contacts	II.2.a; III.2.a–c; III.3.b.(1).
(3) Equipment lists and records	III.3.e.(3); III.3.e.(6); III.3.f.(1); III.3.f.(3)–(5).
(4) Communications plan	III.3.b.(2).
(5) Site-specific safety and health plan	III.3.b.(3); III.3.c.(7); III.3.e. (1).

ATTACHMENT 3: REGULATORY CROSS-COMPARISON MATRICES—Continued

	ICP Citation(s)
(6) List of acronyms and definitions.	
(7) A geographic-specific appendix.	
154.1040 Specific requirements for substantial harm facilities.	
154.1041 Specific response information to be maintained on mobile MTR facilities.	
154.1045 Groups I–IV petroleum oils.	
154.1047 Group V petroleum oils.	
154.1050 Training	III.5.
154.1055 Drills	III.5.
154.1057 Inspection and maintenance of response resources	III.3.e.(6).
154.1060 Submission and approval procedures.	
154.1065 Plan revision and amendment procedures	III.6.
154.1070 Deficiencies.	
154.1075 Appeal Process.	
Appendix C—Guidelines for determining and evaluating required response resources for facility response plans.	III.3.f.(3).
Appendix D—Training elements for oil spill response plans	III.5.
DOT/RSPA FRP (49 CFR Part 194)	
194.101 Operators required to submit plans.	
194.103 Significant and substantial harm: operator's statement	III.8.
194.105 Worst case discharge	III.3.d.(1).
194.107 General response plan requirements:	
(a) Resource planning requirements	III.3.d.
(b) Language requirements.	
(c) Consistency with NCP and ACP(s)	III.3.d.(3); III.8.
(d) Each response plan must include:	
(1) Core Plan Contents:	
(i) An information summary as required in 194.113	I.4; III.1.
194.113(a) Core plan information summary:	
(1) Name and address of operator	I.4.b; I.4.d.
(2) Description of each response zone	I.4.c.
(b) Response zone appendix information summary:	
(1) Core plan information summary	I.4; III.1.
(2) Name^O^S^A^A^O Submission and approval procedures	III.6.
194.121 Response plan review and update procedures	III.6.
^Apendix^S^A^Aecommended guidelines for the preparation of response plans	I.2.
Section 1—Information summary	I.4.b–c; II.2.a; II.2.f; III.8.
Section 2—Notification procedures	II.2.a; III.2; III.3.b.(2); III.3.e.(3).
Section 3—Spill detection and on-scene spill mitigation procedures	II.1; II.2.e–f; III.3.c.(2).
Section 4—Response activities	II.2.b; III.3.b.(1).
Section 5—List of contacts	II.2.a.
Section 6—Training procedures	III.5.
Section 7—Drill procedures	III.5.
Section 8—Response plan review and update procedures	III.6.
Section 9—Response zone appendices	II.2.b; II.3; III.1.a–c; III.3.
OSHA Emergency Action Plans (29 CFR 1910.38(a)) and Process Safety (29 CFR 1910.119)	
1910.38(a) Emergency action plan:	
(1) Scope and applicability	III.3.c.(1); III.3.d.
(2) Elements:	
(i) Emergency escape procedures and emergency escape route assignments	II.2; II.2.c; III.3.b.(3); III.3.c.
(ii) Procedures to be followed by employees who remain to operate critical plant operations before they evacuate.	II.2; II.2.c; II.2.e; III.3.c.
(iii) Procedures to account for all employees after emergency evacuation has been completed.	II.2.a; III.3.b.(2); III.3.b.(3); III.3.c; III.4.
(iv) Rescue and medical duties for those employees who are to perform them	III.3.b.(3); III.3.c; III.3.c.(7); III.3.e.(1).
(v) The preferred means of reporting fires and other emergencies	II.2.a; III.3.b.
(vi) Names or regular job titles of persons or departments who can be contacted for further information or explanation of duties under the plan.	I.4.f; II.2.a; III.3.b.(2); III.3.b.(4).
(3) Alarm system [16]	II.2.a; III.3.c.(3); III.3.e.(3).
(4) Evacuation	II.2.d; III.3.b.(3); III.3.c.(3); III.3.d; III.3.d.(1).
(5) Training	III.3.e.(5); III.5.
1910.119 Process safety management of highly hazardous chemicals:	
(e)(3)(ii) Investigation of previous incidents	III.4; III.4.b.
(e)(3)(iii) Process hazard analysis requirements	III.3.e.(3).
(g)(1)(i) Employee training in process/operating procedures	III.5.
(j)(4) Inspection/testing of process equipment	III.3.e.(6).
(j)(5) Equipment repair	III.3.e.(6).
(l) Management of change(s)	III.5.
(m) Incident investigation	III.4.a.

ATTACHMENT 3: REGULATORY CROSS-COMPARISON MATRICES—Continued

	ICP Citation(s)
(n) Emergency planning and response	I.1; II.1; II.2; II.2.d; III.2; III.2.a; III.2.b.
(o)(1) Certification of compliance	III.6.
1910.165 Employee alarm systems:	
(b) General requirements	III.3.e.(3).
(b)(1) Purpose of alarm system	III.2; III.2.a.
(b)(4) Preferred means of reporting emergencies	III.2.
(d) Maintenance and testing	III.3.e.(6).
1910.272 Grain handling facilities:	
(d) Development/implementation of emergency action plan	I.1; III.2.
OSHA HAZWOPER (29 CFR 1910.120)	
1910.120(k) Decontamination	III.3.c.(6).
1910.120(l) Emergency response program	I.1.
(1) Emergency response plan:	
(i) An emergency response plan shall be developed and implemented by all employers within the scope of this section to handle anticipated emergencies prior to the commencement of hazardous waste operations.	
(ii) Employers who will evacuate their employees from the workplace when an emergency occurs, and who do not permit any of their employees to assist in handling the emergency, are exempt from the requirements of this paragraph if they provide an emergency action plan complying with section 1910.38(a) of this part.	
(2) Elements of an emergency response plan:	
(i) Pre-emergency planning and coordination with outside parties	I.4.f; II.2.b; II.2.c; III.2.b; III.2.c; III.3.b.(4); III.3.d.
(ii) Personnel roles, lines of authority, and communication	I.4.f; II.2.b; III.2.a; III.2.c; III.3.b.(4); III.3.e.(4).
(iii) Emergency recognition and prevention	II.1; III.7.
(iv) Safe distances and places of refuge	III.3.b.(3); III.3.d.(2).
(v) Site security and control	III.3.d.(2); III.3.e.(2).
(vi) Evacuation routes and procedures	II.2.d; III.3.b.(3)
(vii) Decontamination procedures	III.3.c.(6).
(viii) Emergency medical treatment and response procedures	II.2.d; III.3.c.(7); III.3.e.(1).
(ix) Emergency alerting and response procedures	II.2; II.2.a; II.2.f; II.4; III.2; III.2.a; III.2.b; III.2.c; III.3.d.
(x) Critique of response and follow-up	II.3; III.4; III.4.a; III.6.
(xi) PPE and emergency equipment	III.3.e.(6); III.3.f.(3); III.3.d.(2); III.3.e.(6); III.3.f.(3).
(3) Procedures for handling emergency incidents:	
(i) Additional elements of emergency response plans:	
(A) Site topography, layout, and prevailing weather conditions	III.1.c.
(B) Procedures for reporting incidents to local, state, and federal government agencies.	II.2.a; III.2.
(ii) The emergency response plan shall be a separate section of the Site Safety and Health Plan.	
(iii) The emergency response plan shall be compatible with the disaster, fire, and/or emergency response plans of local, state, and federal agencies.	III.3.e.
(iv) The emergency response plan shall be rehearsed regularly as part of the overall training program for site operations.	III.5.
(v) The site emergency response plan shall be reviewed periodically and, as necessary, be amended to keep it current with new or changing site conditions or information.	
(vi) An employee alarm system shall be installed in accordance with 29 CFR 1910.165 to notify employees of an emergency situation; to stop work activities if necessary; to lower background noise in order to speed communications; and to begin emergency procedures.	
(vii) Based upon the information available at time of the emergency, the employer shall evaluate the incident and the site response capabilities and proceed with the appropriate steps to implement the site emergency response plan.	II.2.c; II.2.d.
1910.120(p)(8) Emergency response program:	I.1
(i) Emergency response plan.	
(ii) Elements of an emergency response plan:	
(A) Pre-emergency planning and coordination with outside parties	I.4.f; II.2.b; II.2.b; III.2.b; III.2.c; III.3.b.(4); III.3.d.
(B) Personnel roles, lines of authority, and communication	I.4.f; II.2.b; III.2.c; III.2.c; III.3.b.(4); III.3.e.(4).
(C) Emergency recognition and prevention	II.1; III.7
(D) Safe distances and places of refuge	III.3.b.(3); III.3.d.(2)
(E) Site security and control	III.3.d.(2); III.3.e.(2)
(F) Evacuation routes and procedures	II.2.d; III.3.b.(3).
(G) Decontamination procedures	III.3.c.(6).
(H) Emergency medical treatment and response procedures	II.2.d; III.3.c.(7); III.3.e.(1).
(I) Emergency alerting and response procedures	II.2; II.2.a; II.2.f; II.4; III.2; III.2.a; III.2.b; III.2.c; III.3.d.

ATTACHMENT 3: REGULATORY CROSS-COMPARISON MATRICES—Continued

	ICP Citation(s)
(J) Critique of response and follow-up	II.3; III.4; III.4.a; III.6.
(K) PPE and emergency equipment	III.3.e.(6); III.3.f.(3); III.3.d.(2); III.3.e.(6); III.3.f.(3).
(iii) Training	III.5.
(iv) Procedures for handling emergency incidents:	
(A) Additional elements of emergency response plans:	
(1) Site topography, layout, and prevailing weather conditions	III.1.c; III.3.d.(1).
(2) Procedures for reporting incidents to local, state, and federal government agencies.	II.2.a; III.2.
(B) The emergency response plan shall be compatible and integrated with the disaster, fire and/or emergency response plans of local, state, and federal agencies.	III.3.e.
(C) The emergency response plan shall be rehearsed regularly as part of the overall training program for site operations.	
(D) The site emergency response plan shall be reviewed periodically and, as necessary, be amended to keep it current with new or changing site conditions or information.	
(E) An employee alarm system shall be installed in accordance with 29 CFR 1910.165.	
(F) Based upon the information available at the time of the emergency, the employer shall evaluate the incident and the site response capabilities and proceed with the appropriate steps to implement the site emergency response plan	II.2.d; II.2.e; III.3.d.(1).
1910.120(q) Emergency response to hazardous substance releases:	
(1) Emergency response plan	III.3.1.
(2) Elements of an emergency response plan:	
(i) Pre-emergency planning and coordination with outside parties	I.4.f; II.2.b; II.2.c; III.2.b; III.2.c; III.3.b.(4); III.3.d.
(ii) Personnel roles, lines of authority, training, and communication	I.4.f; II.2.b; III.2.b; III.2.c; III.3.b.(4); III.3.e.(4).
(iii) Emergency recognition and prevention	II.1; III.7.
(iv) Safe distances and places of refuge	III.3.b.(3); III.3.d.(2).
(v) Site security and control	III.3.d.(2); III.3.e.(2).
(vi) Evacuation routes and procedures	II.2.d; III.3.b.(3).
(vii) Decontamination procedures	III.3.c.(6).
(viii) Emergency medical treatment and response procedures	II.2.d; III.3.c.(7); III.3.e.(1).
(ix) Emergency alerting and response procedures	II.2; II.2.a; II.2.f; II.4; III.2; III.2.a; III.2.b; III.2.c; III.3.d.
(x) Critique of response and follow-up	II.3; III.4; III.4.a; III.6.
(xi) PPE and emergency equipment	III.3.e.(6); III.3.f.(3); III.3.d.(2); III.3.e.(6); III.3.f.(3).
(xii) Emergency response plan coordination and integration	III.3.e; III.8.
(3) Procedures for handling emergency response:	
(i) The senior emergency response official responding to an emergency shall become the individual in charge of a site-specific Incident Command System (ICS).	II.2.b; III.3; III.3.a; III.3.b; III.3.b.(1); III.3.b.(2); III.3.e.(3).
(ii) The individual in charge of the ICS shall identify, to the extent possible, all hazardous substances or conditions present and shall address as appropriate site analysis, use of engineering controls, maximum exposure limits, hazardous substance handling procedures, and use of any new technologies.	II.2.c; II.2.d; III.3.c.(3).
(iii) Implementation of appropriate emergency operations and use of PPE	II.2.c; II.2.d; II.2.e; III.3.c; III.3.c.(1); III.3.d.(1); III.3.d.(2).
(iv) Employees engaged in emergency response and exposed to hazardous substances presenting an inhalation hazard or potential inhalation hazard shall wear positive pressure self-contained breathing apparatus while engaged in emergency response.	II.2.d.
(v) The individual in charge of the ICS shall limit the number of emergency response personnel at the emergency site, in those areas of potential or actual exposure to incident or site hazards, to those who are actively performing emergency operations.	III.3.c; III.3.e.(5).
(vi) Backup personnel shall stand by with equipment ready to provide assistance or rescue.	II.2.d; III.3.e.(5).
(vii) The individual in charge of the ICS shall designate a safety official, who is knowledgeable in the operations being implemented at the emergency response site.	II.2.d; III.3.b.(3).
(viii) When activities are judged by the safety official to be an IDLH condition and/or to involve an imminent danger condition, the safety official shall have authority to alter, suspend, or terminate those activities.	III.3.b.(3).
(ix) After emergency operations have terminated, the individual in charge of the ICS shall implement appropriate decontamination procedures.	III.3.c.(6).

ATTACHMENT 3: REGULATORY CROSS-COMPARISON MATRICES—Continued

	ICP Citation(s)
(x) When deemed necessary for meeting the tasks at hand, approved self-contained compressed air breathing apparatus may be used with approved cylinders from other approved self-contained compressed air breathing apparatus provided that such cylinders are of the same capacity and pressure rating.	
(4) Skilled support personnel.	
(5) Specialist employees.	
(6) Training	III.5.
(7) Trainers.	
(8) Refresher training.	
(9) Medical surveillance and consultation.	
(10) Chemical protective clothing.	
(11) Post-emergency response operations.	
EPA's Risk Management Program (40 CFR Part 68)	
68.20–36 Offsite consequence analysis	III.3.d.(1).
68.42 Five-year accident history	III.4.b.
68.50 Hazard review	III.3.d.(1).
68.60 Incident investigation	III.4.a
68.67 Process hazards analysis	III.3.d.(1)
68.81 Incident investigation	III.4.a
68.95(a) Elements of an emergency response program:	
(1) Elements of an emergency response plan:	
(i) Procedures for informing the public and emergency response agencies about accidental releases.	II.2.a; III.2.
(ii) Documentation of proper first-aid and emergency medical treatment necessary to treat accidental human exposures.	III.3.c.(7); III.3.e.(1).
(iii) Procedures and measures for emergency response after an accidental release of a regulated substance.	II.1; II.2; II.3; II.4; III.3.a–c.
(2) Procedures for the use of emergency response equipment and for its inspection, testing, and maintenance.	III.3.e.(6).
(3) Training for all employees in relevant procedures	III.5.
(4) Procedures to review and update the emergency response plan	III.6.
68.95(b) Compliance with other federal contingency plan regulations.	
68.95(c) Coordination with the community emergency response plan.	

Notes to Attachment 3

[1] Facilities should be aware that most states have been authorized by EPA to implement RCRA contingency planning requirements in place of the federal requirements listed. Thus, in many cases state requirements may not track this matrix. Facilities must coordinate with their respective states to ensure an ICP complies with state RCRA requirements.

[2] Facilities should be aware that most states have been authorized by EPA to implement RCRA contingency planning requirements in place of the federal requirements listed. Thus, in many cases state requirements may not track this matrix. Facilities must coordinate with their respective states to ensure an ICP complies with state RCRA requirements.

[3] Facilities should be aware that most states have been authorized by EPA to implement RCRA contingency planning requirements in place of the federal requirements listed. Thus, in many cases state requirements may not track this matrix. Facilities must coordinate with their respective states to ensure an ICP complies with state RCRA requirements.

[4] Section 264.56 is incorporated by reference at § 264.52(a).

[5] Incorporates by reference § 264.37.

[6] Section 265.56 is incorporated by reference at § 265.52(a).

[7] Incorporates by reference § 265.37.

[8] Section 279.52(b)(6) is incorporated by reference at § 279.52(b)(2)(i).

[9] Incorporates by reference § 279.52(a)(6).

[10] Non-response planning parts of this regulation (e.g., prevention provisions) require a specified format.

[11] If a facility is required to develop a strong oil spill contingency plan under this section, the requirement can be met through the ICP.

[12] The appendix further describes the required elements in 120.20(h). It contains regulatory requirements as well as recommendations.

[13] Specific plan requirements for sections listed under 154.1030(b) are contained in 154.1035(a)–(g).

[14] Note: Sections 154.1045 and 154.1047 contain requirements specific to facilities that handle, store, or transport Group I–IV oils and Group V oils, respectively.

[15] Ibid.

[16] Section 1910.38(a)(3) incorporates 29 CFR 1910.165 by reference.

Dated: April 18, 1996.

Elliott P. Laws,

Assistant Administrator, Office of Solid Waste and Emergency Response, U.S. Environmental Protection Agency.

Dated: April 22, 1996.

Rear Admiral James C. Card,

Chief, Marine Safety and Environmental Protection Directorate, U.S. Coast Guard.

Dated: April 18, 1996.

Richard B. Felder,

Associate Administrator for Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation.

Dated: April 18, 1996.

John B. Moran,

Director of Policy, Occupational Safety and Health Administration, Department of Labor.

Dated: April 18, 1996.

Thomas Gernhofer,

Associate Director, Offshore Minerals Management, Minerals Management Service, Department of the Interior.

[FR Doc. 96–13712 Filed 6–4–96; 8:45 am]

BILLING CODE 6560–50–P

federal register

Wednesday
June 5, 1996

Part III

Department of Transportation

Research and Special Programs Administration

49 CFR Part 171, et al.

Transportation of Hazardous Materials by Rail; Miscellaneous Amendments; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 174, 178, and 179

[Docket No. HM–216; Amdt Nos. 171–144, 172–148, 173–252, 174–83, 178–115, 179–52]

RIN 2137–AC66

Transportation of Hazardous Materials by Rail; Miscellaneous Amendments

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the Department's Hazardous Materials Regulations (HMR) to incorporate a number of changes to rail requirements based on rulemaking petitions from industry and RSPA initiatives. This action is necessary to update the regulations and to respond to petitions for rulemaking. The intended effect of these regulatory changes is to improve safety and reduce costs to offerors and transporters of hazardous materials.

DATES: *Effective date:* The effective date of these amendments is October 1, 1996.

Compliance date: Voluntary compliance with the regulations, as amended herein, is authorized June 30, 1996.

Incorporation by reference: The incorporation by reference of certain publications listed in these amendments has been approved by the Director of the Federal Register as of October 1, 1996.

FOR FURTHER INFORMATION CONTACT: Beth Romo, telephone (202) 366–8553, Office of Hazardous Materials Standards, Research and Special Programs Administration, Washington DC, 20590–0001, or James H. Rader, telephone (202) 366–0510, Office of Safety Assurance and Compliance, Federal Railroad Administration, Washington DC, 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On December 19, 1995, RSPA issued a notice of proposed rulemaking (NPRM) under Docket HM–216 [60 FR 65492]. The NPRM proposed miscellaneous changes to rail requirements contained in the HMR, based on petitions for rulemaking submitted in accordance with 49 CFR 106.31 or agency initiative.

RSPA received 22 comments in response to the proposed rule. Comments were submitted by chemical manufacturing companies, trade associations, emergency response organizations, and rail carriers. Commenters were uniformly supportive of RSPA's and FRA's efforts to respond to petitions for rulemaking and to reduce regulatory burdens by simplifying or updating existing regulations. Several commenters suggested other amendments to the HMR as part of this initiative. These suggestions are incorporated into this final rule where possible, but many are beyond the scope of the rule and should be proposed in a future rulemaking action to ensure adequate opportunity for public notice and comment.

This rule is consistent with the goals of President Clinton's Regulatory Reinvention Initiative. The President directed Federal agencies to review all agency regulations and eliminate or revise those that are outdated or in need of reform. A notice issued April 4, 1995 by RSPA requested comments on regulatory reform (Docket HM–222; 60 FR 17049) and announced a comprehensive review of the HMR to identify provisions that are candidates for elimination, revision, clarification, or relaxation. Certain changes in this document reflect the results of this review.

II. Summary of Regulatory Changes by Section

Listed below is a section-by-section summary of changes and, where applicable, the assigned petition number.

Part 171

Section 171.7

Various American Society for Testing and Materials (ASTM) standards are updated to reflect the most current version. Other ASTM standards that no longer would be referenced in revised § 179.12 are removed. In the NPRM, RSPA did not propose any changes to ASTM A 285 and proposed an update to ASTM A 515; however, because these standards are no longer applicable, they are removed in this final rule.

Part 172

Section 172.101; The Hazardous Materials Table

Several entries in the Hazardous Materials Table are revised as proposed. For the entry ''Dimethylhydrazine, unsymmetrical'', assigned Special Provisions B74 and B79, Special Provision B79 is removed. Special Provision B74 requires the use of a tank car conforming to a Class 105S, 106, 110, 112J, or 114J. Special Provision B79 requires each tank car to have a tank head puncture system if the tank was constructed prior to April 1, 1989. Because Special Provision B74 requires all tank cars to meet the requirements of B79, referencing Special Provision B79 is unnecessary. For the entry for Calcium carbide, Special Provision B59 is added for both Packing Group I and II entries. This special provision will authorize the continued use of Class AAR 207 tank cars for the transportation of calcium carbide after October 1, 1996.

Sections 172.101 (The Hazardous Materials Table) and 172.330

In the Hazardous Materials Table, RSPA proposed to revise 29 entries by removing Special Provision B12 assigned to those entries in Column (7). This special provision requires the marking of tank cars with the proper shipping name or common name of the material. As part of the proposal to provide relief from this marking requirement, RSPA proposed to consolidate marking requirements currently contained in § 172.102 special provisions and in Parts 173 and 179 into § 172.330 and limit its applicability to certain materials which pose very high risks in transportation. RSPA proposed in the NPRM that the requirement to mark the proper shipping name or common name of a hazardous material on a tank car be limited to: Division 2.1 and 2.3 materials; Division 2.2 materials in Class DOT 107 tank cars; anhydrous ammonia; ammonia solutions with more than 50% ammonia; bromine and bromine solutions; hydrogen cyanide; chloroprene; and refrigerant or dispersant gases, as defined in § 173.115. A majority of commenters supported this proposal, but several suggested that other commodities should be considered for inclusion in the proposed list of commodities requiring marking. Two emergency response organizations, the International Association of Fire Fighters (IAFF) and the International Association of Fire Chiefs (IAFC), strongly opposed elimination of the marking requirement. The IAFF claimed that fewer cars would have information providing instant confirmation of the contents, thereby delaying rescue actions while shipping papers are researched. The IAFC agreed, stating that the inability to promptly identify contents of a car involved in an incident or accident would increase the hazard to fire and emergency service responders. Very little cost or effort is involved to stencil the product or proper shipping name on the car, the IAFC added. One chemical manufacturer questioned the safety rationale of removing this requirement and stated that use of a proper shipping name is preferable for loaders/unloaders, repair and cleaning

facility personnel, and emergency responders, rather than depending only on the four-digit identification number. Based on views expressed by emergency response organizations and after careful consideration of all comments on this issue, RSPA and FRA have decided to retain the requirement for marking tank cars with the proper shipping name for all commodities currently assigned B12, but to move these requirements to § 172.330. Accordingly, this rule provides a list of these commodities in § 172.330(a)(1). RSPA and FRA believe that a future revision of this list may be warranted because certain high hazard materials currently are not subject to this marking requirement, while other hazardous materials posing less risk appear on the list. Interested readers are invited to submit suggestions as to what proper shipping names should be removed, retained or added to the list.

Section 172.102

Special Provisions B4 and B10 are revised as proposed to remove a prohibition on the use of Association of American Railroads (AAR) 206 tank cars. In the § 172.101 Hazardous Materials Table (HMT), each commodity assigned this special provision must be in a packaging authorized in § 173.243, which does not allow an AAR 206 tank car. Special Provision B5 is revised as proposed to authorize use of tank cars, constructed from other than aluminum plate, for ammonium nitrate fertilizer. Special Provision B12 is removed, as discussed above.

Changes to Special Provisions B42, B65, B71, B72, B74, and B76 are adopted as proposed. These provisions are revised to clarify that any class tank car with a higher test pressure than authorized also may be used. Special Provisions B42, B65, and B76 also are revised to authorize the optional marking of the tank to a lower pressure specification. All but one commenter addressing this issue supported the proposed change. Commenters agreed that the proposed option allows flexibility for safety valve settings for certain classes of pressure cars and allows the originally designed tank pressure to also remain marked on the car. One commenter believed that confusion would arise if there is an option to mark the tank with either the tank test pressure rating or a lower pressure rating, required to coincide with the pressure relief device start-to-discharge pressure. RSPA and FRA do not believe that either the current requirement or the new option will cause confusion. The option adopted in this final rule simply removes the mandatory link between marked test pressure and the safety valve start-to-discharge settings.

RSPA is removing a requirement in Special Provision B57 that the shipping name CHLOROPRENE must be marked on a tank car. This marking requirement is included in the revision of § 172.330(a)(1). Based on a comment, RSPA is revising Special Provision B57 to specify a safety vent with a minimum diameter of 305 mm (12 inches) with a rupture disc pressure of not more than 45 psi. RSPA also is revising the first sentence of Special Provision B78 to specify the test pressure and to clarify which rail cars are authorized.

As pointed out by a commenter, RSPA proposed the addition of a new class DOT 120A, but overlooked the need to add corresponding special provisions. Therefore, authorizations for use of Class DOT 120A tank car tanks are added to Special Provisions B71, B74, B76, and B78.

Section 172.203

Currently, rail carrier shipping paper requirements are contained in both Parts 172 and 174. In this final rule, RSPA is moving the shipping paper requirements in Part 174 to Part 172. Commenters supported the consolidation of shipping paper requirements in Part 172. Paragraph (e)(2) is revised as proposed to replace references with a specific requirement to precede the basic shipping description with the wording ''RESIDUE, LAST CONTAINED.'' Paragraph (g)(1) also is revised to adopt a requirement to identify a rail car, freight container, transport vehicle, or portable tank that contains a hazardous material by reporting mark and number. Several commenters requested that RSPA clarify in the final rule that annotating a reporting mark and number on a shipping paper applies only to those shipments which are assigned reporting marks. RSPA agrees and is limiting this requirement to those rail cars, transport vehicles, freight containers and portable tanks displaying a reporting mark.

Section 172.205

This section is revised as proposed. RSPA received unanimous support for its proposal to revise paragraph (f) for consistency with Environmental Protection Agency (EPA) hazardous waste manifest requirements for transportation by rail contained in 40 CFR 263.20(f).

Section 172.330

Paragraph (a)(1) is revised to clarify marking requirements for tank cars. See preamble discussion under §§ 172.101 and 172.330.

Section 172.510

Paragraph (a) is revised to require the placement of each placard on a white square background on each class DOT 113 tank car used to transport a Division 2.1 (flammable gas) material. This change will enhance compliance with switching requirements for rail cars by communicating to railroad switching crews, through a white square background, that a class DOT 113 tank car transporting a Division 2.1 material may not be cut off while in motion. (See § 174.83(b).) Commenters generally supported this proposed change; however, one rail carrier opposed it, claiming that such placards require special attention and imposing the requirement on class DOT 113 tank cars containing flammable gas would dilute the meaning of the square white background and be more confusing than helpful. RSPA does not agree and believes a white square background will more effectively communicate to rail crews the presence of flammable gases, such as liquid hydrogen.

Several commenters pointed out an unintended change in wording which would broaden the requirement for a placard with a square white background to all Hazard Zone A materials, including those in a class or division other than Division 2.3 or Division 6.1. RSPA is revising the proposed wording to limit the requirement for a placard on a square white background to Hazard Zone A materials in Divisions 2.3 and 6.1. However, after reviewing these comments, RSPA believes this requirement should be broadened to apply to all Hazard Zone A materials (with corresponding changes in § 174.83) and may propose such a change in a future rulemaking action.

Sections 172.510 and 172.526

The NPRM proposed the removal of provisions for the specifications for and use of RESIDUE placards. The majority of commenters to this issue supported RSPA's and FRA's proposal to eliminate these requirements. These commenters cited standardization among all transportation modes, enhanced regulatory understanding and compliance, and harmonization with NAFTA and international regulations. One chemical manufacturer noted that its emergency response personnel were not aware of any incident where the RESIDUE placard has made a difference in the outcome of the incident. This commenter maintained that eliminating this placard would result in considerable savings to the company.

Several other commenters, including the Chemical Manufacturers Association, believed that the determination of what constitutes ''residue'' is arbitrary and stated that some residue tank cars could have a significant amount of product remaining in the tank. One rail carrier indicated that a common deficiency is the failure of an offeror to completely reverse all placards applied to a tank car. Thus, loaded tank cars will often have a RESIDUE placard as one of the four placards displayed, or conversely, residue tank cars will still have the original loaded placard in one of the holders.

Only four commenters—the IAFC, two chemical manufacturers and a government safety inspector—opposed removing the requirement for the use of a RESIDUE placard. The IAFC believed the information is crucial to fire and emergency responders because it communicates whether a tank car is full or just has residue left in the tank. The IAFC claimed the 22,000 occasions cited in the NPRM were due to poor compliance and inadequate enforcement. The commenter further stated that eliminating the RESIDUE placard may significantly increase the hazard or risk to fire or emergency response personnel. Not knowing the amount of product in a car will force responders to treat all tank cars as if they were full, which may result in unnecessary and potentially expensive actions.

RSPA and FRA disagree with the opinion expressed by IAFC that the 22,000 occasions cited in the NPRM were due both to poor compliance and inadequate enforcement since they were discovered as a result of FRA's enforcement efforts. As noted by one commenter, RSPA and FRA are aware of many ''residue'' tank cars which have remaining product that may contain as much as 1,000 gallons or more of hazardous material. Moreover, FRA has discovered that some shipments of liquefied compressed gases in pressure tank cars that are unloaded through equalization of pressure retain as much as one-third of the original load. In a fire, a partially-filled tank car can rupture as violently as a full tank car, thereby presenting a similar hazard to emergency responders. In fact, a partially-filled tank car exposed to fire in some circumstances may rupture in less time than a full tank car, because a partially-filled tank car has less thermal mass. Clearly, a residue placard may lead to a false sense of security. Further, RSPA and FRA believe that the primary purpose of placards is to convey the presence of a hazardous material, a ''trigger'' to emergency response personnel that more needs to be known about the contents of bulk packages of hazardous materials before entering a potential danger zone. By obtaining a copy of the shipping papers or freight car movement documents, emergency response personnel will gain basic information on the hazards present and the shipper's emergency response telephone number, resulting in better informed decisions about any precautions or evacuation measures needed to secure the incident site. One chemical manufacturer expressed concern that the removal of the residue placard will mandate the use of permanent pressure-sensitive placards to general service rail tank cars and, where the commodities change frequently, increase the possibility of misidentification of the commodity being transported. Nothing in the proposed rule would require the use of pressure-sensitive placards. Shippers and carriers may continue to use ''tag board'' placards placed within placard holders. Based on consideration of all comments received, RSPA is removing all provisions applying to the specifications for and use of RESIDUE placards.

Part 173

Section 173.24b

Commenters uniformly supported this proposal to add a mid-range temperature for calculating outage and filling limits for certain thermally protected and jacketed tank cars. This proposal was based on a petition for rulemaking submitted by the Propane Gas Association of Canada [P–1251] in cooperation with Transport Canada. Paragraph (a) of the proposed rule included provisions for anhydrous ammonia currently contained in Note 2 following the § 173.314(c) table. In this final rule, RSPA is adopting a mid-range temperature calculation for anhydrous ammonia by revising Note 2 of the § 173.314(c) table.

Section 173.29

Paragraph (f) is removed, consistent with the removal of § 172.510(c).

Sections 173.240 through 173.244

RSPA is adding an authorization for the use of Class 120A tank car tanks in each of these sections.

Section 173.314

Paragraph (b)(5), which contains provisions for marking the proper shipping name of certain Class 2 materials on tank cars, is removed because these provisions also appear in § 172.330. Paragraph (b)(6) is redesignated (b)(5) and amended to revise requirements for heat-resistant gaskets. Commenters expressed concern as to the difficulty of obtaining suitable heat-resistant materials because of the scarcity of materials (other than asbestos) that are capable of withstanding temperatures of 230°C that are also compatible with the lading. Besides temperature and compatibility, the selection of a proper gasket must include consideration of many factors, such as the mating of the gasket to its seating surfaces, fluid media, operating pressure, flange design, bolting data, and size. RSPA and FRA agree with those comments that, because of numerous factors involved, criteria for the selection of a suitable gasket material is too technically complex for resolution at this time. Therefore, this final rule does not define a minimum temperature for heat-resistant gaskets, but identifies criteria which a shipper must consider in selecting a proper gasket. In addition, in analyzing comments to this section, RSPA and FRA discovered that when this provision was moved from § 179.102–3(a)(3) to § 173.314 under changes adopted in Docket HM–181, certain words were inadvertently removed. RSPA is restoring this wording to refer to ''gaskets for manway cover plates.''

In the paragraph (c) table, several entries are amended to add an authorization for use of a Class DOT 120A tank car tank.

RSPA also is authorizing Class DOT 112J and 112T specification tank cars for the transportation of dimethyl ether, as proposed. Currently, only the use of a DOT 105A300W tank car is authorized. This is based on an exemption issued to Aeropres Corporation (DOT–E 11000) and a petition for rulemaking [P–1253].

RSPA also is revising Note 2 in paragraph (c) of the table. This note is assigned to the entry ''Ammonia, anhydrous or ammonia solutions >50 percent ammonia'' and the revision will allow shippers to calculate outage and filling limits for tank cars based on corresponding changes adopted in § 173.24b.

In addition, RSPA is removing paragraph (i), which currently provides alternate settings for safety relief valves on tank car tanks used for certain commodities, because pressure relief device requirements are being consolidated in § 179.15.

Part 174

Section 174.3

This section prohibits a shipment of a hazardous material not prepared in accordance with Parts 171, 172, and 173

from being offered for transportation or transported by rail. The section is revised as proposed to be consistent with language contained in Parts 175, 176 and 177 for unacceptable hazardous materials shipments.

Section 174.8 through 174.10

Inspection requirements currently contained in §§ 174.8, 174.9 and 174.10 are consolidated into § 174.9 to clarify a railroad's inspection duties at points of origination, interchange points and other locations where rail cars must be inspected. Sections 174.8 and 174.10 are removed. Section 174.9 requires a railroad to inspect each rail car for compliance with the HMR and other conditions that may make the car unsafe for transportation.

The final rule further clarifies that a railroad employee may perform inspections at ''ground level.'' One commenter, a chemical manufacturer, opposed this proposed change because inspections would be limited to leaks detectable at ground level. Another commenter representing a chemical manufacturing company recognized the practicality of ground level inspections, and believed that shippers and carriers must work together to ensure proper securement and compliance with hazard communication standards. A commenter supporting this revision noted that requirements for above ground inspections raise substantial safety concerns, are extremely burdensome, and significantly impair efficiency. RSPA and FRA believe that ground level inspections provide an adequate level of safety and this provision is adopted with an editorial revision to clarify provisions for train crew inspection.

Section 174.11

Section 174.11 is removed as proposed because it merely references § 171.12a for transportation of Canadian shipments or packagings by rail car within the U.S.

Section 174.18

Section 174.18 concerning the handling of astray packages of hazardous materials is obsolete; therefore this section is removed as proposed.

Section 174.24

Shipping paper requirements for rail carriers in Part 174 are moved to Part 172. Revised § 174.24 cross-references shipping paper requirements in Part 172. One commenter expressed concern that the proposed wording of this section would allow origin carriers to accept hazardous materials without first receiving shipping papers. The commenter believed that documentation shows the offer and acceptance affiliation between shipper and carrier and proves that a shipper offered hazardous material for transportation prior to acceptance by a carrier. RSPA agrees that the wording in this section should be revised to clarify that a carrier may not accept or transport a hazardous material by rail unless the carrier receives a properly prepared shipping document from the shipper.

Numerous commenters urged RSPA to address electronic transmission of a shipper certification. Commenters claimed that adopting a provision in § 172.204 to recognize electronic data interchange (EDI) or other electronic transmission of shipping paper certifications could eliminate the need for an existing exemption, DOT–E–7616. RSPA and FRA agree with commenters that this issue should be addressed, but believe that adopting new certification provisions for electronic transmissions is beyond the scope of this final rule.

Section 174.25

RSPA is removing the ''placard notation'' requirement since it is outdated for emergency response communication. RSPA also is removing the requirement for a ''placard endorsement'' placed on a waybill near the reporting mark of each rail car, freight container, transport vehicle, or portable tank that contains a hazardous material when transported by rail. Commenters supporting these proposals cited improved hazard communication requirements and technological advancements as reasons to eliminate these outdated provisions. The only commenter to oppose these proposals, IAFF, claimed that a placard notation ''allows the company officer to instantly make an initial diagnosis regarding a 'go/no go' decision for imminent rescue'' and ''* * * offers a point of quick confirmation of the basic hazard.'' IAFF further noted that ''* * * removing the placard endorsement cripples the ability of the incident commander to make quick and correct decisions when life safety is at stake.'' RSPA and FRA disagree with IAFF. Hazard communication requirements in the HMR (e.g., proper shipping name, hazard class, identification number, packing group and emergency response information) are the principal tools that emergency response personnel should use to assess the emergency. Because the current placard notation is repetitive of other hazard communication requirements and generally restates the hazard class of the material, it is considered unnecessary for making a ''go/no go'' decision. Removing this requirement also makes requirements for railroad transportation consistent with other modes. Accordingly, this final rule removes requirements for the placard notation and endorsement.

Other shipping paper requirements in this section, including those for tank cars containing the residue of a hazardous material, are removed or moved to Part 172.

Section 174.26

Amendments to this section are adopted as proposed. Paragraph (a) is removed because, if a carrier complies with paragraph (b), the carrier also is complying with paragraph (a). Paragraphs (b) and (c) are redesignated paragraphs (a) and (b), respectively. Newly designated paragraph (b) is revised to reference shipping paper requirements of Part 172 and specify use of other forms of car movement documents.

Sections 174.47 and 174.48

As proposed, the provisions in these sections are consolidated into revised § 174.50 to prescribe requirements for forwarding shipments in violation of the HMR and damaged or leaking packages.

Section 174.49

This section is removed as proposed because open-flame lanterns are no longer used.

Section 174.50

This section is revised by consolidating requirements of §§ 174.47, 174.48, and 174.50 and by removing all obsolete provisions. As proposed, packages other than tank cars would have to be repaired, reconditioned, or overpacked prior to subsequent movement. Tank cars would have to be repaired or be moved under conditions approved by FRA's Associate Administrator for Safety.

RSPA and FRA have recently learned that at least one business entity has interpreted existing § 174.47(b) to permit the ongoing movement of noncomplying tank cars once their ''in-violation'' status was reported. Neither FRA nor RSPA agree with this interpretation. Both agencies believe that the HMR have, even before these amendments, clearly prohibited such movement. FRA has consistently taken enforcement action against the movement of tank cars that are in violation of the HMR. The amendment removes any doubt that the old language might have created on the part of one shipper, and provides a method for relief where repairs cannot be made without further movement. For instance,

a tank car found en route with missing placards or markings is typically ''repaired'' by corrective action on the spot. In more serious situations, it may not be possible to conduct an on-site repair, such as repair of a tank car with its thermal protection system torn or abraded so that it no longer meets a specification. A tank car in this condition may only be moved under the authority of an exemption.

Commenters generally believed the proposed changes will promote safety, simplify the process, and enable the shipper or carrier to take quicker action. Several commenters recommended that the proposed section be modified to authorize use of a telephone, fax, or electronic mail for notification and FRA approval, with written confirmation to be provided within a specified number of days. RSPA and FRA agree with this recommendation and are revising the section accordingly.

The Iowa Department of Transportation asked RSPA to expand the proposed provision which would allow a leaking tank car to be switched to ''a location distant from habitation and highways'' to include ''streams'' and ''pipelines within the railroad rights of way.'' The Iowa DOT cited a National Transportation Safety Board report on activities within railroad rights of way that may disturb pipelines. This commenter expressed concern that corrosives or other chemicals could pose either an immediate risk or a long-term effect on pipelines that would not be readily apparent, with corresponding potential effects on water quality and the environment. RSPA and FRA agree in principle with the commenter, and this final rule is broadened, not just to include streams or pipelines within railroad rights of way, but to authorize limited movement of a leaking tank car to reduce or eliminate any immediate risk to human health or the environment.

Section 174.55

Proposed changes to this section were intended to clarify and streamline requirements for loading and securing packages of hazardous materials. Of the 22 comments submitted in response to the NPRM, only three commenters suggested changes to the proposed revision of this section. One commenter noted that lading securement requirements should apply to both ''transport vehicles'' (as stated in the NPRM) and ''freight containers'' (as provided in the current regulations). RSPA agrees, and the final rule reflects this change.

The NPRM contained a proposal to streamline requirements by eliminating the need to seek DOT approval for lading restraint systems that permit ''limited movement.'' RSPA and FRA believe it is not the slight movement of hazardous materials packages that creates a safety hazard, but their unsecured movement.

All three commenters believed the proposed requirement that lading ''be secured'' was too vague; two favored a return to the term ''blocked and braced'' and the other suggested requiring ''lading restraint systems.'' While RSPA and FRA do not agree that the proposal was too vague, RSPA is replacing the word ''secured'' in proposed § 174.55(a) with language requiring that a package containing a hazardous material must be loaded in the transport vehicle or freight container so that it cannot fall and must be safeguarded in such a manner that other freight cannot fall onto or slide into it. This is a performance standard which acknowledges that all packages in a vehicle or container may move to a limited degree during transportation without adversely affecting their structural and containment integrity.

The performance standard adopted in this final rule provides rail shippers and carriers maximum flexibility in meeting regulatory requirements and is consistent with requirements for other modes of transportation. At times, damage-free transportation can be achieved by loading packages so tightly within a vehicle or freight container that each package is protected by those around it and the total load does not exceed the design strength of the walls or doors. For such loads, no additional equipment or material is necessary. With other load configurations, material in addition to the packages is necessary to create a tight load.

In response to concerns expressed by commenters, this final rule explicitly mandates blocking and bracing (i.e., a lading restraint system), when the required protection cannot be achieved through use of other freight.

Section 174.67

The shipping community uses interior heater coils to improve the ability of a solid or viscous product to flow and thereby reduce tank car unloading times. The interior coils consist of a series of longitudinally arranged and manifolded welded pipe so that one to four inlet and outlet pipe connections allow circulation of a heating medium, usually steam or hot oil, throughout the entire system. The current regulations require that, after a tank equipped with interior heater coils is unloaded, the inlet and outlet pipe connections must be left open for drainage and to prevent the potential collapse of the coils from the vacuum otherwise created from condensing vapors. This requirement applies whether or not the coils were actually used to heat the commodity from the tank.

Comments on this issue were split between supporters and those who opposed removal of the requirements. Several commenters thought that if steam were used, drainage of the condensate would inhibit corrosion. RSPA and FRA believe it unlikely that keeping the inlet and outlet pipe caps off will actually inhibit corrosion of the coils because heater coils become bent and often water remains trapped in pipe valleys. Further, because interior heater coils may exceed 700 feet in length there is inadequate air flow within the coils to dry them completely. In FRA's experience, the single most common failure of interior heater coils is not corrosion or collapse but failure of coil anchors. When the anchor fails, the coils move, creating stresses. Fatigue cracks may occur in these high stress areas and create the potential for a hazardous material release, RSPA has, within the last two years, issued 29 exemptions allowing the transportation of tank cars containing the residue of a hazardous material with the heater coil pipe caps on the heater coil pipes.

After considering the comments received, RSPA and FRA conclude that coil failures are usually the result of poor maintenance or operational practices, both of which should be reviewed by the industry. This final rule makes optional the current requirement that the inlet and outlet pipe connections must remain open.

Section 174.85

Corresponding changes in §§ 172.510 and 172.526 remove provisions for a RESIDUE placard. Two commenters noted that proposed paragraph (c) referenced ''rail car'' rather than ''tank car'', which would expand current provisions. RSPA agrees and is revising paragraph (c) to reference a tank car containing a residue of a hazardous material.

Part 178

Section 178.337–2

Two ASTM references are updated in paragraphs (b)(2)(i) and (ii).

Part 179

The following sections are revised by updating certain ASTM specifications and deleting others that are no longer used, based on a petition [P–1023] from AAR: §§ 179.100–7, 179.100–10, 179.100–20, 179.102–1, 179.102–2, 179.200–7, 179.200–24, 179.201–5, and 179.300–7.

Sections 179.12 through 179.12–7

Sections 179.12–1 through 179.12–7 are removed and § 179.12 is revised by incorporating provisions from §§ 179.12–1 and 179.12–5. The design and materials of construction for interior heater coils require AAR approval. This final rule removes the DOT specification requirements and allows AAR greater flexibility in approving heater system designs.

Section 179.15

This section is added to consolidate pressure relief device requirements currently contained in §§ 173.314, 179.100–15, 179.200–18, 179.201–7 and 179.220–19 and adopt provisions to: (1) increase the start-to-discharge pressure of pressure relief devices for certain low pressure tanks while allowing the continued use of existing cars; (2) allow for a reduced orifice in the upstream nozzle of a pressure relief device to accommodate pressure surges; (3) increase the rupture disc burst pressure for cars so equipped; (4) standardize the start-to-discharge pressure setting for all commodities and tank car specifications; and (5) align the start-to-discharge pressure for tank cars with a setting prescribed by the ASME code for pressure vessels.

Most commenters endorsed RSPA's proposed addition of this section, with minor editorial clarifications, stating that this was a worthwhile change in the regulations that would enhance overall safety and benefit a number of shippers and carriers. CMA stated that proposed provisions in this new section would allow shippers to establish pressure relief device settings that are more directly related to the product requirements, rather than arbitrarily relating the settings to the tank test pressure.

The AAR and the Railway Progress Institute (RPI) suggested that RSPA include the ''mid-range'' temperature proposed in § 173.24b for the calculation of outage and filling limits into pressure relief device setting requirements. RSPA proposed a mid-range temperature of 43°C (110°F) for certain thermally protected and jacketed tank cars. RSPA and FRA agree, and a mid-range temperature requirement is added in paragraph (b)(1).

Several commenters suggested that RSPA adopt a range for the burst pressure, as opposed to a set burst pressure (e.g., from 20 to 33 percent of the tank burst pressure for DOT 111A60W tank cars). Other commenters suggested an extension of the proposed one-year period because development of rupture discs that are designed to the dimensions of the rupture disc holder may take longer than one year and thus would not be commercially available. The commenters claimed that if this requirement were adopted and made effective within one year, the current inventory of rupture discs would become worthless.

RSPA and FRA believe the need to increase the burst pressure of a rupture disc installed in a nonreclosing pressure relief device is warranted because of the number of premature rupture disc failures in transportation which have resulted in railroad employee injuries. Of the 5,406 reported hazardous materials releases by rail from 1990 through 1994, RSPA received reports of 1,716 rupture disc failures (an average of 343 each year). RSPA also received 418 reports of railroad employee injuries as a result of a release of hazardous materials (all sources of release for an average of 84 each year). Because rupture disc failures account for nearly 32 percent of the total number of releases by rail during this study period, RSPA and FRA believe that there will be a considerable decrease in the number of premature rupture disc failures as a result of increasing the burst pressure of the rupture disc.

This final rule adopts a rupture disc burst pressure of 33 percent of the tank burst pressure because such pressures can reduce premature failures in the transportation system. Rupture discs are required to be manufactured with a tolerance of +0 to −15 percent of the burst pressure marked on the rupture disc. (See A5.02 of the AAR Tank Car Manual.) In addition, in response to concerns expressed by commenters, RSPA is extending the proposed one-year transition period in paragraph (f) to October 1, 1998. This extension will minimize cost impacts in implementing new designs and will facilitate depletion of existing inventory of rupture discs.

One commenter suggested that RSPA incorporate a requirement for a ''means of inspection of the disc without releasing clamping pressure on the disc,'' similar to A4.07(d) in the AAR Specifications for Tank Cars. Many safety vent devices in use today have such features, including hinged covers and screw plugs, for the inspection of a rupture disc. While these devices are designed to meet the requirements of the AAR specifications, RSPA and FRA believe that in order to fully inspect a rupture disc, the disc must be removed from the safety vent device. It is important that a careful inspection (both top and bottom of the disc) be conducted for corrosion and damage because it has been FRA's experience that a rupture disc may appear normal on the top side, but be severely damaged or corroded on the bottom side. For these reasons, RSPA recently amended the regulations under Docket HM–201 to require a careful inspection of the rupture disc. See § 173.31(d)(1)(vi), effective July 1, 1996 (60 FR 49048, 49073).

In addition, the following editorial changes are made to provisions proposed in the NPRM: paragraph (b)(4) is revised by removing the word ''valve''; paragraph (e)(2) is revised by replacing the word ''fail'' with ''burst'' and by adding the wording ''at not greater than'' before ''95''; a new paragraph (e)(3) is added to base the vapor tight pressure and the start-to-discharge tolerance on the discharge setting of the reclosing pressure relief device; in paragraph (f), paragraph ''(b)(4)'' is added after paragraph ''(a)''; and paragraph (g) is revised to require each pressure relief device to communicate with the vapor space above the lading as near as practicable on the longitudinal centerline and center of the tank.

Sections 179.100–15, 179.200–18, 179.201–7, and 179.220–19

These sections contain provisions for safety relief devices. Because requirements for safety relief devices are consolidated in § 179.15, RSPA is removing these sections from the HMR.

Sections 179.101–1 and 179.201–1

Individual specification requirements for pressure tank cars and non-pressure tank cars are revised. These revisions correct many typographical errors and remove several special references that are no longer applicable. RSPA also is adding a new class ''DOT 120A'' specification tank car and a new ''DOT 111A60W6'' specification tank car in the table based on two petitions for rulemaking [P–1044 and P–1119] from AAR. One commenter correctly noted that if the DOT 120A tank car is adopted, RSPA should assign packaging authorizations in Part 173 and § 172.102. The commenter also requested that this car be authorized in § 173.314 for ''Division 2.2 not specifically identified in this table''. RSPA agrees and is adding authorizations for a DOT120A tank car to appropriate sections. RSPA is removing certain entries from the table since these provisions are currently found in the text proceeding the table (see for example §§ 179.200–11, 179.200–14, and 179.200- 16). An editorial revision is made to a reference in the § 179.201–1 table for DOT

111A100W4, based on a commenter's suggestion.

Section 179.102–4

Paragraph (d), which specifies at least one pressure relief valve on a tank car tank used to transport vinyl fluoride, inhibited, is removed, consistent with the consolidation of safety relief device provisions in § 179.15. In addition, paragraphs (b) and (c) are redesignated paragraphs (a) and (b), paragraphs (e) through (k) are redesignated paragraphs (c) through (i), and reserved paragraph (l) is removed.

Section 179.103–5

Paragraph (b)(2) is revised as proposed to adopt requirements for the attachment of unloading connections for bottom outlets on pressure tank cars. This revision reflects existing requirements for bottom outlets on non-pressure tank cars.

Section 179.200–7

In addition to the revision of the paragraph (b) table discussed previously, certain ASTM specifications are revised to remove references to outdated publications. The entry for ASTM B 209–70, Alloy 6061 is removed, as are footnotes 4 and 5 associated with that entry. Footnote 2 following the paragraph (d) table is revised to reference Practice A of ASTM A 262–85, which is a definitive, rapid method of identifying, by simple etching, those specimens free of susceptibility to intergranular attack.

Section 179.200–14

The first sentence of paragraph (a) and the first sentence of paragraph (b) are revised to recognize the new outage and filling limits for tank cars adopted in Docket HM–181.

Section 179.200–16

RSPA is revising the first sentence in paragraph (d) to require an outage scale visible through the manway opening when using a gauging device. RSPA is adopting a commenter's suggested alternative wording because it clarifies this provision.

Section 179.200–24

Based on a commenter's suggestion to indicate the grade of material for the entry ''Material'', the reference to ''ASTM A 285C'' is revised to read ''ASTM A 516–GR 70''.

Section 179.201–4

This section is adopted as proposed to refer to Footnote 2 of § 179.200–7(d) rather than the AAR Specifications to specify material requirements for fittings, tubes, castings, projections, and closures.

Sections 179.220–7 and 179.300–7

References to ASTM A 515 and ASTM A 285 are removed from the table following paragraph (b) in § 179.220–7 and the table following paragraph (a) in § 179.300–7, because these specifications no longer are authorized for new construction.

Section 179.221–1

RSPA is revising the class DOT 115A specification table as noted in the discussion of §§ 179.101–1 and 179.201–1.

Sections 179.222, 179.222–1, and 179.500–17

These sections are removed because identical provisions are contained elsewhere in the HMR.

III. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and therefore, was not reviewed by the Office of Management and Budget. The rule is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation [44 FR 11034].

The economic impact of this rule is expected to result in only minimal costs to certain persons subject to the HMR and may result in modest cost savings to a small number of persons subject to the HMR and to the agency. Because of the minimal economic impact of this rule, preparation of a regulatory impact analysis or a regulatory evaluation is not warranted.

B. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 (''Federalism''). Federal law expressly preempts State, local, and Indian tribe requirements applicable to the transportation of hazardous material that cover certain subjects and are not substantively the same as Federal requirements. 49 U.S.C. 5125(b)(1). These subjects are:

(1) The designation, description, and classification of hazardous material;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(3) The preparation, execution, and use of shipping documents pertaining to hazardous material, and requirements respecting the number, content, and placement of such documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous material.

This final rule preempts State, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are ''substantively the same'' (see 49 CFR 107.202(d)) as the Federal requirements.

Federal law (49 U.S.C. 5125(b)(2)) provides that if DOT issues a regulation concerning any of the covered subjects, after November 16, 1990, DOT must determine and publish in the Federal Register the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption for these requirements will be October 1, 1996. Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

C. Regulatory Flexibility Act

This final rule responds to petitions for rulemaking and agency review. It is intended to provide clarification of the regulations and relax certain requirements. Therefore, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number. Information collection requirements in 49 CFR parts 172 and 174 pertaining to shipping papers are currently approved under OMB control number 2137–0051. A requirement to annotate a reporting mark and number on shipping documents for certain rail shipments reflects a current rail carrier operating requirement and insignificantly increases the amount of burden imposed by this collection. Some provisions adopted in this final rule, such as elimination of requirements for placing placard endorsements and placard notations on shipping documents, will result in a minor reduction in the amount of burden imposed by this collection. RSPA believes that these changes in burden are not sufficient to warrant

revision of the currently approved information collection.

E. Regulation Identifier Number (RIN)

A regulation identifier 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 number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labels, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

49 CFR Part 178

Hazardous materials transportation, Incorporation by reference, Motor vehicles safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 179

Hazardous materials transportation, Incorporation by reference, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for Part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In the § 171.7(a)(3) Table, under the entry *American Society for Testing and Materials,* 9 entries are removed and 9 new entries are added in alphabetical order, to read as follows:

§ 171.7 Reference material.

(a) *Matter incorporated by reference* * * *

(3) *Table of material incorporated by reference.* * * *

Source and name of material	49 CFR reference
* * * * * * *	
American Society for Testing and Materials	
* * * * * * *	
[Remove]	
ASTM A 20–81 Standard Specification for General Requirements for Steel Plates for Pressure Vessels, Revision C	178.337; 179.102–17
* * * * * * *	
ASTM A 240–82 Standard Specification for Heat-Resisting Chromium and Chromium-Nickel Stainless Steel Plate, Sheet and Strip for Fusion-Welded Unfired Pressure Vessels, Revision A.	178.57; 178.358; 179.100; 179.200; 179.201; 179.220; 179.400.
* * * * * * *	
ASTM A 262–68 Recommended Practices for Detecting Susceptibility to Intergranular Attack in Stainless Steels	179.100; 179.200.
* * * * * * *	
ASTM A 302–78 Pressure Vessel Plates, Alloy Steel, Manganese-Molybdenum and Manganese-Molybdenum Nickel.	179.100; 179.200; 179.220.
* * * * * * *	
ASTM A 370–77 Standard Methods and Definition for Mechanical Testing of Steel Products	179.102–4 and 179.102–17
* * * * * * *	
ASTM A 516–79b Standard Specification for Pressure Vessel Plates, Carbon Steel, for Moderate and Lower-Temperature Service.	178.337; 179.100; 179.102; 179.200 179.220
ASTM A 537–80 Standard Specification for Pressure Vessel Plates, Heat-Treated, Carbon-Manganese-Silicon Steel.	179.100; 179.102.
* * * * * * *	
ASTM B 162–69 Nickel Plate, Sheet, and Strip	179.200.
ASTM B 209–69 Aluminum Alloy Sheet and Plate	179.100; 179.200; 179.220
* * * * * * *	
[Add]	
ASTM A 20/A 20M–93a Standard Specification for General Requirements for Steel Plates for Pressure Vessels	178.337–2; 179.102–4; 179.102–17.
* * * * * * *	
ASTM A 240/A 240M–94b Standard Specification for Heat-Resisting Chromium and Chromium-Nickel Stainless Steel Plate, Sheet and Strip for Pressure Vessels.	178.57; 178.358–5; 179.100–7; 179.100–10; 179.102–1; 179.102–4; 179.102–17; 179.200–7; 179.201–5; 179.220–7; 179.400–5.

Source and name of material	49 CFR reference
* * * * * * *	
ASTM A 262–93a Standard Practices for Detecting Susceptibility to Intergranular Attack in Austenitic Stainless Steels.	179.100–7; 179.200–7; 179.201–4.
* * * * * * *	
ASTM A 302/A 302M–93 Standard Specification for Pressure Vessel Plates, Alloy Steel, Manganese-Molybdenum and Manganese-Molybdenum Nickel.	179.100–7; 179.200–7; 179.220–7.
* * * * * * *	
ASTM A 370–94 Standard Test Methods and Definitions for Mechanical Testing of Steel Products	179.102–1; 179.102–4; 179.102–17.
* * * * * * *	
ASTM A 516/A 516M–90 Standard Specification for Pressure Vessel Plates, Carbon Steel, for Moderate and Lower- Temperature Service.	178.337–2; 179.100–7; 179.100–20; 179.102–1; 179.102–2; 179.102–4; 179.102–17; 179.200–7; 179.220–7.
ASTM A 537/A 537M–91 Standard Specification for Pressure Vessel Plates, Heat-Treated, Carbon-Manganese-Silicon Steel.	179.100–7; 179.102–4; 179.102–17.
* * * * * * *	
ASTM B 162–93a Standard Specification for Nickel Plate, Sheet, and Strip	179.200–7.
ASTM B 209–93 Standard Specification for Aluminum and Aluminum-Alloy Sheet and Plate	179.100–7; 179.200–7; 179.220–7.
* * * * * * *	

* * * * *

§ 171.7 [Amended]

3. In addition, § 171.7, in the paragraph (a)(3) table, the following changes are made:

a. Under American Society for Testing and Materials, the following entries are removed: ASTM A 53–69a, ASTM A 178–70, ASTM A 192–69, ASTM A 269–69, ASTM A 285–78, ASTM A 312–70a, ASTM A 515–69, ASTM B 161–70, ASTM B 210–70, ASTM B 221–76, ASTM B 241–76.

b. Under Association of American Railroads, for the entry ''AAR Manual of Standards and Recommended Practices, Section I, Specially Equipped Freight Car and Intermodal Equipment, 1988'' in Column (2), a reference ''174.55;'' is added as the first reference.

c. Under Association of American Railroads, for the entry ''AAR Manual of Standards and Recommended Practices, Section C—Part III, Specifications for Tank Cars, Specification M–1002, September 1992'' in Column (2), a reference ''179.15;'' is added in numerical order.

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

4. The authority citation for Part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 172.101 [Amended]

5. In § 172.101, in the Hazardous Materials Table, the following changes are made:

a. For the following entries, in Column (7), Special Provision ''B12,'' is removed:

Acrolein, inhibited;
Bromine *or* Bromine solutions;
Bromine chloride;
Dinitrogen tetroxide, liquefied;
Formic acid;
Hydrocyanic acid, aqueous solutions *or* Hydrogen cyanide, aqueous solutions *with not more than 20 percent hydrogen cyanide;*
Hydrocyanic acid, aqueous solutions *with less than 5 percent hydrogen cyanide;*
Hydrofluoric acid, solution, *with more than 60 percent strength;*

Hydrofluoric acid, solution, *with not more than 60 percent strength;*
Hydrogen cyanide, stabilized *with less than 3 percent water;*
Hydrogen fluoride, anhydrous;
Hydrogen peroxide and peroxyacetic acid mixtures, stabilized *with acids, water and not more than 5 percent peroxyacetic acid;*
Hydrogen peroxide, aqueous solutions *with more than 40 percent but not more than 60 percent hydrogen peroxide (stabilized as necessary);*
Hydrogen peroxide, aqueous solutions *with not less than 20 percent but not more than 40 percent hydrogen peroxide (stabilized as necessary);*
Hydrogen peroxide, stabilized *or* Hydrogen peroxide aqueous solutions, stabilized *with more than 60 percent hydrogen peroxide;*
Motor fuel anti-knock mixtures;
Nitric acid *other than red fuming, with more than 70 percent nitric acid;*
Nitric acid *other than red fuming, with not more than 70 percent nitric acid;*
Nitric oxide;
Nitric oxide and dinitrogen tetroxide mixtures *or* Nitric oxide and nitrogen dioxide mixtures;
Perchloryl fluoride;
Phosphorus, amorphous;
Phosphorus, white dry *or* Phosphorus, white, under water *or* Phosphorus, white, in solution *or* Phosphorus, yellow dry or Phosphorus, yellow, under water *or* Phosphorus, yellow, in solution;
Phosphorous white, molten;
Potassium nitrate and sodium nitrite mixtures;
Sulfur trioxide, inhibited; and
Sulfur trioxide, uninhibited.

b. For the entry ''Calcium carbide'', for Packing Groups I and II, in Column (7), Special Provision ''B59,'' is added immediately following ''B55,'' each place it appears.

c. For the entries ''Carbon dioxide, solid *or* Dry ice'' and ''Potassium permanganate'', in Column (7), Special Provision ''B12'' is removed.

d. For the entry ''Dimethylhydrazine, unsymmetrical'', in Column (7), Special Provision ''B79,'' is removed.

6. In § 172.102, in paragraph (c)(3), Special Provisions B12 and B79 are removed and Special Provisions B42, B57, B65, B71, B72, B74, B76 and the first sentence of B78 are revised to read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(3) * * *

Code/Special Provisions

* * * * *

B42 Tank cars must have a test pressure of 34.47 Bar (500 psig) or greater and conform to Class 105J. Each tank car must have a safety relief device having a start-to-discharge pressure of 10.34 Bar (150 psig). The tank car specification may be marked to indicate a test pressure of 13.79 Bar (200 psig).

* * * * *

B57 Class 115A tank car tanks used to transport chloroprene must be equipped with a safety vent of a diameter not less than 305 mm (12 inches) with a maximum rupture disc pressure of 45 psi.

* * * * *

B65 Tank cars must have a test pressure of 34.47 Bar (500 psig) or greater and conform to Class 105J. Each tank car must have a safety relief device having a start-to-discharge pressure of 15.51 Bar (225 psig). The tank car specification may be marked to indicate a test pressure of 20.68 Bar (300 psig).

* * * * *

B71 Tank cars must have a test pressure of 20.68 Bar (300 psig) or greater and conform to Class 105, 112, 114 or 120.

B72 Tank cars must have a test pressure of 34.47 Bar (500 psig) or greater and conform to Class 105J, 106, or 110.

B74 Tank cars must have a test pressure of 20.68 Bar (300 psig) or greater and conform to Class 105S, 106, 110, 112J, 114J or 120S.

B76 Tank cars must have a test pressure of 20.68 Bar (300 psig) or greater and conform to Class 105S, 112J, 114J or 120S. Each tank car must have a safety relief device having a start-to-discharge pressure of 10.34 Bar (150 psig). The tank car specification may be marked to indicate a test pressure of 13.79 Bar (200 psig).

* * * * *

B78 Tank cars must have a test pressure of 4.14 Bar (60 psig) or greater and conform to Class 103, 104, 105, 109, 111, 112, 114 or 120. * * *

* * * * *

§ 172.102 [Amended]

7. In addition, in § 172.102, in paragraph (c)(3), the following changes are made:

a. For Special Provision B4, the wording ''AAR 206 tank car tanks and'' is removed.

b. For Special Provision B5, the wording ''DOT 103 ALW, 111A60 ALW tank car tanks and'' is removed.

c. For Special Provision B10, the wording ''AAR 206 tank car tanks,'' is removed.

8. In § 172.203, paragraphs (e)(2) and (g) are revised to read as follows:

§ 172.203 Additional description requirements.

* * * * *

(e) * * *

(2) The description on the shipping paper for a tank car containing the residue of a hazardous material must include the phrase, ''RESIDUE: LAST CONTAINED * * *'' before the basic description.

* * * * *

(g) *Transportation by rail.* (1) A shipping paper prepared by a rail carrier for a rail car, freight container, transport vehicle or portable tank that contains hazardous materials must include the reporting mark and number when displayed on the rail car, freight container, transport vehicle or portable tank.

(2) The shipping paper for each DOT–113 tank car containing a Division 2.1 material or its residue must contain an appropriate notation, such as ''DOT 113'', and the statement ''Do not hump or cut off car while in motion.''

(3) When shipments of elevated temperature materials are transported under the exception permitted in § 173.247(h)(3) of this subchapter, the shipping paper must contain an appropriate notation, such as ''Maximum operating speed 15 mph.''.

* * * * *

9. In § 172.205, paragraph (f) is revised to read as follows:

§ 172.205 Hazardous waste manifest.

* * * * *

(f) *Transportation by rail.* Notwithstanding the requirements of paragraphs (d) and (e) of this section, the following requirements apply:

(1) When accepting hazardous waste from a non-rail transporter, the initial rail transporter must:

(i) Sign and date the manifest acknowledging acceptance of the hazardous waste;

(ii) Return a signed copy of the manifest to the non-rail transporter;

(iii) Forward at least three copies of the manifest to:

(A) The next non-rail transporter, if any;

(B) The designated facility, if the shipment is delivered to that facility by rail; or

(C) The last rail transporter designated to handle the waste in the United States; and

(iv) Retain one copy of the manifest and rail shipping paper in accordance with 40 CFR 263.22.

(2) Rail transporters must ensure that a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification and signatures) and, for exports, an EPA Acknowledgment of Consent accompanies the hazardous waste at all times. Intermediate rail transporters are not required to sign either the manifest or shipping paper.

(3) When delivering hazardous waste to the designated facility, a rail transporter must:

(i) Obtain the date of delivery and handwritten signature of the owner or operator of the designated facility on the manifest or the shipping paper (if the manifest has not been received by the facility); and

(ii) Retain a copy of the manifest or signed shipping paper in accordance with 40 CFR 263.22.

(4) When delivering hazardous waste to a non-rail transporter, a rail transporter must:

(i) Obtain the date of delivery and the handwritten signature of the next non-rail transporter on the manifest; and

(ii) Retain a copy of the manifest in accordance with 40 CFR 263.22.

(5) Before accepting hazardous waste from a rail transporter, a non-rail transporter must sign and date the manifest and provide a copy to the rail transporter.

* * * * *

10. In § 172.330, paragraph (a)(1) is revised to read as follows:

§ 172.330 Tank cars and multi-unit tank car tanks.

(a) * * *

(1) In a tank car unless the following conditions are met:

(i) The tank car must be marked on each side and each end as required by § 172.302 with the identification number specified for the material in the § 172.101 Table; and

(ii) A tank car containing any of the following materials must be marked on each side with the key words (including words such as ''stabilized'', ''inhibited'', ''compressed'', or ''liquefied'') of the proper shipping name specified for the material in the § 172.101 Table, or with a common name authorized for the material in this subchapter (e.g., ''Refrigerant Gas''):

Acrolein, inhibited
Ammonia, anhydrous, liquefied
Ammonia solutions (more than 50% ammonia)
Bromine *or* Bromine solutions
Bromine chloride
Chloroprene, inhibited
Dispersant gas *or* Refrigerant gas (as defined in § 173.115 of this subchapter)
Division 2.1 materials
Division 2.2 materials (in Class DOT 107 tank cars only)
Division 2.3 materials
Formic acid
Hydrocyanic acid, aqueous solutions
Hydrofluoric acid, solution
Hydrogen cyanide, stabilized (less than 3% water)
Hydrogen fluoride, anhydrous
Hydrogen peroxide, aqueous solutions (greater than 20% hydrogen peroxide)
Hydrogen peroxide, stabilized
Hydrogen peroxide and peroxyacetic acid mixtures
Nitric acid (other than red fuming)
Phosphorus, amorphous
Phosphorus, white dry *or* Phosphorus, white, under water *or* Phosphorus white, in solution, *or* Phosphorus, yellow dry or Phosphorus, yellow, under water *or* Phosphorus, yellow, in solution
Phosphorus white, molten
Potassium nitrate and sodium nitrate mixtures
Potassium permanganate
Sulfur trioxide, inhibited
Sulfur trioxide, uninhibited

* * * * *

11. In § 172.510, paragraph (a) is revised, paragraphs (b) and (c) are removed, and paragraphs (d) and (e) are redesignated as paragraphs (b) and (c), respectively, to read as follows:

§ 172.510 Special placarding provisions: Rail.

(a) *White square background.* The following must have the specified placards placed on a white square background, as described in § 172.527:

(1) Division 1.1 and 1.2 (explosive) materials which require EXPLOSIVES 1.1 or EXPLOSIVES 1.2 placards affixed to the rail car;

(2) Materials classed in Division 2.3 Hazard Zone A or 6.1 Packing Group I Hazard Zone A which require POISON GAS or POISON placards affixed to the rail car, including tank cars containing only a residue of the material; and

(3) Class DOT 113 tank cars used to transport a Division 2.1 (flammable gas) material, including tank cars containing only a residue of the material.

* * * * *

§ 172.526 [Removed and Reserved]

12. Section 172.526 is removed and reserved.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

13. The authority citation for Part 173 continues to read as follows:

Authority: 49 U.S.C. 5102–5127; 49 CFR 1.53.

14. In § 173.24b, paragraph (a)(3) is removed and paragraph (a)(1) is revised to read as follows:

§ 173.24b Additional general requirements for bulk packagings.

(a) *Outage and filling limits.* (1) Except as otherwise provided in this subchapter, liquids and liquefied gases must be so loaded that the outage is at least five percent for materials poisonous by inhalation, or at least one percent for all other materials, of the total capacity of a cargo tank, portable tank, tank car (including dome capacity), multi-unit tank car tank, or any compartment thereof, at the following reference temperatures—

(i) 46 °C (115 °F) for a noninsulated tank;

(ii) 43 °C (110 °F) for a tank car having a thermal protection system, incorporating a metal jacket that provides an overall thermal conductance at 15.5 °C (60 °F) of no more than 10.22 kilojoules per hour per square meter per degree Celsius (0.5 Btu per hour/per square foot/ per degree F) temperature differential; or

(iii) 41 °C (105 °F) for an insulated tank.

* * * * *

§ 173.29 [Amended]

15. In § 173.29, paragraph (f) is removed and reserved.

§ 173.240 [Amended]

16. In § 173.240, in paragraph (a), the wording ''or 115 tank car tanks;'' is revised to read ''115, or 120 tank car tanks;''.

§ 173.241 [Amended]

17. In § 173.241, in paragraph (a), the wording ''or 115 tank car tanks;'' is revised to read ''115, or 120 tank car tanks;''.

§ 173.242 [Amended]

18. In § 173.242, in paragraph (a), the wording ''or 115 tank car tanks;'' is revised to read ''115, or 120 tank car tanks;''.

§ 173.243 [Amended]

19. In § 173.243, in paragraph (a), the wording ''or 115 fusion-welded tank car tanks;'' is revised to read ''115, or 120 fusion-welded tank car tanks;''.

§ 173.244 [Amended]

20. In § 173.244, in paragraph (a), the wording ''or 114 fusion-welded tank car tanks;'' is revised to read ''114, or 120 fusion-welded tank car tanks;''.

21. In § 173.314, as amended at 60 FR 49074, effective July 1, 1996, paragraph (b)(5) is removed, paragraph (b)(6) is redesignated as paragraph (b)(5) and revised, Note 2 following the paragraph (c) table is revised, and paragraph (i) is removed and reserved, to read as follows:

§ 173.314 Compressed gases in tank cars and multi-unit tank cars.

* * * * *

(b) * * *

(5) Each tank car used for the transportation of anhydrous ammonia or any material that meets the criteria of Division 2.1 or 2.3 must have gaskets for manway cover plates and for mounting

of fittings designed (for temperature, application, media, pressure, and size) to create a positive seal so that, under conditions normally incident to transportation, there will not be an identifiable release of the material to the environment. The use of sealants to install gaskets is prohibited.

(c) * * *

Notes:

* * * * *

2. The liquefied gas must be so loaded so that the outage is at least two percent of the total capacity of the tank at the reference temperature of 46 °C (115 °F) for a noninsulated tank; 43 °C (110 °F) for a tank having a thermal protection system incorporating a metal jacket that provides an overall thermal conductance at 15.5 °C (60 °F) of no more than 10.22 kilojoules per hour per square meter per degree Celsius (0.5 Btu per hour/per square foot/per degree F) temperature differential; or 41 °C (105 °F) for an insulated tank.

* * * * *

§ 173.314 [Amended]

22. In addition, in § 173.314, as amended at 60 FR 49074, effective July 1, 1996, the following changes are made:

a. In the paragraph (c) table, in Column 3, the wording ‘‘, 120A’’ is added in numerical order for the following entries:

Ammonia, anhydrous, or ammonia solutions > 50 percent ammonia
Ammonia solutions with > 35 percent ammonia, but ≤ 50 percent ammonia by mass
Division 2.1 materials not specifically provided in this table
Division 2.2 materials not specifically identified in this table
Division 2.3 Zone B materials not specifically identified in this table
Division 2.3 Zone C materials not specifically identified in this table
Division 2.3 Zone D materials not specifically identified in this table
Ethylamine

b. In the paragraph (c) table, in Column 3, for the entry ‘‘Dimethyl ether’’, the class designations ‘‘, 112, 114, 120’’ are added in appropriate numerical order.

PART 174—CARRIAGE BY RAIL

23. The authority citation for Part 174 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

24. Section 174.3 is revised to read as follows:

§ 174.3 Unacceptable hazardous materials shipments.

No person may accept for transportation or transport by rail any shipment of hazardous material that is not in conformance with the requirements of this subchapter.

§ 174.8 [Removed]

25. Section 174.8 is removed.

26. Section 174.9 is revised to read as follows:

§ 174.9 Inspection and acceptance.

At each location where a hazardous material is accepted for transportation or placed in a train, the carrier shall inspect each rail car containing the hazardous material, at ground level, for required markings, labels, placards, securement of closures and leakage. This inspection may be performed in conjunction with inspections required under parts 215 and 232 of this title.

§ 174.10 [Removed]

27. Section 174.10 is removed.

§ 174.11 [Removed]

28. Section 174.11 is removed.

§ 174.18 [Removed]

29. Section 174.18 is removed.

30. Section 174.24 is revised to read as follows:

§ 174.24 Shipping papers.

A carrier may not accept or transport a hazardous material by rail unless the carrier receives a shipping paper on which the hazardous material is properly described in the manner prescribed in part 172 of this subchapter. An originating carrier must retain a copy of the shipping paper that bears the shipper’s certification as required by § 172.204 of this subchapter. This section does not apply to a material that is excepted from shipping paper requirements as specified in § 172.200 of this subchapter.

§ 174.25 [Removed]

31. Section 174.25 is removed.

32. In § 174.26, paragraph (a) is removed, paragraphs (b) and (c) are redesignated as paragraphs (a) and (b), respectively, and newly redesignated paragraph (b) is revised to read as follows:

§ 174.26 Notice to train crews of placarded cars.

* * * * *

(b) A member of the train crew of a train transporting a hazardous material must have a copy of a document for the hazardous material being transported showing the information required by part 172 of this subchapter.

§§ 174.47 and 174.48 [Removed]

33. Sections 174.47 and 174.48 are removed.

§ 174.49 [Removed]

34. Section 174.49 is removed.

35. Section 174.50 is revised to read as follows:

§ 174.50 Nonconforming or leaking packages.

Leaking packages other than tank cars may not be forwarded until repaired, reconditioned, or overpacked in accordance with § 173.3 of this subchapter. Except as otherwise provided in this section, a tank car that no longer conforms to this subchapter may not be forwarded unless repaired or approved for movement by the Associate Administrator for Safety, Federal Railroad Administration. Notification and approval must be furnished in writing, or through telephonic or electronic means with subsequent written confirmation provided within two weeks. For the applicable address and telephone number, see part 107, subpart B, Appendix A, of this chapter. A leaking tank car containing a hazardous material may be moved without repair or approval only so far as necessary to reduce or eliminate an immediate threat of harm to human health or the environment when it is determined its movement would provide greater safety than allowing the car to remain in place. In the case of a liquid leak, measures must be taken to prevent the spread of the liquid.

36. Section 174.55 is revised to read as follows:

§ 174.55 General requirements.

(a) Each package containing a hazardous material being transported by rail in a freight container or transport vehicle must be loaded so that it cannot fall or slide and must be safeguarded in such a manner that other freight cannot fall onto or slide into it under conditions normally incident to transportation. When this protection cannot be provided by using other freight, it must be provided by blocking and bracing. For examples of blocking and bracing in freight containers and transport vehicles, see Bureau of Explosives Pamphlet Nos. 6 and 6C.

(b) Each package containing a hazardous material bearing package orientation markings prescribed in § 172.312 of this subchapter must be loaded within a transport vehicle or freight container to remain in the correct position indicated by those markings during transportation.

(c) The doors of a freight container or transport vehicle may not be used to secure a load that includes a package containing a hazardous material unless the doors meet the design strength

requirements of Specification M–930 (for freight containers) and M–931 (for trailers) in the AAR's Manual of Standards and Recommended Practices and the load is also within the limits of the design strength requirements for the doors.

§ 174.67 [Amended]

37–38. In § 174.67, in paragraph (k), the wording '', except that heater coil inlet and outlet pipes must be left open for drainage'' is removed.

39. Section 174.85 is amended by revising paragraph (c) to read as follows:

§ 174.85 Position in train of placarded cars, transport vehicles, freight containers, and bulk packagings.

* * * * *

(c) A tank car containing the residue of a hazardous material must be separated from a locomotive or occupied caboose by at least one non-placarded rail car.

* * * * *

PART 178—SPECIFICATIONS FOR PACKAGINGS

40. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 178.337–2 [Amended]

41. In § 178.337–2, the following changes are made:

a. In paragraph (b)(2)(i), the wording ''A–516–72'' is revised to read ''A 516''.

b. In paragraph (b)(2)(ii) the wording ''A–20–72a'' is revised to read ''A 20''.

PART 179—SPECIFICATIONS FOR TANK CARS

42. The authority citation for Part 179 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

43. Section 179.12 is revised to read as follows:

§ 179.12 Interior heater systems.

(a) Interior heater systems shall be of approved design and materials. If a tank is divided into compartments, a separate system shall be provided for each compartment.

(b) Each interior heater system shall be hydrostatically tested at not less than 13.79 bar (200 psi) and shall hold the pressure for 10 minutes without leakage or evidence of distress.

§§ 179.12–1 through 179.12–7 [Removed]

44. Sections 179.12–1 through 179.12–7 are removed.

45. Section 179.15 is added to read as follows:

§ 179.15 Pressure relief devices.

Except for DOT Class 106, 107, 110, and 113 tank cars, tanks must have a pressure relief system that conforms to the following requirements:

(a) *Performance standard.* Each tank must have a pressure relief system having sufficient flow capacity to prevent pressure build-up in the tank to no more than the flow rating pressure of the pressure relief device in fire conditions as defined in Appendix A of the Association of American Railroads Specifications for Tank Cars.

(b) *Settings for pressure relief valves.* (1) Except as provided in paragraph (b)(2) of this section, a reclosing pressure relief valve must have a minimum start-to-discharge pressure equal to the sum of the static head and gas padding pressure and the lading vapor pressure at the following reference temperatures:

(i) 46 °C (115 °F) for noninsulated tanks;

(ii) 43 °C (110 °F) for tanks having a thermal protection system incorporating a metal jacket that provides an overall thermal conductance at 15.5 °C (60 °F) of no more than 10.22 kilojoules per hour per square meter per degree Celsius (0.5 Btu per hour/per square foot/per degree F) temperature differential; and

(iii) 41 °C (105 °F) for insulated tanks.

(2)(i) The start-to-discharge pressure may not be lower than 5.17 Bar (75 psig) or exceed 33 percent of the minimum tank burst pressure.

(ii) Tanks built prior to October 1, 1997 having a minimum tank burst pressure of 34.47 Bar (500 psig) or less may be equipped with a reclosing pressure relief valve having a start-to-discharge pressure of not less than 14.5 percent of the minimum tank burst pressure but no more than 33 percent of the minimum tank burst pressure.

(3) The vapor tight pressure of a reclosing pressure relief valve must be at least 80 percent of the start-to-discharge pressure.

(4) The flow rating pressure must be 110 percent of the start-to-discharge pressure for tanks having a minimum tank burst pressure greater than 34.47 Bar (500 psig) and from 110 percent to 130 percent for tanks having a minimum tank burst pressure less than or equal to 34.47 Bar (500 psig).

(5) The tolerance for a reclosing pressure relief valve is ±3 psi for valves with a start-to-discharge pressure of 6.89 Bar (100 psig) or less and ±3 percent for valves with a start-to-discharge pressure greater than 6.89 Bar (100 psig).

(c) *Flow capacity of pressure relief systems.* The total flow capacity of each reclosing and nonreclosing pressure relief device must conform to Appendix A of the Association of American Railroads Specifications for Tank Cars.

(d) *Flow capacity tests.* The manufacturer of any reclosing or nonreclosing pressure relief device must design and test the device in accordance with Appendix A of the Association of American Railroads Specifications for Tank Cars.

(e) *Combination pressure relief systems.* A nonreclosing pressure relief device may be used in series with a nonreclosing pressure relief valve. The pressure relief valve must be located outboard of the nonreclosing pressure relief device.

(1) When a breaking pin device is used in combination with a reclosing pressure relief valve, the breaking pin must be designed to fail at the start-to-discharge pressure specified in paragraph (b) of this section, and the reclosing pressure relief valve must be designed to discharge at not greater than 95 percent of the start-to-discharge pressure.

(2) When a rupture disc is used in combination with a reclosing pressure relief valve, the rupture disc must be designed to burst at the start-to-discharge pressure specified in paragraph (b) of this section, and the reclosing pressure relief valve must be designed to discharge at not greater than 95 percent of the start-to-discharge pressure. A device must be installed to detect any accumulation of pressure between the rupture disc and the reclosing pressure relief valve. The detection device must be a needle valve, trycock, or tell-tale indicator. The detection device must be closed during transportation.

(3) The vapor tight pressure and the start-to-discharge tolerance is based on the discharge setting of the reclosing pressure relief device.

(f) *Nonreclosing pressure relief device.* In addition to paragraphs (a), (b)(4), (c), and (d) of this section, a nonreclosing pressure relief device must conform to the following requirements:

(1) After October 1, 1998, a nonreclosing pressure relief device must incorporate a rupture disc designed to burst at 33 percent of the tank burst pressure.

(2) The approach channel and the discharge channel may not reduce the required minimum flow capacity of the pressure relief device.

(3) The nonreclosing pressure relief device must be designed to prevent interchange with other fittings installed on the tank car, must have a structure that encloses and clamps the rupture disc in position (preventing any distortion or damage to the rupture disc

when properly applied), and must have a cover, with suitable means of preventing misplacement, designed to direct any discharge of the lading downward.

(4) The nonreclosing pressure relief device must be closed with a rupture disc that is compatible with the lading and manufactured in accordance with Appendix A of the AAR Specifications for Tank Cars. The tolerance for a rupture disc is +0 to −15 percent of the burst pressure marked on the disc.

(g) *Location of relief devices.* Each pressure relief device must communicate with the vapor space above the lading as near as practicable on the longitudinal center line and center of the tank.

(h) *Marking of pressure relief devices.* Each pressure relief device and rupture disc must be permanently marked in accordance with the Appendix A of the Association of American Railroads Specifications for Tank Cars.

46. In § 179.100–7, the table in paragraph (a) is revised to read as follows:

§ 179.100–7 Materials.

(a) * * *

Specifications	Minimum tensile strength (p.s.i.) welded condition[1]	Minimum elongation in 2 inches (percent) welded condition (longitudinal)
AAR TC128, Gr. B	81,000	20
ASTM A 302, Gr. B	80,000	19
ASTM A 516	70,000	20
ASTM A 537, Class 1	70,000	23

[1] Maximum stresses to be used in calculations.

* * * * *

§ 179.100–7 [Amended]

47. In addition, in § 179.100–7, the following changes are made:

a. In the table in paragraph (b), the last entry ''ASTM B 209–70, Alloy 6061[4]'' is removed and, in the first column, the wording ''209–70'' is revised to read ''209'' each place it appears.

b. In the footnotes to the paragraph (b) table, Footnotes 4 and 5 are removed and Footnote 6 is redesignated as Footnote 4.

c. In the table in paragraph (c)(1), the wording ''A240–70'' is revised to read ''A 240'' each place it appears.

d. In paragraph (c)(2)(i), the wording ''A262–68'' is revised to read ''A 262'', the word ''Recommended'' is revised to read ''Standard'', and the word ''Austenitic'' is added immediately before ''Stainless Steel''.

§ 179.100–10 [Amended]

48. In § 179.100–10, in paragraph (c), the wording ''ASTM A240–70'' is revised to read ''ASTM A 240''.

§ 179.100–15 [Removed]

49. Section 179.100–15 is removed and reserved.

§ 179.100–20 [Amended]

50. In § 179.100–20, in the paragraph (a) table, for the entry ''Material'', in the second column, the wording ''ASTM A515–70'' is revised to read ''ASTM A 516''.

51. Section 179.101–1 is revised to read as follows:

§ 179.101–1 Individual specification requirements.

In addition to § 179.100, the individual specification requirements are as follows:

DOT specification	Insulation	Bursting pressure (psi)	Minimum plate thickness (inches)	Test pressure (psi)	Manway cover thickness	Bottom outlet	Bottom washout	Reference (179.***)
105A100ALW	Yes	500	5/8	100	[2] 2 1/2	No	No.	
105A200ALW	Yes	500	5/8	200	[2] 2 1/2	No	No.	
105A300ALW	Yes	750	5/8	300	[2] 2 5/8	No	No.	
105A100W	Yes	500	[3] 9/16	100	2 1/4	No	No.	
105A200W	Yes	500	[3] 9/16	200	2 1/4	No	No.	
105A300W	Yes	750	[1] 11/16	300	[7] 2 1/4	No	No.	
105A400W	Yes	1,000	[1] 11/16	400	[7] 2 1/4	No	No.	
105A500W	Yes	1,250	[1] 11/16	500	2 1/4	No	No	102–1, 102–2.
105A600W	Yes	1,500	[1] 11/16	600	2 1/4	No	No	102–4, 102–17.
109A100ALW	Optional	500	5/8	100	[2] 2 1/2	No	Optional.	
109A200ALW	Optional	500	5/8	200	[2] 2 1/2	No	Optional.	
109A300ALW	Optional	750	5/8	300	[2] 2 5/8	No	Optional.	
109A300W	Optional	500	[1] 11/16	300	2 1/4	No	Optional.	
112A200W	Optional[4]	500	[3 5] 9/16	200	2 1/4	No	No.	
112A340W	Optional[4]	850	[1] 11/16	340	2 1/4	No	No.	
112A400W	Optional[4]	1,000	[1] 11/16	400	2 1/4	No	No.	
112A500W	Optional[4]	1,250	[1] 11/16	500	2 1/4	No	No.	
114A340W	Optional[4]	850	[1] 11/16	340	[6]	Optional	Optional	103.
114A400W	Optional[4]	1,000	[1] 11/16	400	[6]	Optional	Optional	103.
120A200ALW	Yes	500	5/8	200	[2] 2 1/2	Optional	Optional	103.
120A100W	Yes	500	[3] 9/16	100	2 1/4	Optional	Optional	103.
120A200W	Yes	500	[3] 9/16	200	2 1/4	Optional	Optional	103.
120A300W	Yes	750	[1] 11/16	300	2 1/4	Optional	Optional	103.
120A400W	Yes	1,000	[1] 11/16	400	2 1/4	Optional	Optional	103.
120A500W	Yes	1,250	[1] 11/16	500	2 1/4	Optional	Optional	103.

[1] When steel of 65,000 to 81,000 p.s.i. minimum tensile strength is used, the thickness of plates shall be not less than 5/8 inch, and when steel of 81,000 p.s.i. minimum tensile strength is used, the minimum thickness of plate shall be not less than 9/16 inch.

[2] When approved material other than aluminum alloys are used, the thickness shall be not less than 2 1/4 inches.

[3] When steel of 65,000 p.s.i. minimum tensile strength is used, minimum thickness of plates shall be not less than 1/2 inch.

[4] Tank cars not equipped with a thermal protection or an insulation system used for the transportation of a Class 2 (compressed gas) material must have at least the upper two-thirds of the exterior of the tank, including manway nozzle and all appurtenances in contact with this area, finished with a reflective coat of white paint.

[5] For inside diameter of 87 inches or less, the thickness of plates shall be not less than 1/2 inch.

[6] See AAR specifications for tank cars, Appendix E, E4.01 and § 179.103–2.

[7] When the use of nickel is required by the lading, the thickness shall not be less than two inches.

§ 179.102–1 [Amended]

52. In § 179.102–1, in paragraph (a)(1), the following changes are made:

a. In the first sentence, the wording ''A516–79b'' is revised to read ''A 516''.

b. At the end of the third sentence, the wording ''A370–77'' is revised to read ''A 370''.

c. In the last sentence, the wording ''A240–79'' is revised to read ''A 240''.

§ 179.102–2 [Amended]

53. In § 179.102–2, in paragraph (a)(1), the wording ''A516–70a'' is revised to read ''A 516'' and the wording ''TC–128–70'' is revised to read ''TC–128''.

§ 179.102–4 [Amended]

54. In § 179.102–4, the following changes are made:

a. Paragraph (d) is removed.

b. Paragraphs (b) and (c) are redesignated as paragraphs (a) and (b), respectively.

c. Paragraphs (e) through (k) are redesignated as paragraphs (c) through (i), respectively.

d. Paragraph (l) is removed.

55. In § 179.103–5, in paragraph (a)(3), the word ''valve'' is removed, and paragraph (b)(2) is revised to read as follows:

§ 179.103–5 Bottom outlets.

* * * * *

(b) * * *

(2) To provide for the attachment of unloading connections, the discharge end of the bottom outlet nozzle or reducer, the valve body of the exterior valve, or some fixed attachment thereto, shall be provided with one of the following arrangements or an approved modification thereof. (See appendix E. Fig. E17 of the AAR Specifications for Tank Cars for illustrations of some of the possible arrangements.)

(i) A bolted flange closure arrangement including a minimum 1-inch NPT pipe plug (see Fig. E17.1) or including an auxiliary valve with a threaded closure.

(ii) A threaded cap closure arrangement including a minimum 1-inch NPT pipe plug (see Fig. E17.2) or including an auxiliary valve with a threaded closure.

(iii) A quick-coupling device using a threaded plug closure of at least 1-inch NPT or having a threaded cap closure with a minimum 1-inch NPT pipe plug (see Fig. E17.3 through E17.5). A minimum 1-inch auxiliary test valve with a threaded closure may be substituted for the 1-inch pipe plug (see Fig E17.6). If the threaded cap closure does not have a pipe plug or integral auxiliary test valve, a minimum 1-inch NPT pipe plug shall be installed in the outlet nozzle above the closure (see Fig. E17.7).

(iv) A two-piece quick-coupling device using a clamped dust cap must include an in-line auxiliary valve, either integral with the quick-coupling device or located between the primary bottom outlet valve and the quick-coupling device. The quick-coupling device closure dust cap or outlet nozzle shall be fitted with a minimum 1-inch NPT closure (see Fig. E17.8 and E17.9).

* * * * *

56. Section 179.200–7 is amended by revising the table in paragraph (b) to read as follows:

§ 179.200–7 Materials.

* * * * *

(b) * * *

Specifications	Minimum tensile strength (p.s.i.) welded condition [1]	Minimum elongation in 2 inches (percent) weld metal (longitudinal)
AAR TC 128, Gr. B	81,000	19
ASTM A 516, Gr. 70	70,000	20

[1] Maximum stresses to be used in calculations.

* * * * *

§ 179.200–7 [Amended]

57. In addition, in § 179.200–7, the following changes are made:

a. In the table in paragraph (c), the last entry ''ASTM B 209–70, Alloy 6061 [4]'' is removed, and in the first column, for each entry, the wording ''209–70'' is revised to read ''209''.

b. In the paragraph (c) table, Footnotes 4 and 5 are removed and Footnote 6 is redesignated as Footnote 4.

c. In the table in paragraph (d), in the first column, for each entry, the wording ''240–70'' is revised to read ''240''.

d. In Footnote 2 in the paragraph (d) table, the wording ''the following procedures in ASTM Specification A 262–68 titled, 'Recommended Practices for Detecting Susceptibility to Intergranular Attack in Stainless Steels,' and must exhibit corrosion rates not exceeding the following:'' is revised to read ''Practice A of ASTM Specification A 262 titled, 'Standard Practices for Detecting Susceptibility to Intergranular Attack in Austenitic Stainless Steels.' If the specimen does not pass Practice A, Practice B or C must be used and the corrosion rates may not exceed the following:''.

e. In the table in paragraph (e), in the first column, the wording ''162–692'' is revised to read ''1622''.

f. In the table in paragraph (f), in the first column, the wording ''302–69a'' is revised to read ''302''.

58. In § 179.200–14, the first sentence of paragraph (a) and the first sentence of paragraph (b) are revised to read as follows:

§ 179.200–14 Expansion capacity.

(a) Tanks shall have expansion capacity as prescribed in this subchapter. * * *

(b) For tank cars having an expansion dome, the expansion capacity is the total capacity of the tank and dome combined. * * *

* * * * *

59. In § 179.200–16, the first sentence in paragraph (d) is revised to read as follows:

§ 179.200–16 Gauging devices, top loading and unloading devices, venting and air inlet devices.

* * * * *

(d) When using a visual gauging device on a car with a hinged manway cover, an outage scale visible through the manway opening shall be provided. * * *

* * * * *

§ 179.200–18 [Removed]

60. Section 179.200–18 is removed.

§ 179.200–24 [Amended]

61. In § 179.200–24, in the paragraph (a) table, for the entry ''Material'' , in the second column, the wording ''ASTM A285 C'' is revised to read ''ASTM A 516–GR 70''.

62. Section 179.201–1 is revised to read as follows:

§ 179.201–1 Individual specification requirements.

In addition to § 179.200, the individual specification requirements are as follows:

DOT Specification [1]	Insulation	Bursting pressure (psi)	Minimum plate thickness (inches)	Test pressure (psi)	Bottom outlet	Bottom washout	References (179.201 - ***)
103A–ALW	Optional	240	½	60	No	Optional.	

DOT Specification [1]	Insulation	Bursting pressure (psi)	Minimum plate thickness (inches)	Test pressure (psi)	Bottom outlet	Bottom washout	References (179.201 - ***)
103AW	Optional	240	179.201–2	60	No	Optional.	
103ALW	Optional	240	½	60	Optional	Optional	6(a).
103ANW	Optional	240	179.201–2	60	No	Optional	6(d).
103BW	Optional	240	179.201–2	60	No	No	6(b), 3.
103CW	Optional	240	179.201–2	60	No	No	6(c), 4,5.
103DW	Optional	240	179.201–2	60	Optional	Optional	6(a), 6(c), 4, 5.
103EW	Optional	240	179.201–2	60	No	Optional	6(c), 4, 5.
103W	Optional	240	179.201–2	60	Optional	Optional	6(a).
104W	Yes	240	179.201–2	60	Optional	Optional	6(a).
111A60ALW1	Optional	240	½	60	Optional	Optional	6(a).
111A60ALW2	Optional	240	½	60	No	Optional.	
111A60W1	Optional	240	7/16	60	Optional	Optional	6(a).
111A60W2	Optional	240	7/16	60	No	Optional.	
111A60W5	Optional	240	7/16	60	No	No	3, 6(b).
111A60W6	Optional	240	7/16	60	Optional	Optional	4, 5, 6(a), 6(c).
111A60W7	Optional	240	7/16	60	No	No	4, 5, 6(a).
111A100ALW1	Optional	500	⅝	100	Optional	Optional	6(a).
111A100ALW2	Optional	500	⅝	100	No	Optional.	
111A100W1	Optional	500	7/16	100	Optional	Optional	6(a).
111A100W2	Optional	500	7/16	100	No	Optional.	
111A100W3	Yes	500	7/16	100	Optional	Optional	6(a).
111A100W4	Yes (see 179.201–11).	500	7/16	100	No	No	6(a), 8, 10.
111A100W5	Optional	500	7/16	100	No	No	3.
111A100W6	Optional	500	7/16	100	Optional	Optional	4, 5, 6(a) and 6(c).
111A100W7	Optional	500	7/16	100	No	No	4, 5, 6(c).

[1] Tanks marked ''ALW'' are constructed from aluminum alloy plate; ''AN'' nickel plate; ''CW,'' ''DW,'' ''EW,'' ''W6,'' and ''W7'' high alloy steel or manganese-molybdenum steel plate; and those marked ''BW'' or ''W5'' must have an interior lining that conforms to § 179.201–3.

§ 179.201–4 [Amended]

63. In § 179.201–4, at the end of the paragraph, the wording ''AAR Specifications for Tank Cars, appendix M, M3.03(b) and M4.05(d)'' is revised to read ''ASTM Specification A 262''.

§ 179.201–5 [Amended]

64. In § 179.201–5, in paragraphs (a) and (b), the wording ''ASTM A240–70'' is revised to read ''ASTM Specification A 240'' each place it appears.

§ 179.201–7 [Removed]

65. Section 179.201–7 is removed.

66. In § 179.220–7, the table in paragraph (b) is revised to read as follows:

§ 179.220–7 Materials.

* * * * *

(b) * * *

Specifications	Minimum tensile strength (p.s.i.) welded condition [1]	Minimum elongation in 2 inches (percent) weld metal (longitudinal)
AAR TC 128, Gr. B	81,000	19
ASTM A 516, Gr. 70	70,000	20

[1] Maximum stresses to be used in calculations.

* * * * *

§ 179.220–7 [Amended]

67. In addition, in § 179.220–7, the following changes are made:

a. In the table in paragraph (c), the last entry ''ASTM B 209–70, Alloy 6061 [4]'' is removed, and the wording ''ASTM B 209–70'' is revised to read ''ASTM B 209'' each place it appears.

b. In the table in paragraph (d), the wording ''ASTM 240–70'' is revised to read ''ASTM 240'' each place it appears.

c. In the table in paragraph (e), the wording ''ASTM A 302–70a'' is revised to read ''ASTM A 302''.

§ 179.220–19 [Removed]

68. Section 179.220–19 is removed.

69. Section 179.221–1 is revised to read as follows:

§ 179.221–1 Individual specification requirements.

In addition to § 179.220, the individual specification requirements are as follows:

DOT specification [1]	Insulation	Bursting pressure (psi)	Minimum plate thickness (inches)	Test pressure (psi)	Bottom outlet	Bottom washout	Reference (179.221–***)
115A60ALW	Yes	240	3/16	60	Optional.	Optional	
115A60W1	Yes	240	⅛	60	Optional	Optional	1
115A60W6	Yes	240	⅛	60	Optional	Optional	1

[1] Tanks converted to DOT–111A series from existing forge-welded specification, DOT–105A 300, 490, or 500 tanks, by modification using conversion details complying with DOT–111A specification requirements, shall be stenciled by substituting the letter ''F'' for the letter ''W'' in the specification designation.

§ 179.222 [Removed]

70. Section 179.222 is removed.

§ 179.222–1 [Removed]

71. Section 179.222–1 is removed.

§ 179.300–7 [Amended]

72. In § 179.300–7, the following changes are made:

a. In the table at the end of paragraph (a), the entries for ''ASTM A 285–69'' and ''ASTM A 515–69'' are removed.

b. Paragraph (b) is removed and reserved.

§ 179.500–17 [Amended]

73. In § 179.500–17, paragraph (a)(7) is removed.

Issued in Washington, DC, on May 17, 1996, under authority delegated in 49 CFR part 1.

Rose A. McMurray,

Acting Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 96–12954 Filed 6–4–96; 8:45 am]

BILLING CODE 4910–60–P

federal register

Wednesday
June 5, 1996

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 25

Standards for Approval for High Altitude Operation of Subsonic Transport Airplanes; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. 26070, Amendment No. 25–87]

RIN 2120–AB18

Standards for Approval for High Altitude Operation of Subsonic Transport Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment to the Federal Aviation Regulations (FAR) specifies airplane and equipment airworthiness standards for subsonic transport airplanes to be operated up to an altitude of 51,000 feet. This action is prompted by an increase in the number of applications received to raise the maximum certificated operating altitude for transport category airplanes, and is intended to ensure an acceptable level of safety for airplanes operated at high altitudes.

EFFECTIVE DATE: July 5, 1996.

FOR FURTHER INFORMATION CONTACT: Robert C. McCracken, Flight Test and Systems Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue Southwest, Renton, Washington 98055–4056; telephone (206) 227–2118.

SUPPLEMENTARY INFORMATION:

Background

This amendment is based on Notice of Proposed Rulemaking (NPRM) No. 89–31, which was published in the Federal Register on November 22, 1989 (54 FR 48538). The notice proposed to upgrade airplane and equipment airworthiness standards for subsonic transport airplanes to be operated up to an altitude of 51,000 feet, and it was based on special conditions that have been used for type certification for many years.

Current policy for FAA rulemaking projects is to endeavor to achieve harmonization with the Joint Airworthiness Authorities (JAA) and other airworthiness authorities through the Aviation Rulemaking Advisory Committee (ARAC) and its harmonization working groups. Although this rulemaking project has not been the subject of a harmonization working group activity, because it was initiated prior to the time harmonization became a high priority with the FAA and JAA, comments received from the JAA members were addressed in this amendment.

As noted in Notice 89–31, the higher operational altitudes made feasible by the advent of turbojet transport airplanes introduced certain risks with respect to crew and passenger breathing that were not experienced with earlier propeller-driven airplanes. Accordingly, certification standards were developed in the early 1950s to permit safe operation of early turbojet transport airplanes up to certain maximum operating altitudes—typically 41,000 or 42,000 feet. Subsequent to the type certification of the early turbojet transport airplanes, applicants requested approval to operate certain later airplanes at higher altitudes. These were in most cases small ''executive'' transport airplanes, and the requested altitudes ranged up to 51,000 feet.

The operation of these airplanes at altitudes above 40,000 feet usually involved a number of novel or unusual design features that were not addressed by the airworthiness requirements in the current regulations. In order to ensure a level of safety equivalent to that established by part 25 of the FAR, §§ 21.16 and 21.101 of part 21 require that additional standards be developed in the form of special conditions and that compliance with the special conditions be demonstrated.

The regulatory changes adopted by this amendment codify and consolidate the different high-altitude criteria that have been made applicable by special conditions to previously certificated subsonic transport airplanes. In addition, the changes acknowledge a human physiological limit of 34,000 feet (see Glossary), the level above which persons not using supplementary oxygen are in serious peril. To assure compatibility or equivalency with other provisions of part 25, which were amended after many of the special conditions discussed herein were implemented, these changes are written so that terminology relating to the probability of certain failures is consistent with those other provisions. Generally, the intent of those provisions is to recognize that the degree of hazard of any given failure is inversely related to the probability of occurrence of that failure. Failures that are considered to be catastrophic must be shown to be extremely improbable, and hazardous failures must be shown to be improbable (see Glossary). Examples of these terms are found in §§ 25.671, 25.672, and 25.1309.

It must be noted that widespread operation of transport category airplanes at altitudes greater than 51,000 feet is not currently envisioned. A major factor in an approval for operation up to 51,000 feet is an emergency descent during a decompression, which must be shown to result in a maximum cabin altitude of no more than 40,000 feet. Accordingly, the changes adopted in this amendment have been developed to provide adequate standards for safe operation of such airplanes up to 51,000 feet. Should an applicant seek approval to operate a transport category airplane above that altitude, additional standards may be needed for safe operation. If so, appropriate special conditions would be adoptive to require compliance with those standards.

The changes in this amendment involve ventilation, cabin cooling, pressurization and pressure vessel integrity, and oxygen equipment. The following paragraphs describe the changes, and the reasons for the changes, in the regulations incorporated with the adoption of this amendment. The comments received in response to Notice 89–31, the disposition of the comments, and, when applicable, the effect of the comments on the changes, are discussed immediately following this section.

1. Ventilation (Airflow and Contamination)

Prior to this amendment, § 25.831(a) required each passenger and crew compartment to be ventilated and each crew compartment to have enough fresh air to enable crewmembers to perform their duties without undue discomfort or fatigue. For the crew compartment, a minimum of 10 cubic feet of fresh air per minute per crewmember was required. Section 25.1309 (specifically §§ 25.1309(b)(2) and 25.1309(d)(3)) requires that the effects on occupants of any failures of required systems be analyzed, but § 25.1309 is a general rule and does not specifically address minimum airflow requirements.

The executive transport special conditions that have been applied in the past supplemented § 25.831(a) by specifying that the minimum fresh airflow of 10 cubic feet per minute (cfm) per crewmember was to be provided to each occupant during normal operation. The special conditions also required that each occupant be furnished with enough uncontaminated air to provide reasonable comfort during normal operating conditions and also after any probable failure of any system that would adversely affect the cabin ventilation air. This rule amends § 25.831 to include the additional airflow requirements contained in previous special conditions, stipulating that the ventilation system must be designed to provide 10 cfm (converted to pounds of air) for each occupant.

Some airplanes now incorporate ventilation systems in which fresh air is augmented with conditioned and recirculated air. Section 25.831(a) as amended permits a ventilation system that uses a mixture of the minimum amount of fresh air and any desired quantity of recirculated air that is shown to be uncontaminated by odors, particulates, or gases. In this regard, the minimum amount of fresh air is specified by weight rather than by volume in order to provide a parameter independent of altitude. Ten cubic feet of standard air at a typical cabin altitude of 8,000 feet and typical cabin temperature of 75°F. weighs approximately 0.55 pounds. This rule amends § 25.831 to include the additional airflow requirements as noted above. This standard is equivalent to the present requirement for crewmembers.

2. Cabin Cooling

During the Supersonic Transport (SST) review in the 1960s, it was noted that certain pressurization system failures, whether considered by themselves or in combination with the use of hot ram air for emergency pressurization, could lead to cabin temperatures exceeding human tolerance. The FAA therefore concluded that any failure or combination of failures that could lead to temperature exposures that would cause undue discomfort must be shown to be improbable (see Glossary). Minor corrective actions (e.g., selection of alternate equipment or procedures) would be allowed if necessary for probable failures. The FAA also concluded that any failure or combination of failures that could lead to intolerable temperature exposures must be extremely improbable. Major corrective actions (e.g., emergency descent, configuration changes) would be allowed for an improbable failure condition. Temperature limits were incorporated into the special conditions imposed on executive transport airplanes when approved for high altitude operation. The SST and executive transport special conditions contained two graphs which explained the requirements for the probable and improbable cases. In formulating this amendment, the FAA has determined that the public interest is served by adopting the time-temperature limits associated with improbable failure conditions, and they are adopted as a new § 25.831(g). This amendment does not allow the time of exposure at any given temperature to exceed the values given in the associated graph.

3. Pressurization and Pressure Vessel Integrity

Section 25.365(d), increases the fuselage pressure relief valve safety factor of 1.33 by 25 percent to 1.67, codifying the standard that was originally contained in the SST special conditions. This increased structural safety factor was also included in the executive transport special conditions to reduce the likelihood of structural failure and to limit the size of the opening if a failure occurs. It is included in this amendment for this reason.

The FAA had considered proposing both pressurization standards similar to those previously required by the special conditions for executive transport and separate standards similar to those required for large transport airplanes. The separate standards were thought to be necessary because of the inherent differences in pressurized volume of the two types of transports, and the belief that a larger airplane may decompress more slowly than a smaller airplane. Upon further review, this approach was deemed impractical because certain larger transport airplanes have decompression characteristics more analogous to smaller transport airplanes and vice versa. Therefore, this amendment applies the same standard to all transport airplanes.

It should be noted that the special conditions required consideration of specific failures, which are addressed later in this discussion. Subsequent to the issuance of the special conditions, reliability, probability, and damage tolerance concepts addressing other failures and methods of analysis were incorporated into part 25. This amendment allows the use of these additional methods of analysis and failure considerations.

The earlier executive transport special conditions required a pressure demand mask (see Glossary). Later special conditions included, pursuant to the recommendations of the FAA Civil Aeromedical Institute (CAMI), a requirement for a pressure demand mask with a mask-mounted regulator (see Glossary). The requirement for the use of the same type of equipment is adopted by this amendment.

The objective of the amended § 25.841(a) (pressurization) when applied in conjunction with amended § 25.1447(c) (oxygen equipment) is to provide airworthiness standards that allow subsonic airplanes to operate at their maximum achievable altitudes. This is the highest altitude for which an applicant chooses to demonstrate that, after decompression caused by a single failure or combination of failures that are not shown to be extremely improbable: (1) the flightcrew will remain alert and be able to fly the airplane; (2) the cabin occupants will be protected from the effects of hypoxia; and (3) in the event that some occupants do not receive supplemental oxygen, they nevertheless will be protected against permanent physiological damage.

Section 25.841(a)(1) as amended is equivalent to the existing § 25.841(a) with the exception of editorial changes and elimination of the words ''reasonably'' and ''or malfunctions.'' The ''probable'' failure criteria are the same as those contained in § 25.1309. The term ''failure conditions'' has been added to this section to clarify that failure combinations that lead to a probable depressurization event must also be considered.

Section 25.841(a)(2) as amended limits exposure of the airplane occupants, after decompression, to a cabin altitude no greater than 40,000 feet. This requirement is unchanged from that previously established in part 25 for certification of transport category airplanes using diluter demand (flightcrew) and continuous flow (passenger) oxygen equipment (see Glossary).

Section 25.841(a)(2) as amended is a combination of the later executive transport high altitude special conditions and § 25.1309, i.e., the degree of the hazard must be inversely related to the probability of the failure condition. The amended § 25.841(a)(2) was developed from the recommendations of CAMI and is based on the concept of ''Time of Safe Unconsciousness'' documented by James G. Gaume (see Reference 1). The use of continuous-flow oxygen masks by passengers following rapid decompression to cabin altitudes above 34,000 feet may fail to provide protection from hypoxia, as noted in the discussion under Paragraph 4. ''*OXYGEN EQUIPMENT*,'' below. Additionally, some passengers might be exposed to high cabin altitudes following decompression without the use of oxygen. A few passengers may lose consciousness at 34,000 feet cabin altitude, and more may lose consciousness at greater altitudes even with the use of continuous-flow oxygen equipment. Exposure to cabin altitudes in excess of 25,000 feet for more than 2 minutes without supplemental oxygen may cause permanent physiological (brain) damage. Therefore, in order to demonstrate compliance with this rule, approved emergency descent procedures and a cabin altitude analysis must be prepared to ensure that these

altitude limits are not exceeded following a decompression failure that is not shown to be extremely improbable.

Section 25.841(a)(3) as amended describes the failure conditions that must be considered in evaluating cabin decompression. Possible modes of failure to be evaluated include malfunctions and damage from external sources such as tire burst, wheel failure, uncontained engine failure, engine fan, compressor or turbine multi-blade failure, and loss of antennas. Sections 25.1309 and 25.571, and associated advisory material, provide guidance in determining the sources of failure. System failures (both latent and active), combinations of system failures, system failures combined with pressure vessel leaks, system failures causing engine shutdown, uncontained engine failures causing structural and system damage, and structural failures without system failures must all be evaluated. Typical systems include engine bleed air systems, air conditioning systems, power sources, outflow valves and control systems. Failures which expose the occupants to cabin altitudes in excess of either 25,000 feet for more than 2 minutes or 40,000 feet for any amount of time must be shown to be extremely improbable.

The executive transport airplane special conditions required evaluation of uncontained engine failure (including fan, compressor and turbine blades, and rotor disc) and complete loss of thrust from all engines. The FAA policy has been to presume that these failures will occur and permit the use of analytical methods to assess the damage. Multiple engine failures have occurred because of secondary effects from uncontained engine failure and from operational errors. Multiple fan blade, rotor, and other uncontained engine failures have occurred during cruise conditions and have caused cabin decompression. The service history of airplane decompressions resulting from uncontained engine failure has been acceptable. Flight levels for most transport airplanes have been at an altitude where oxygen equipment is capable of providing adequate protection. Uncontained engine failure is most likely to occur during takeoff and climb; however, approximately 20 percent of the known bursts have occurred in cruise mode, not including those caused by bird strikes. The possibility of an uncontained engine failure in cruise mode cannot be ignored, and the damage resulting in depressurization must be assessed.

Structural failures in large transport airplanes which would result in decompression are generally considered to include a loss of a typical skin panel bound by a crack stopper pattern, a door seal, window, or windshield, unless the design is such that loss of the windshield is shown to be extremely improbable when operating at the higher altitudes. Structural failures in executive transport airplanes leading to decompression, discussed in the various special conditions, included the following:

1. Any single failure in the pressurization system combined with the occurrence of a leak produced by the complete loss of a door seal element, or a fuselage leak through an opening having an area 2.0 times the area which produces the maximum permissible fuselage leak rate approved for normal operation in accordance with § 25.841(a).

2. The maximum pressure vessel opening resulting from an initially detectable crack propagating for a period encompassing four normal inspection intervals. Mid-panel cracks and cracks through skin-stringer and skin-frame combinations must be evaluated.

3. Pressure vessel openings resulting from tire burst, uncontained engine failure, loss of antennas, or stall warning vanes, or any probable equipment failure. The effects of such damage while operating under maximum cabin pressure differential must be evaluated.

Subsequent to the initial development and issuance of high altitude special conditions, § 25.571 was amended by Amendments 25–45 (1978) and 25–52 (1980) to require damage-tolerance and fatigue evaluation of airplane primary structure. Section 25.571 requires showing that a catastrophic failure due to fatigue, corrosion, or accidental damage will not occur throughout the operational life of the airplane (§ 25.571 (a)). The effects that are required to be considered under § 25.571 are not limited to depressurization. Compliance with § 25.571 requires the development of inspection intervals and procedures for the detection of crack lengths associated with the decompression of critical vent areas. Any event that would expose the occupants to cabin pressure altitudes in excess of the limits established under this amendment must be shown to be extremely improbable.

In demonstrating compliance with proposed § 25.841, the crew would presumably perform an emergency descent in accordance with an approval emergency procedure. The time required for the crew to recognize a decompression emergency and don their oxygen masks has been established by tests to be 17 seconds. This 17-second delay is imposed between the cabin altitude warning and the beginning of action for descent. The critical failure case (probable system failure) must be demonstrated by system failure tests at the maximum airplanes altitude. For improbable failure, the cabin altitude can be established by analysis, and verified, if necessary, by tests at a much lower altitude, with the results extrapolated to the higher altitude.

4. Oxygen Equipment

Both diluter demand and pressure demand oxygen equipment have proven satisfactory for cabin pressure altitudes of 40,000 feet or less when the person using the oxygen equipment is exposed gradually to increased altitudes. However, the FAA was concerned that rapid decompression to cabin pressure altitudes that exceed 34,000 feet could temporarily negate the protective qualities of such equipment, unless the mask and oxygen are being used prior to the decompression, leading to moderate to severe decreases in flightcrew performance. To prevent such performance decrements, Notice 89–31 proposed that the use of 100 percent oxygen be required by this amendment for flightcrews operating at airplane altitudes which may expose them to cabin altitudes exceeding 34,000 feet following a pressurization failure. As discussed below, in response to public comment, this requirement has been removed pending further study by the FAA.

Prior to this amendment, § 25,1447(c)(3) required that each washroom be equipped with two oxygen outlets and two units of dispensing equipment. The term washroom has been replaced in other sections of part 25. This reference is deleted for consistency, and the existing provisions of § 25,1447(c)(3) are incorporated into a revised § 25.1447(c)(1). The amended regulation does not specify demand equipment under § 25.1447(c)(2), because § 25.1447(c)(3)(i) as amended allows the option of using either diluter demand or pressure demand equipment for airplanes to be operated above an altitude of 25,000 feet, and § 25,1447(c)(3)(ii) as amended requires pressure demand equipment for airplanes where decompression may expose the flightcrew to cabin altitudes in excess of 34,000 feet.

Discussion of Comments

Comments were received from foreign and domestic airplane manufacturers, foreign government agencies, various trade organizations representing employee groups, and individuals. The majority of the commenters support the

proposals but many suggest changes. Many commenters recommend editorial, organizational, and clarifying comments which would result in clearer language.

Several commenters recommend removing the proposed change to § 25.365(d) that would require a safety factor of 1.67 times the structural design pressure differential loads corresponding to the maximum relief valve setting for airplanes to be approved for operation above 45,000 feet. One commenter notes that the pressure vessel structural design is based on fatigue loads and their effect on crack propagation. Another commenter expresses the opinion that, as the justification for the margin increase is concerned with damage tolerance rather than static strength, the FAA should attack the problem through damage tolerance requirements rather than static strength. This commenter also states that the damage tolerance requirements, even at altitudes below 40,000 feet, lead to stress levels sufficiently low so that the 1.67 requirement is ''likely to be complied with.'' A third commenter recommends changing the wording to remove the 1.67 factor, substituting a requirement that thermal effects on structural components and materials must be accounted for. The FAA does not concur that the higher factor is not necessary for airplanes operating at altitudes above 45,000 feet. A rapid decompression at altitudes above 45,000 feet could be catastrophic to the passengers. Therefore, this event must be extremely improbable; i.e., it is not expected to occur during the lifetime of an entire fleet of airplanes. Service history, however, shows that decompressions at higher altitudes are not extremely remote events even for airplanes assessed to the damage tolerance criteria. Loss of cabin pressure at lower altitudes has not been catastrophic to the passengers from environmental effects due to the higher ambient pressures and relatively short time for emergency descent. Although application of damage tolerance techniques will reduce the incidence of pressure vessel failures in service, there is no reason to expect that current methodology will preclude all future failures. To address these concerns, the FAA has determined that requiring the higher safety factor of 1.67 will reduce the probability of structural failures which could result in depressurization. The static factor of 1.67 is not appropriate to account for thermal effects because not all parts are subjected to the same temperature and also materials may not be affected to the same degree. The current § 25.603(c) already requires that the effects of temperature be accounted for in determining material properties. Section 25.365 is, therefore, amended as proposed.

Two commenters note that the probability terminology regarding proposed §§ 25.831 (c), (d), and (g) is not consistent with that found in regulatory and advisory material associated with § 25.1309. The FAA concurs with these comments. The terminology in the amendment is changed to address failure conditions rather than failures or failure combinations as proposed.

One commenter recommends allowing the fresh air requirements proposed to be required under § 25.831(a) to remain a crewmember requirement only. The FAA does not concur with this recommendation. It has been determined that this level of airflow is required for several reasons. Members of the flightcrew performing their functions in the passenger cabin are not sedentary and must perform their duties without undue discomfort or fatigue. In addition, fresh airflow has been determined to be necessary to provide adequate smoke clearance in the event of smoke accumulation due to a system failure or fire. However, it is clear that the additional airflow is not required at all times and under all operating conditions. Therefore, the wording in the final rule has been changed to state that the ventilation system must be *designed* to provide the fresh airflow. This also addresses concerns regarding the low fresh airflow capability that occurs during descent at low power levels.

Two commenters note that the fresh air requirement should be 0.55 pounds of fresh air per minute per occupant rather than the 0.6 pounds proposed in the notice. The FAA ''rounded off'' the value for mass flow from 0.55 to 0.6 pounds of fresh air per second when proposing the rule. Recognizing that this constitutes an increase in the level of safety not originally intended by the FAA, and noting that the added fresh air must be supplied at some specific cost, the final rule is changed to require that the airplane ventilation system be designed to provide 0.55 pounds of fresh air per minute per occupant. Another commenter recommends that the FAA use 0.5 pounds per minute per occupant rather than 0.6, noting that the Civil Aviation Authorities (CAA) and other airworthiness authorities use 0.5 pounds per minute. The FAA has determined that the 10 cubic feet per minute, converted to 0.55 pounds per minute as noted above, provides an acceptable minimum airflow. The commenter provides no data to support the recommendation. The rule is issued with the change noted above.

The same commenter notes that the notice does not contain clear requirements for airflow following failures. The commenter further notes that the JAA provides guidance in ACJ 25.831(e) regarding this matter. The FAA has not determined that a need exists to define the ventilation requirements following failures. The ventilation rates following various failures conditions were not addressed either in previously issued special conditions or Notice 89–31. In addition, the commenter did not provide any data in support of his proposal other than that it exists in advisory material in other airworthiness standards.

One commenter states that 0.6 pounds of fresh air per occupant is impractical and unjustified for commuter airplanes because available engines do not provide sufficient bleed flow to meet the new requirement. The FAA does not concur that this proposal is impractical or unjustified. This rule will not apply to existing airplanes. When new airplanes are designed and certificated, propulsion systems are available that can provide adequate bleed air to meet these requirements. The FAA has determined that health and safety considerations justify the new requirements for airplanes operating at all altitudes.

Further, the commenter states that the changes proposed for §§ 25.831 (c) and (d) will require an increase in reliability requirements that is not justifiable for airplanes certificated for altitudes below 40,000 feet. This commenter believes that the existing wording, ''reasonably probable,'' is not equivalent to the proposed wording, ''not extremely improbable.'' The FAA concurs with the commenter, and has determined that these changes are not needed. Therefore, because these were the only proposed changes to §§ 25.831 (c) and (d), the final rule has been revised to remove the changes to these sections.

Two commenters recommend either removing or defining the word ''uncontaminated'' as used in the proposed § 25.831(a), noting that the term is too vague, and might well be impossible to meet in, for instance, the case where the airplane is operating in an environment which itself contains contaminants, as might be the case near some airports in congested areas, the FAA does not concur with the comment. Descriptive wording is often used when the desire is to present objective design standards. The intent in this case is to ensure that the system

designer will consider the need to provide an environment conducive to crew and passenger comfort. The FAA has prepared and plans to release advisory material to provide more detailed guidance for use in finding compliance with this rule.

One commenter recommends removing both the proposed and the existing §§ 25.831 (c) and (d), stating that the sections are ambiguous and that the requirement that the systems perform their intended functions under all foreseeable (normal and failure) conditions is addressed in § 25.1309. The FAA does not concur. As noted above, descriptive terminology is used to present design standards when specific requirements would be too inflexible and restrictive. Further, § 25.1309 is not intended to be the sole regulation for use in determining acceptability of system design when failure conditions exist. The FAA has found that individual rules are desirable when addressing specific functions, such as those governing ventilation requirements, in order to ensure adequate consideration of the specific issues identified.

One commenter suggest changing the wording of the proposed § 25.831(d) from ''If the accumulation of hazardous quantities of smoke * * *,'' noting that in-service experience has shown that accumulation of smoke is reasonably likely. The FAA concurs that the accumulation of smoke in cockpits has occurred on numerous occasions, and is not an extremely improbable event. However, future designs may embody features that render smoke accumulation extremely improbable. Should a manufacturer be able to show such reliability, smoke evacuation should not be required to be demonstrated.

Two commenters note that protection from smoke in the cockpit cannot be ensured, even while wearing and using the crewmember oxygen equipment stipulated in the proposed § 25.1447(c)(3), unless an ''emergency pressure (1 to 3 inches of water) is provided to ensure positive mask pressure and flow into goggles.'' The FAA recognized that a positive pressure differential between the inside of the mask and ambient is desirable. Many existing regulators have a ''test'' or ''emergency'' position to provide the pressure differential noted above. However, the FAA does not concur that this approach needs to be required by regulation, and has not proposed such a change. For the purposes of this rulemaking, the preamble of Notice 89–31 merely notes that one of the advantages of the pressure demand mask is that, if either the 100 percent or the full positive pressure (sometimes called ''test'') setting is selected, protection from smoke within the cockpit would be provided. While the degree of protection is not identified, selection of either of these settings does eliminate the ambient air which is inspired with diluter demand masks, thus reducing the risk of smoke or fumes being inhaled by the wearer.

Three parties offer comments on the proposed new § 25.831(g). One commenter recommends continuing the time/temperature curve proposed for this section beyond 90 minutes, and recommends referring to the curve in the FAA SST ''white book,'' TENTATIVE AIRWORTHINESS STANDARDS FOR SUPERSONIC TRANSPORTS. Copies of the appropriate pages from that document have been added to the docket for this rulemaking action. The FAA infers that the commenter believes the curve should be extended to 200 plus minutes because that is the extent of the graph in the white book. The FAA does not concur with this comment. The curve in the white book actually ends at 90 minutes for a temperature of 90 degrees Fahrenheit (90 °F), although the actual graph grid extends to over 200 minutes. The FAA, in responding to comments on previously issued special conditions for high altitude operations, modified the SST time/temperature curve by increasing the allowable maximum temperature from 90 degrees to 100 degrees Fahrenheit to accommodate aircraft while operating in high ambient temperature conditions. It was noted that it would be difficult to meet the temperature maximums while operating on the ground with outside temperatures above 100 degrees. The end point on the proposed curve indicates that the exposure time to a temperature of 100 degrees Fahrenheit (100 °F) shall not exceed 90 minutes. The FAA has determined that the limits established by this curve are appropriate for improbable failure conditions. In addition, there were no other comments addressing the proposed time/temperature limits. Considering the above, the curve in the final rule is retained as proposed.

A second commenter states that this amendment is not justified for airplanes operating below 40,000 feet. The FAA infers that the commenter is recommending removing this proposal. The FAA does not concur that this change is unjustified. Excessive temperatures in the crew and passenger compartments can present a hazard to continued safe flight and landing for any airplane. Therefore, although this hazard is not regarded as sufficient to warrant retroactive application of these requirements to existing designs, these improvements in design standards are appropriate and cost effective for future designs. While this change was proposed primarily to codify existing special conditions for high altitude operation, it is also appropriate for airplanes certificated for operation at lower maximum altitudes. A third commenter recommends changing the proposed rule to clarify that the amended rule is directed at airplanes which utilize high temperature air to maintain pressurization following failure conditions. While the FAA concurs that the requirement, which originated in existing special conditions, was directed primarily at such airplanes, the amended rule is intended to apply to any failure condition that can result in excessively high temperatures. For the above reasons, § 25.831(g) is added as proposed.

One commenter recommends leaving the phrase ''Pressurized cabins and compartments to be occupied * * *'' in § 25.841(a) rather than changing it to ''Pressurized cabins and any other occupied compartments * * *'' as proposed. The commenter notes that this change is not addressed in the preamble to the proposal, and expresses concern that the change in wording might result in a change in interpretation. The FAA does not concur with this comment. This change in wording does not change the meaning of the Section, and, in the opinion of the FAA, is clearer.

One commenter recommends adding a section to the proposed § 25.841(a)(3) to note that ''Turbine engine installations failures must be assessed according to the specific requirements of § 25.903(d) * * *'' The FAA does not concur with this recommendation. It is not clear how adding this detail would clarify the requirements for assessing the damage resulting from an contained engine failure. Further clarification is considered to be appropriate for advisory material, and the FAA addresses uncontained engine failure in the advisory circular which was proposed concurrent with Notice 89–31.

One commenter states that the proposed § 25.841(a)(1) calls for ''an unjustified reliability increase relating to the pressurization system.'' The FAA infers that the commenter is requesting that the rule continue to address only those failures which are ''reasonably probable.'' The FAA does not concur. As noted earlier, reasonably probable has been interpreted by the FAA to include both the probable and

improbable categories. For this reason, the new wording does not constitute an increase in the required reliability.

The same commenter states that the proposed § 25.841(a)(2) will be in conflict with the proposed § 25.841(a)(1). The FAA does not agree. Section 25.841(a)(1) addresses acceptable cabin pressure altitudes following probable failure conditions, while § 25.841(a)(2) addresses cabin altitudes following failure conditions not shown to be extremely improbable, i.e., probable and improbable failure conditions.

One commeter expresses the concern that the adoption of the proposed § 25.841(a)(2)(i), which limits exposure to cabin pressure altitudes exceeding 25,000 feet to a maximum of 2 minutes for failure conditions not shown to be extremely improbable, will result in ''severe restrictions on flight routes as well as maximum certification altitude.'' The commeter states that the proposed §§ 25.841(a)(2) and (a)(3) are proposed to address concerns regarding ''extremely rapid decompressions which may occur with small volume, high altitude (to 51,000 feet) executive transport airplanes,'' and recommends that the FAA remove these sections from the final rule. The FAA does not concur. While it is true that one of the reasons for formulating this rule change was to codify the certification requirements previously issued as special conditions for small volume transport category airplanes requesting approval for high altitude operation, the FAA has reviewed the service history of rapid depressurizations on all transport category airplanes including those with large pressurized volumes. Such events, while rare, do occur in service. The effects of exposure to altitudes above 25,000 feet for more than 2 minutes, or to an altitude above 40,000 feet for any period of time, are discussed in the preamble of the notice. If an applicant can show that failure conditions leading to excellence of these cabin altitudes are extremely improbable, there is no impact on operating altitude. As to having a significant effect on operating altitudes, this requirement does not affect airplanes already certificated, so there would be no ''more extensive requirements on the current commercial fleet.'' This commenter also recommends changing ''any probable failure or failure combinations'' to ''any probable failure or probable failure combination.'' As noted earlier, the FAA is changing the wording for both §§ 25.831 and 25.841 to ''failure conditions,'' which covers failures and combinations of failures, and more closely parallels § 25.1309 terminology.

One commenter recommends revising § 25.841(a)(1) to show that ''In case of dispatch with equipment inoperative per an approved Minimum Equipment List (MEL), only reasonably probable failures or reasonably probable failure malfunctions need be considered,'' when addressing the 15,000 feet maximum cabin altitude requirement of this section. The commenter notes that dispatch under an approved MEL with one of two air conditioning packs inoperative has been a safe practice. The FAA does not concur with this recommendation. The certification rules in part 25 do not address MEL dispatch. In the case of dispatch with one pack inoperative, the practice followed in recent certification projects has been to limit the operating altitude of an airplane dispatching under these conditions to that which has been demonstrated in that configuration considering the effect of potential failures. The FAA intends that this practice be continued under this rule.

One commenter suggests adding a new § 25.841(a)(2)(iii) reading ''Compliance with paragraph (i) is not required for cabin altitude versus time profiles where exposure above ten thousand feet does not exceed 10 minutes.'' The commenter notes that operating rules (§ 121.333(a)) assume that the airplane descends from the maximum altitude to 10,000 feet in ten minutes, and that permanent ill effects from hypoxia under present operating rules have been rare. Further, recent special conditions for the Beech Model 400A and British Aerospace Model BAe Model 125–1000A airplane contains cabin altitude versus time curves which support the ''ten minutes above 10,000 feet'' criteria. The FAA does not concur with the commenter's suggestion. The cabin altitude limitations stipulated in the special conditions were interim standards applicable to those airplanes only. Physiological data from CAMI have resulted in the FAA establishing the requirements for cabin altitudes as they are stated in the proposal. Adopting the commenter's proposal could result in an applicant being allowed to demonstrate compliance while showing exposures to cabin altitudes up to 40,000 feet for extended periods while still meeting the standards, which would be unacceptable. The FAA has determined that preventing the occupants from being exposed to cabin altitudes greater than 25,000 feet for more than 2 minutes or 40,000 feet for any duration will provide an acceptable level of safety at an acceptable cost.

This commenter also suggests adding a new § 25.841(a)(2)(iv) to allow the occupants to be exposed to cabin altitudes greater than 25,000 feet or 10,000 feet (if (iii) were adopted) when minimum flight altitudes make literal compliance with these sections impractical. The commenter is concerned that literal compliance with § 25.841(b) would result in prohibition of flight over the Himalayas or Andes, or in certain areas where minimum altitudes are stipulated. The FAA does not share this concern. The proposed rule requires design features to prevent the exposure of occupants to the high cabin altitudes in the presence of failure conditions. The ability to operate in areas where operational constraints dictate minimum flight altitudes is a function of operating rules and appropriate flight planning in terms of supplemental oxygen, etc. The certification rules do not address these considerations.

The same commenter recommends changing § 25.841(a)(3) to more precisely define the manner in which various causes of a decompression are treated, and suggests subparagraphs treating uncontained engine failure, fuselage structural failure, discrete source failure, and system failure separately. The FAA does not agree that these details are appropriate for inclusion in the certification rule. The FAA plans to provide guidance material regarding the manner in which the various failure cases may be addressed.

One commenter supports the rulemaking but states that ''Existing crew and passenger emergency oxygen systems in civil aircraft do not have sufficient pressure breathing capability to protect the individual for the required length of time for controlled descent to below 33,000 feet where, I believe, existing oxygen systems may function adequately for life support.'' The FAA infers from this comment that the commenter desires that this proposal contain new requirements for oxygen systems. The FAA does not agree with this commenter concerning equipment used by the flightcrew. The FAA has determined that the oxygen dispensing equipment required by this rule will provide adequate protection when the exposure envelopes are observed. The FAA shares the commenter's concern with respect to the passenger oxygen equipment. While the passenger equipment is certificated to operate to a pressure altitude of 40,000 feet, the physiological effects of decompression on the passengers may prevent the equipment from being effective in all cases. The alternatives would be to require the passengers to breathe 100 percent oxygen at the altitudes of concern or to prohibit operation at the

higher altitudes. Breathing 100 percent oxygen by all passengers is considered to be an unacceptable solution from an operational standpoint, and the exposure envelopes adopted for this rule have been selected to mitigate the limitations of the passenger oxygen system. It is considered that developing new oxygen equipment standards to be included with this rule is unwarranted. The FAA has determined that operation at the altitudes addressed in this rule can be accomplished with an acceptable level of safety, and this rule has established cost effective means of attaining that goal.

One commenter suggests that the requirement in § 25.1447(c)(1) for automatic presentation of oxygen dispensing units if certification for operation above 30,000 feet is requested refer to 31,000 feet, as 30,000 feet (FL300) is not an authorized cruising altitude. The FAA agrees that this is not a cruising altitude. However, the FAA does not concur that it is inappropriate to stipulate a requirement for operation *above* 30,000 feet. Further, this requirement is unchanged from the existing rule.

A second commenter recommends amending § 25.1447(c)(1) by removing the requirement for supplemental oxygen for passengers if the cabin altitude limits in Notice 89–31 are adopted. The commenter states that it is not realistic to expect all passengers to utilize the oxygen system, and infers that if the limits proposed are adopted, the risk to healthy passengers is minimal. The FAA does not concur with this comment. If the FAA were to follow the commenter's logic, i.e., not to require passenger oxygen systems, the exposure envelope would limit the cabin altitude to 15,000 feet. Historical events and decompression tests indicate that supplemental oxygen is needed even when the cabin pressure altitudes required by this rule are observed. Further, this requirement is unchanged from the existing rule. No other comments were received on the proposed §§ 25.1447 (c)(1) and (c)(2) and they are adopted as proposed.

One commenter states that § 25.1447(c)(3) requires pressure demand masks for operation above 25,000 feet but the justification in the preamble of the notice states that diluter demand masks are acceptable up to 34,000 feet. The FAA does not agree with this comment. Section 25.1447(c)(3)(i) requires a diluter demand *or* pressure demand (pressure demand mask with a diluter demand pressure breathing regulator) type mask for airplanes to be operated above 25,000 feet. The pressure demand (pressure demand mask with a diluter demand pressure breathing regulator) type with a mask-mounted regulator is required for airplanes operated at altitudes where decompressions that are not extremely improbable may expose the flightcrew to cabin pressure altitudes above 34,000 feet.

One commenter recommends that the pressure breathing requirements of §§ 25.1447(c)(3)(i) and (ii) be detailed in the form of mask pressure versus cabin altitude curves. The commenter suggests that the current pressure breathing equipment specified under Technical Standard Order TSO–C89 may not be acceptable for cabin altitudes up to 45,000 feet. The commenter provides no rationale in support of his recommendation. The FAA does not concur. The type of data recommended by the commenter is appropriate to TSO requirements, and the revision to those documents is beyond the scope of this notice. Further, one of the purposes of this rulemaking is to provide protection by preventing exposure of the occupants to cabin altitudes above 40,000 feet. Masks and regulators are currently in use that meet the requirements in the curves submitted by the commenter for conditions up to that altitude.

One commenter notes that a pressure demand mask with a mask-mounted regulator may have different oxygen delivery percentage requirements under TSO–C89 depending on the altitude for which it is certificated. The commenter suggests that the rule clarify the mask and regulator requirements by stipulating the altitude to which the mask and regulator are approved under the TSO. The FAA does not concur with this suggestion. By specifying the type of oxygen equipment for the crew, and the manner of its use, the FAA has determined that the flightcrew will retain the ability to safely operate the airplane during a decompression.

One commenter suggests withdrawing the proposed § 25.1447(c)(3)(ii) because the equipment standards defined in TSO–C89 ''provide the necessary oxygen up to 40,000 feet, and are considered safe.'' The FAA does not concur. There is no requirement that the equipment used in transport category airplanes be approved under a TSO. As discussed in the notice, operation at altitudes which can, in the event of a rapid decompression, result in incapacitation or a physiological hazard to the occupants requires oxygen equipment to meet the specific environments that may be encountered. It is recognized that equipment with TSO authorization is available that will provide the required protection at a reasonable cost. The intent of this rulemaking is to identify a minimum equipment standard that is known to provide this protection, and that equipment is called out in the amended sections.

Another commenter suggests amending § 25.1443 by addition of a curve of ''cabin pressure altitude versus minimum required oxygen mass flow'' for cabin altitudes from 0 to 51,000 feet which would replace the generic mass flow requirement which appears in § 25.1441. The FAA does not concur with this comment. A revision to § 25.1443 as suggested by the commenter would not increase the level of safety. Existing rules related to oxygen mass flow provide an adequate level of safety. If such material were to be added, this level of detail would be more appropriate in a Technical Standard Order or the advisory material that has been proposed to accompany this rulemaking action.

One commenter recommends deleting § 25.1447(c)(3)(ii) both as it now exists and as proposed. The existing section is deleted for the reasons noted in the preamble to Notice 89–31. The commenter believes that the section as proposed, which stipulates the use of ''a pressure demand (pressure demand mask with a diluter demand pressure breathing regulator) type with a mask-mounted regulator,'' is unduly restrictive by requiring a mask-mounted regulator, and dictates a design solution. Additionally, the commenter states that §§ 25.1441(d) and 25.1443(b) and Technical Standard Order TSO–C89 address oxygen equipment, thereby obviating the need for the proposed section. Another commenter recommends that the FAA define the required oxygen equipment (diluter demand and pressure demand masks) in terms of performance rather than by stipulating a specific equipment type. The FAA does not concur with these comments. The specific descriptions for the oxygen equipment that is proposed in these amendments has been determined by the FAA to be necessary to provide protection for the flightcrew in cases where the cabin altitude will exceed the specified levels. Neither of the FAR sections nor the TSO data provide adequate assurance of that protection. The FAA believes that this detailed stipulation is necessary to ensure the protection and to provide standardization in interpretation of the new requirements. However, the FAA intends to allow sufficient latitude for system designers to develop safer and/or less expensive approaches to specific requirements. For this reason, § 25.1447(c)(3)(ii) is changed to allow other means of protection for flight

crewmembers if the proposed equipment affords the same protection.

One commenter states that existing panel-mounted diluter-demand regulators have proven satisfactory. This party suggests that the pressure-demand mask with a mask-mounted regulator be mandatory for newly certificated airplanes only. The FAA agrees that panel mounted regulators have proven satisfactory, but the FAA has determined that in a high altitude rapid decompression, the protection afforded by a mask mounted regulator is superior to that found in panel mounted regulators. As noted in the preamble of the notice, the time delay in providing 100 percent oxygen to the flight crewmember, which results from the air in the hoses of the oxygen equipment, can significantly negate the hypoxic protection of such equipment. Further, this amendment constitutes a revision to part 25, and is not applicable to the existing fleet. It is, however, the FAA's position that every effort be made to provide a level of safety equal to the latest certification standards for existing airplanes that are updated by amended or supplemental type certification. The FAA's policy regarding establishment of the type certification basis for derivative airplanes is described in Action Notice A 8110.23, dated September 26, 1990. A copy of this document has been placed in the Rules Docket. Following issuance of these amendments, the concepts contained herein would be applicable to airplanes which incorporate changes in the oxygen systems or increases in approved operating altitudes, in accordance with § 21.101. For high altitude approvals, this has been accomplished in the past through special conditions which contain provisions essentially the same as those embodied in these amendments.

Several comments express concerns regarding long term use of 100 percent oxygen by fightcrews. One of these parties suggests that the crew member use normally diluted oxygen with the regulator set at the ''normal'' position. Another states that 100 percent oxygen should not be permitted unless adequate safeguards have been established. A third party states that 100 percent oxygen should be used only for short periods as an emergency measure due to a health hazard. One commenter recommends deleting the proposed § 25.1447(c)(4) and retaining § 121.333(c)(2), which requires at least one pilot to wear and use an oxygen mask at altitudes of 41,000 feet and greater. Another commenter believes that wearing an oxygen mask at lower altitudes ''is not necessary nor is it useful.'' One commenter notes that breathing 100 percent oxygen will dry out the lungs, can lead to narcosis, and states that the long term effects are not clearly understood. Another commenter recommends deleting the proposal to require the wearing of masks and revert to the requirements in the operating rules. Another commenter states that large volume transports decompress slowly giving crews more time to don oxygen masks, and current large transports are certificated to 45,000 feet without requiring the flightcrew to be using oxygen. The FAA infers that the commenter believes that this proposal should not apply to ''large'' transport airplanes. The FAA does not concur with this viewpoint. The physical size of the airplane is not germane; the important parameter is the post-decompression cabin altitude and its effect on occupants. One commenter notes that the requirement for prebreathing 100 percent oxygen would necessitate additional oxygen supplies at added cost. Finally, one commenter questions whether breathing 100 percent rather than 40 percent oxygen provides better protection in terms of blood oxygen saturation level. This commenter provides data showing that prebreathing 30 to 40 percent oxygen provides adequate protection against the effects of hypoxia following rapid decompression. The data show that the blood oxygen saturation level following the decompression is not significantly depressed even if the crew member is breathing 30 percent oxygen, as long as the oxygen supplied to the crew member goes to 100% immediately. After considering all the negative comments received and reviewing existing data regarding high altitude decompressions, the FAA has determined that it is appropriate to withdraw this proposal. The proposed § 25.1447(c)(4), requiring that one flight crewmember be wearing an oxygen mask and breathing 100 percent oxygen when operating at altitudes where the cabin altitude can reach 34,000 feet in the event of a decompression, has been withdrawn.

One commenter states that, regarding the proposed § 25.1447(c)(5), portable oxygen equipment would only be ''at hand'' if the crew members were sitting by the oxygen equipment or were actually using it, and recommends striking the work ''immediately'' from the proposal. The FAA does not believe this change is necessary or warranted. This requirement is retained from the existing § 25.1447(c)(4), and is considered met in existing airplanes by having portable oxygen equipment located adjacent to the crew member seat with additional units located at specific locations in the passenger cabin. The FAA anticipates that industry will continue to provide this protection in the same manner as it has done in existing airplanes, with no change in the rule or in FAA policy regarding showing compliance.

Two commenters point out that the nomenclature used in the glossary of the notice misidentified the type of passenger oxygen equipment used in airplanes with altitudes above 35,000 feet. One commenter recommends changing the definition in the Glossary for ''Continuous Flow Oxygen Systems'' to note that the type of equipment used is a mask with a ''reservoir'' bag rather than a ''rebreather'' bag. The FAA concurs with these comments, and the glossary is changed to reflect the terminology used in current descriptive literature.

One commenter notes that, while special conditions have been issued covering various airplanes requesting approval for high altitude operations, this proposal impacts all airplanes seeking certification under part 25 of the FAR, including those with maximum flight altitudes less than 41,000 feet. These proposals constitute increased standards for those airplanes. The FAA concurs with this statement. This rulemaking addresses the physiological limitations of occupants of transport category airplanes which can experience depressurization to cabin altitudes greater than 34,000 feet. However, the commenter does not recommend any specific changes in the proposals.

The JAA notes that future rulemaking relative to the Joint Airworthiness Regulations (JAR) will require retroactive application for each new amendment, and asks if the FAA is considering similar action. As noted earlier, application of new amendments to the FAR are made applicable to type certification programs in accordance with § 21.101 of the FAR. There are no plans to require retroactive application of new amendments to the existing fleet, as suggested by the JAA. The JAA also suggests considering a number of added concerns regarding operations at high altitudes, such as the effects of icing on airspeed and pressure probes, changes in static stability criteria for high mach/high altitude operation, and health hazards related to cosmic radiation during high altitude cruise. A second commenter recommends that the proposal be revised to address standards related to the exposure of crewmembers to cosmic radiation when operating at altitudes up to 51,000 feet. The effects of icing (ice crystals) on airspeed and pressure probes and stability criteria

were not considered in the special conditions issued prior to this rulemaking, and no data was submitted by the commenter to support its position. No action is contemplated by the FAA regarding these comments. The effects of cosmic radiation are not addressed in this proposal, and no data were submitted by either commenter in support of their suggestions. The FAA is aware of the concerns expressed by the commenters and may consider further rulemaking to address those concerns.

One commenter suggests requiring initial and periodic training including altitude chamber and pressure breathing instruction for pilots of airplanes affected by this rulemaking. As the certification rules in part 25 do not address specific training requirements, this proposal is outside the scope of this rulemaking. However, this proposal will be discussed with the FAA organization responsible for crew training.

One commenter notes that the FAA should require improvements in pressure demand masks to improve comfort, and suggests that research and development in comfort and human factors is needed. The FAA believes that there is oxygen equipment available that meets the requirements of this rule and also provides an acceptable level of comfort. The small executive jet airplanes approved under existing special conditions are so equipped. If further improvements are needed, the marketplace will drive the development and availability of these products.

One commenter suggests that the FAA has failed to consider the relatively small transport category airplanes intended for commuter airline operation. The example noted is a 16,000 pound airplane intended to carry 25 passengers, operating at altitudes of 25,000 to 30,000 feet. The commenter states that the manufacturer will apply for certification to the highest expected operating altitude and the amendments of this proposal will apply. The specific comments related to these concerns are addressed elsewhere in this document, but the commenter apparently believes that these applicants should not have these requirements imposed on their airplanes. The position adopted by the FAA with this rulemaking action is that any airplane operating at flight altitudes where decompression can result in a hazard to the occupants must be designed to provide protection.

One commenter recommends leaving the regulations as they now exist for large airplanes operating up to 45,000 feet and directing the proposed rules to the smaller airplanes operating at higher altitudes. This party states that large airplanes certified under the existing rules provide an acceptable level of safety, and the proposed rules will result in ''undue restrictions or unvalidated costly additional effort.'' Another commenter expresses a similar opinion, and comments that adoption of these standards will have a significant economic impact due to requiring retrofit of many existing airplanes. The FAA does not share these views. The protection afforded the occupants should be the same for any transport category airplane, regardless of volume. Larger airplanes have shown decompression characteristics similar to the small airplanes. If the applicant can demonstrate that the cabin altitude does not exceed prescribed limits, many of the provisions of this amendment do not apply. In any case, these rules are not retroactive to existing airplanes as a result of this rulemaking, and only new or modified airplanes are required to meet the new requirements. Another commenter makes the point that there have been recent decompression events involving large airplanes wherein the decompression ''is surely as explosive as any to be realized on a smaller Lear Jet . . .,'' and agrees with the proposals.

Another commenter believes that existing supplemental oxygen systems are acceptable, and if the requirements in Notice 89–31 are adopted, there are strong arguments for elimination of the passenger oxygen system. The FAA does not concur with these statements. While it is recognized that not all passengers will be able to don their oxygen equipment, the protection afforded by the systems currently installed provides acceptable protection from the effects of hypoxia at an acceptable cost for the majority of the occupants from the effects of hypoxia. Even when the decompression event is slower or the cabin altitude is limited, and the oxygen masks are not absolutely essential for survival, some protection is afforded to all the passengers when the cabin altitude exceeds safe limits. The operating rules also require the installation of this equipment.

One commenter states that the economic analysis reflects an operating cost increase of $19 million per year, implying that the rule would have to save 19 lives per year to be reasonable. The same commenter recommends revising the Regulatory Flexibility Determination because small entities may operate affected airplanes and may incur increased operating costs. In each case, the commenter appears to be referring to FAA's economic analysis of proposed § 25.1447(c)(4). As noted earlier, Notice 89–31 proposed that § 25.1447(c)(4) require that one flight crewmember wear an oxygen mask and breathe 100 percent oxygen when operating at altitudes where the cabin altitude can reach 34,000 feet in the event of a decompression. In response to public comments and cost considerations, the FAA has withdrawn this proposal and will subject it to further study. In regard to the commenter's recommendation regarding small entities, the magnitude of the costs and the number of affected small entities, rather than simply the incidence of costs, are the criteria by which a rule is judged to have a significant economic impact on small entities. A regulatory flexibility determination of the final rule is presented in the next section of this document.

The same commenter also states that the Regulatory Evaluation does not take into consideration evolving FAA policy of applying the latest FAR amendments when determining the certification basis for amended type certifications. The FAA agrees and has added this policy to this final regulatory evaluation, without affecting the justification of the rule. It is FAA's policy that every effort be made to provide a level of safety equal to the latest certification standards for existing airplanes that are updated by amended or supplemental type certificates. Amendments to the FAR may be made applicable to derivative airplanes in accordance with § 21.101 if it is determined that the new or redesigned system is not adequately addressed in the regulations incorporated by reference to the type design.

The commenter also identifies a statement in the NPRM Regulatory Evaluation that incorrectly assumes that new airplanes will not have engines mounted in positions which could damage the fuselage. The commenter appears to be misinterpreting FAA's language. The statement being referred to by the commenter is one pertaining only to small volume transport airplanes. The FAA agrees that most other transport category airplanes will have wing-mounted engines located such that fragments from an engine burst could affect the fuselage and pressure vessel.

References

Reference 1. ''Factors Influencing the Time of Safe Unconsciousness (TSU) for Commercial Jet Passengers Following Cabin Decompression'' by James G. Gaume, *Aerospace Medicine,* April 1970.

Reference 2. Aerospace Information Report (AIR) No. 822 and 825B (Physiology Section); SAE Committee A–10.

Copies of pertinent portions of these documents have been placed in the

Rules Docket and are available for public inspection.

Glossary

Physiology Altitude Limits. The response of human beings to increased altitude varies with the individual. People that smoke or are in poor health will be affected at a much lower altitude than people who are young and in good physical condition. Without supplementary oxygen, most people will begin to experience a reduction in night vision or general visual acuity at approximately 5,000 feet altitude. At an altitude of approximately 10,000 feet, a person will begin to display measurable deterioration in mental abilities and physical dexterity after a period of several hours. At 18,000 feet, the mental deterioration may result in unconsciousness, and the time of useful consciousness (TUC) is generally about 15 minutes. At 25,000 feet, the TUC for most people is about 3–10 minutes. At altitudes above 25,000 feet, the TUC decreases very rapidly, becoming only a few seconds at 40,000 feet. If a person is breathing 100 percent oxygen, however, the partial pressure of oxygen in the lungs at 34,000 feet altitude is the same as that for a person breathing air at sea level. At 40,000 feet, a person breathing 100 percent oxygen will have the same partial pressure of oxygen in the lungs as a person breathing air at 10,000 feet. Therefore, 34,000 feet is the highest altitude at which a person would be provided complete protection from the effects of hypoxia, and 40,000 feet is the highest altitude at which 100 percent oxygen will provide reasonable protection for the time period needed to descend to a safe altitude.

Hypoxia. Hypoxia is a condition caused by insufficient oxygen. It results from the reduced oxygen partial pressure in the inspired air caused by the decrease in barometric pressure with increasing altitude.

Diluter Demand Oxygen System. A flightcrew oxygen system consisting of a close-fitting mask with a regulator that supplies a flow of oxygen proportional to cabin altitude. Regulators are usually designed to provide zero percent oxygen and 100 percent cabin air at cabin altitudes of 8,000 feet or less, with the ratio changing to 100 percent oxygen and zero percent cabin air at approximately 34,000 feet cabin altitude. Oxygen is supplied only when the user inhales, reducing, the amount of oxygen that is required.

Pressure Demand Oxygen System. Similar to diluter demand equipment, except that oxygen is automatically supplied to the mask under pressure at cabin altitudes above approxmately 34,000 feet. This pressurized supply of oxygen provides some additional protection against hypoxia at altitudes up to 39,000 feet.

Pressure Demand Mask With Mask-Mounted Regulator. A pressure demand mask with the regulator attached directly to the mask, rather than mounted on the instrument panel or other area within the flight deck. The mask-mounted regulator eliminates the problem of a long hose which must be purged of air before oxygen is delivered to the mask.

Continuous Flow Oxygen System. The oxygen system typically provided to passengers. The passenger mask most commonly used in transport category airplanes is equipped with a reservoir bag, which is replenished by a continuous flow of oxygen. This design incorporates a check valve between the reservoir bag and the face mask to prevent introduction of exhaled gasses into the bag and assure 100% oxygen in the reservoir. Dilution is accomplished at the later phases in inspiration by a loaded ambient air valve which introduces ambient air following depletion of the oxygen in the reservoir bag.

Probable Failures. Probable failures may be expected to occur several times during the operational life of each airplane. The probability of occurrence is on the order of 1×10^{-5} or greater (Advisory Circular 25.1309–1A). The consequences of the failure or the required corrective action may not significantly impact the safety of the airplane or the ability of the crew to cope with adverse operating conditions. Systems that operate within this category are referred to as nonessential systems.

Improbable Failures. Improbable failures are not expected to occur during the total operational life of a random single airplane of a particular type, but may occur during the total operational life of all airplanes of a particular type. The probability of occurrence is on the order of 1×10^{-5} or less. The consequences of the failure or the required corrective action must not prevent the continued safe flight and landing of the airplane. Systems that operate within this category are referred to as essential systems.

Extremely Improbable Failures. Extremely improbable failures are so unlikely that they need not be considered to ever occur, unless engineering judgement would require their consideration. The probability of occurrence is on the order of 1×10^{-9} or less. This category includes failures or combinations of failures that would prevent the continued safe flight and landing of the airplane. Systems that operate within this category are referred to as critical systems.

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Section, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule: (1) will generate benefits that justify its costs; (2) is not a ''significant regulatory action'' as defined in the Executive Order and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures; (3) will not have a significant economic impact on a substantial number of small entities; and (4) will not constitute a barrier to international trade. These analyses, available in the docket, are summarized below.

Regulatory Evaluation Summary

The rule may impose relatively incremental costs in that applicant manufacturers will be required to demonstrate compliance and operators may experience increased operating costs. The FAA has determined that these potential incremental costs will be exceeded by the safety and efficiency benefits of the rule.

A. Ventilation and Cabin Cooling—§ 25.831 (a), (c), (d), and (g)

The FAA has determined that health and safety considerations justify the airflow design requirements of § 28.831(a) for all transport category airplanes. First, cabin crewmembers must be able to perform their duties without undue discomfort or fatigue. Secondly, benefits may be realized from the assured availability of the additional airflow when it is required. Third, fresh airflow is necessary to provide adequate smoke clearance in the event of smoke accumulation in the passenger cabin, an event which has occurred on several occasions. Fourth, administrative benefits will be realized because codified regulations are more efficient than special conditions. Finally, it is noted that other airworthiness authorities have comparable ventilation standards.

The airflow design requirements in revised § 25.831(a) are not expected to result in significant cost changes. Incremental design and manufacturing costs will be negligible because most current airplane models were designed with the additional airflow capability and, even in the absence of this rule, future airplane models would likely continue to be so designed. Incremental operating costs are expected to be nominal because the rule isn't an operating requirement and because the additional airflow is not required at all times and under all operating conditions. Furthermore, to the extent that the amendment codifies special conditions that would have continued to be applied to future high altitude airplane certifications, it will not cause changes in costs.

The new § 25.831(g) supplements the requirements found in § 25.1309 by limiting exposure times to excessive temperatures in the crew and passenger compartments which can present a hazard to continued safe flight and landing, and the limits are appropriate for all transport category airplanes, regardless of certificated maximum flight altitude.

B. Pressurization and Pressure Vessel Integrity—§§ 25.365(d) and 25.841(a)

The higher structural safety factor in revised § 25.365(d) is necessary for airplanes operating above 45,000 feet because a rapid decompression could be catastrophic to occupants. Therefore, the FAA finds that this event should be extremely improbable; i.e., not expected to occur during the lifetime of an entire fleet of airplanes. Service history shows that decompressions at high altitudes are not extremely remote events even for airplanes assessed to damage tolerance criteria. Loss of cabin pressure at lower altitudes has not been catastrophic due to higher ambient pressures and relatively short emergency descent time. The higher structural safety factor was included in the SST and executive transport category airplane special conditions to reduce the likelihood of structural failure and to limit the size of the opening if a failure occurs. The amendment will have a negligible cost.

Revised § 25.841(a) will provide airworthiness standards that allow subsonic airplanes to operate at the highest altitude for which the applicant manufacturer chooses to demonstrate that, after decompression caused by a single failure or combination of failures that are not shown to be extremely improbable: (1) the flightcrew will remain alert and be able to fly the airplane; (2) the cabin occupants will be protected from the effects of hypoxia; and (3) in the event that some occupants do not receive supplemental oxygen, they nevertheless will be protected against physiological injury.

Revised § 25.841(a)(1) is equivalent to existing § 25.841(a) except for editorial changes, elimination of the words ''reasonably'' and ''or malfunctions,'' and addition of the term ''failure conditions.'' Revised § 25.841(a)(2), which limits exposure of occupants after decompression to a cabin altitude not greater than 40,000, is unchanged from previously established standards for airplanes using diluter demand (flightcrew) and continuous flow (passenger) oxygen equipment. It combines the executive transport category high altitude special conditions and § 25.1309, i.e., the degree of the hazard must be inversely related to the probability of the failure condition.

The FAA has determined that the amendment will provide an acceptable level of safety at an acceptable cost. To demonstrate compliance with revised § 25.841, an approved emergency descent procedure and a cabin altitude analysis must be prepared and the crew would perform an emergency descent in accordance with the approved procedure. For probable system failures, the critical failure case (probable system failure) system failure tests must be conducted at the maximum airplane altitude. For improbable failures, the cabin altitude could be established by analysis and verified by tests at a lower altitude with the results extrapolated to the higher altitude. To the extent that the rule codifies special conditions that would have continued to be applied to future high altitude airplane type certifications, it will have no incremental economic effects. There will also be administrative benefits in that codified regulations are more efficient than special conditions.

C. Oxygen Equipment—§ 25.1447(c)

The FAA has determined that operation in accordance with the revised oxygen equipment standards will provide an acceptable level of safety. By specifying the type of oxygen equipment for the crew and the manner of its use, there will be assurance that the flightcrew will retain its ability to safely operate the airplane during a decompression. Panel-mounted regulators have proven satisfactory, but the FAA has determined that in a high altitude rapid decompression, the protection afforded by a mask-mounted regulator is superior to that of panel-mounted regulators. The FAA intends to allow sufficient latitude for system designers to develop safer and/or less expensive approaches to specific requirements. For this reason, § 25.1447(c)(3)(ii) will allow other means of protection for flight crewmembers if they afford the same protection.

To the extent that the changes codify special conditions that would have continued to be applied to future high altitude airplane type certifications, the amendments will have no incremental economic effect other than the administrative benefits of codified regulations relative to special conditions.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by Government regulations. The RFA requires a Regulatory Flexibility Analysis, in which alternatives are considered and evaluated if a rule is expected to have ''a significant economic impact on a substantial number of small entities.'' FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, prescribes standards for complying with RFA review requirements in FAA rulemaking actions. The Order defines ''small entities'' in terms of size thresholds, ''significant economic impact'' in terms of annualized cost thresholds, and ''substantial number'' as a number which is not less than eleven and which is more than one-third of the small subject to the proposed or final rule.

The rule will affect manufacturers and operators of transport category airplanes produced under future new, and some amended and supplemental, airplane type certifications. For manufacturers, Order 2100.14A specifies a size threshold for classification as a small entity as 75 or fewer employees. Since no part 25 airplane manufacturer has 75 or fewer employees, the rule will not have a significant economic impact on a substantial number of small airplane manufacturers. The size threshold for classification as a small operator is the ownership (but not necessarily the operation) of nine or fewer aircraft. The annualized cost thresholds constituting ''significant economic impact'' for operators of aircraft-for-hire, when expressed in 1994 dollars, are $120,000 for scheduled operators whose fleets consist entirely of aircraft with seating capacities of over 60, $69,000 for other scheduled operators, and $4,900 for unscheduled operators. The annualized incremental costs of this rule amortized over a maximum nine-airplane fleet are expected to be less than these annualized cost thresholds. The FAA

has therefore determined that the rule will not have a significant economic impact on a substantial number of small operators.

International Trade Impact Assessment

The rule will have little or no effect on the sale of U.S. airplanes in foreign markets and the sale of foreign airplanes into the U.S.

Federalism Implications

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 will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

International Compatibility

The FAA has reviewed corresponding International Civil Aviation Organization regulations and Joint Airworthiness Authorities regulations, where they exist, and has identified no differences in these amendments and the foreign regulations.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no requirements for information collection associated with this rule.

Conclusion

Because amending the airplane and equipment airworthiness standards for subsonic transport airplanes for operation to an altitude of 51,000 feet is not expected to result in substantial costs, the FAA has determined that this final rule is not major as defined in Executive Order 12866. For the same reason and because this is an issue which has not prompted a great deal of public concern, this final rule is not considered to be significant as defined in Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, since there are no small entities affected by this rulemaking, it is certified, under the criteria of the Regulatory Flexibility Act, that this final rule, a promulgation, will not have a significant economic impact, positive or negative, on a substantial number of small entities. A copy of the final regulatory evaluation prepared for this project may be examined in the public docket or obtained from the person identified under the caption **FOR FURTHER INFORMATION CONTACT.**

List of Subjects in 14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety.

The Amendment

Accordingly, the FAA amends part 25 of the Federal Aviation Regulations (FAR) (14 CFR part 25) as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

2. By amending § 25.365, by revising paragraph (d), to read as follows:

§ 25.365 Pressurized compartment loads.

* * * * *

(d) The airplane structure must be designed to be able to withstand the pressure differential loads corresponding to the maximum relief valve setting multiplied by a factor of 1.33 for airplanes to be approved for operation to 45,000 feet or by a factor of 1.67 for airplanes to be approved for operation above 45,000 feet, omitting other loads.

* * * * *

3. By amending § 25.831 by revising paragraph (a) and by adding a new paragraph (g) to read as follows:

§ 25.831 Ventilation.

(a) Under normal operating conditions and in the event of any probable failure conditions of any system which would adversely affect the ventilating air, the ventilation system must be designed to provide a sufficient amount of uncontaminated air to enable the crewmembers to perform their duties without undue discomfort or fatigue and to provide reasonable passenger comfort. For normal operating conditions, the ventilation system must be designed to provide each occupant with an airflow containing at least 0.55 pounds of fresh air per minute.

* * * * *

(g) The exposure time at any given temperature must not exceed the values shown in the following graph after any improbable failure condition.

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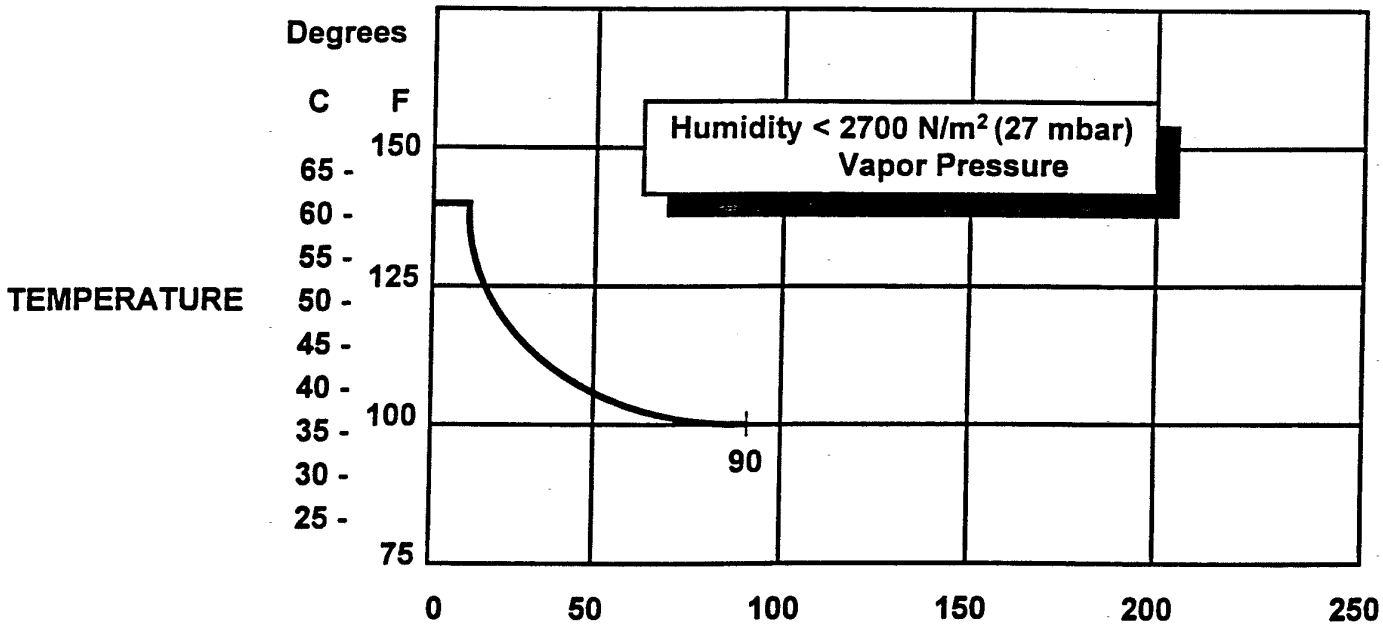

TIME - TEMPERATURE RELATIONSHIP

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4. By amending § 25.841 by revising paragraph (a) to read as follows:

§ 25.841 Pressurized cabins.

(a) Pressurized cabins and compartments to be occupied must be equipped to provide a cabin pressure altitude of not more than 8,000 feet at the maximum operating altitude of the airplane under normal operating conditions.

(1) If certification for operation above 25,000 feet is requested, the airplane must be designed so that occupants will not be exposed to cabin pressure altitudes in excess of 15,000 feet after any probable failure condition in the pressurization system.

(2) The airplane must be designed so that occupants will not be exposed to a cabin pressure altitude that exceeds the following after decompression from any failure condition not shown to be extremely improbable:

(i) Twenty-five thousand (25,000) feet for more than 2 minutes; or

(ii) Forty thousand (40,000) feet for any duration.

(3) Fuselage structure, engine and system failures are to be considered in evaluating the cabin decompression.

* * * * *

5. By amending § 25.1447, by revising paragraphs (c) (1) through (4), to read as follows:

§ 25.1447 Equipment standards for oxygen dispensing units.

* * * * *

(c) * * *

(1) There must be an oxygen dispensing unit connected to oxygen supply terminals immediately available to each occupant, wherever seated, and at least two oxygen dispensing units connected to oxygen terminals in each lavatory. The total number of dispensing units and outlets in the cabin must exceed the number of seats by at least 10 percent. The extra units must be as uniformly distributed throughout the cabin as practicable. If certification for operation above 30,000 feet is requested, the dispensing units providing the required oxygen flow must be automatically presented to the occupants before the cabin pressure altitude exceeds 15,000 feet. The crew must be provided with a manual means of making the dispensing units immediately available in the event of failure of the automatic system.

(2) Each flight crewmember on flight deck duty must be provided with a quick-donning type oxygen dispensing unit connected to an oxygen supply terminal. This dispensing unit must be immediately available to the flight crewmember when seated at his station, and installed so that it:

(i) Can be placed on the face from its ready position, properly secured, sealed, and supplying oxygen upon demand, with one hand, within five seconds and without disturbing eyeglasses or causing delay in proceeding with emergency duties; and

(ii) Allows, while in place, the performance of normal communication functions.

(3) The oxygen dispensing equipment for the flight crewmembers must be:

(i) The diluter demand or pressure demand (pressure demand mask with a diluter demand pressure breathing regulator) type, or other approved oxygen equipment shown to provide the same degree of protection, for airplanes to be operated above 25,000 feet.

(ii) The pressure demand (pressure demand mask with a diluter demand pressure breathing regulator) type with mask-mounted regulator, or other approved oxygen equipment shown to provide the same degree of protection, for airplanes operated at altitudes where decompressions that are not extremely improbable may expose the flightcrew to cabin pressure altitudes in excess of 34,000 feet.

(4) Portable oxygen equipment must be immediately available for each cabin attendant.

Issued in Washington, DC, on May 29, 1996.

David R. Hinson,

Administrator.

[FR Doc. 96–13947 Filed 6–4–96; 8:45 am]

BILLING CODE 4910–13–M

federal register

Wednesday
June 5, 1996

Part V

Federal Communications Commission

47 CFR Part 76

Open Video Systems; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 96–46; FCC 96–249]

Open Video Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Second Report and Order describes rules and policies concerning open video systems. The Second Report and Order amends our regulations to reflect the provisions regarding open video systems in the Telecommunications Act of 1996 (the ''1996 Act''). The Second Report and Order fulfills Congress' mandate in adopting the 1996 Act and will provide guidance to open video system operators, video programming providers, and consumers concerning open video systems.

DATES: *Effective date:* July 5, 1996, except for § 76.1502 which is not effective until approval by OMB of the new information requirements. The Commission will publish a document at a later date notifying the public as to the effective date of § 76.1502.

Written comments by the public on the proposed and/or modified information collections are due on or before July 5, 1996. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before 60 days after publication of the Second Report and Order in theFederal Register.

ADDRESSES: A copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725–17th Street, N.W., Washington, D.C., 20503 or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION, CONTACT: Rick Chessen, Cable Services Bureau, (202) 418–7200. For additional information concerning the information collections contained herein, contact Dorothy Conway at 202–418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order in CS Docket No. 96–46, FCC No. 96–249, adopted May 31, 1996 and released June 3, 1996. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW, Washington, D.C. 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1919 M Street, NW, Washington, D.C. 20554.

The Second Report and Order contains proposed and/or modified information collections. It has been submitted to the OMB for review, as required by the Paperwork Reduction Act of 1995. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collections contained in the Second Report and Order. Comments should address: (a) whether the proposed collections of information are necessary to the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

*OMB Approval Number:*3060–0700.

*Title:*Implementation of Section 302 of the Telecommunications Act of 1996; Open Video Systems.

*Type of Review:*Revision of a currently approved collection.

*Respondents:*640. (10 OVS operators, 250 video programming providers that may request additional Notice of Intent information, file rate complaints, or initiate dispute cases, 60 broadcast stations that may elect type of carriage or make network non-duplication notifications, 300 must-carry list requesters, 20 oppositions to OVS operator certifications.)

*Number of Responses:*3750. (10 Notices of Intent, 250 requests for additional Notice of Intent information, 250 responses to requests for additional Notice of Intent information, 50 rate complaints, 50 rate justifications, 60 carriage elections, 10 must-carry recordkeepers, 300 must-carry list requests, 300 provisions of must-carry lists, 1200 notifications of network non-duplication rights to OVS operators, 1200 OVS operator notifications of network non-duplication rights to programming providers, 10 certifications of compliance, 20 oppositions to certifications of compliance, 20 dispute case complainants, and 20 dispute case defendants.)

Estimated Burden to Respondents: Notice of Intent requirements: 10 prospective OVS operators are estimated to be in existence within the next year. Average number of entities that prospective OVS operators must notify with each Notice of Intent: 45. Average burden to each OVS operator to complete a Notice of Intent and to provide copies to all applicable entities: 8 hours apiece; therefore $10 \times 8 = 80$ hours. Estimated number of written requests for additional information that will be received subsequent to Notices of Intent: 25 per Notice of Intent $\times$ 10 Notices = 250. Average burden to prospective video programming providers to make each written request: 2 hours apiece; therefore $10 \times 25 \times 2 = 500$ hours. Average burden to each OVS operator to provide the additional information to all prospective video programming providers: 8 hours apiece; therefore $10 \times 8 = 80$ hours. Total burden for all respondents = 80 + 500 + 80 = 660 hours. Rate Justification requirements: Estimated number of rate complaints that video programming providers will file: 5 per OVS operator; therefore $10 \times 5 = 50$. Estimated number of rate justifications filed by OVS operators in response to rate complaints: 50. Burden to video programming providers for filing complaints: 1 hour per complaint; therefore $50 \times 1 = 50$ hours. Burden to OVS operators for filing rate justifications: 20 hours per justification; therefore $10 \times 5 \times 20 = 1{,}000$ hours. Total burden for all respondents: 50 + 1,000 = 1050 hours.

Must-Carry and Retransmission Consent requirements: Number of OVS operators: 10. Average number of broadcast stations in each OVS operator's area of carriage: 6. Average burden to broadcast stations for each election for must-carry or retransmission consent: 2 hours per election; therefore $10 \times 6 \times 2$ hours = 120 hours. Annual recordkeeping burden for OVS operators to maintain list of its broadcast stations carried in fulfillment of must-carry requirements: 4 hours per OVS operator; therefore $10 \times 4 = 40$ hours. Estimated annual number of written requests received by OVS operators: 30 per OVS operator; therefore $10 \times 30 = 300$. Burden for completing written requests: .25 hours per request; therefore $10 \times 30 \times .25 = 75$ hours. Burden to OVS operators to respond to requests: .25 hours per request; therefore $10 \times 30 \times .25 = 75$ hours. Total burden for all respondents: 120 + 40 + 75 + 75 = 310 hours.

Sports Exclusivity, Network Non-Duplication and Syndicated Exclusivity requirements: Estimated number of occurrences where television broadcast stations must notify OVS operators of exclusive or non-duplication rights

being exercised: 6 stations in each OVS operator's area of carriage × 20 annual notifications × 10 OVS operators = 1200. Burden to television stations to make notifications: .5 hours per notification; therefore 12400 × .5 = 600 hours. Burden for each OVS operator to make notifications available to all programming providers on their systems: 1 hour per notification × 1200 occurrences = 1200 hours. Total burden for all respondents: 600 + 1200 = 1800 hours.

Certification Process requirements: Annual burden to OVS operators to complete certifications: 1 hour apiece; therefore 10 × 1= 10 hours. Number of oppositions estimated to be filed with the Commission: 2 per certification; therefore 2 × 10 = 20. Average burden for completing oppositions: 4 hours per opposition; therefore 20 × 4 = 80 hours. Total burden for all respondents: 10 + 80 = 90 hours.

Dispute Resolution requirements: Estimated number of notices filed by complainant: 20. Estimated number of defendants' responses to notices filed: 20. Average burden for each notice and response to notice: 4 hours apiece; therefore 40 × 4 = 160 hours. We estimate that the 20 notices will result in the initiation of 10 dispute cases. The average burden for complainants and defendants for undergoing all aspects of the dispute case: 25 hours per case; therefore 20 (10 complainants + 10 defendants) × 25 = 500 hours. Total burden to all respondents: 160 + 500 = 660 hours.

Total Annual Burden to Respondents: 4570 hours. (660 + 1050 + 310 + 18600 + 90 + 660)

Estimated Cost to Respondents: Notices of Intent costs of stationery and postage at $2 apiece for (10 Notices of Intent × 45 entities) + 250 requests for additional information + 250 responses to requests for additional information = $1900.

Rate Justifications costs of stationery and postage at $2 apiece for 50 rate complaints + 50 rate justifications = $200.

Must-Carry and Retransmission Consent costs of stationery and postage at $2 apiece for 60 carriage elections + 300 requests for lists + 300 provisions of lists = $1320.

Sports Exclusivity, Network Non-Duplication and Syndicated Exclusivity costs of stationery and postage at $2 apiece for 1200 notifications to OVS operators + 1200 OVS operator notifications to programming providers = $4800.

Certification Process costs of stationery, diskettes, and postage at $5 for 10 certifications = $50. Costs of stationery and postage at $2 apiece for 20 opposition filings = $40. $50 + $40 = $90.

Dispute Resolutions costs of stationery and postage at $2 apiece for 20 notices + 20 responses to notices = $80. Costs of stationery and postage at $10 apiece for 10 complainants in dispute cases + 10 defendants in dispute cases = $200. $80 + $200 = $280.

Total Estimated Costs to Respondents: $8590. ($1900 + $200 + $1320 + $4800 + $90 + $280).

Needs and Uses: The information collections contained herein are necessary to implement the statutory provisions for Open Video Systems contained in the Telecommunications Act of 1996.

Second Report and Order—Open Video Systems

1. New Section 653 of the Communications Act establishes a new framework for entry into the video programming delivery marketplace—the ''open video system.'' *See* Sections 651 and 653 of the Communications Act of 1934, 47 U.S.C. § 151 (''Communications Act''). As designed by Congress, the open video framework provides an option, particularly to a local exchange carrier, for the distribution of video programming other than as a ''cable system'' governed by all of the provisions of Title VI of the Communications Act. If a telephone company agrees to comply with certain non-discrimination and other requirements it can be certified as an operator of an ''open video system'' and subjected to streamlined regulation under Title VI.

2. In establishing this structure, we believe that Congress intended to advance competition in two areas of the video marketplace. First, Congress sought to encourage telephone companies to enter the video programming distribution market and to deploy open video systems in order to ''introduce vigorous competition in entertainment and information markets'' by providing a competitive alternative to the incumbent cable operator. Telecommunications Act of 1996 Conference Report, S. Rep. 104–230 at 178 (February 1, 1996) (''Conference Report''). The incentive provided by Congress to encourage such entry was not only exemption from particular requirements of Title VI, but that streamlined Title VI obligations would apply in lieu of, and not in addition to, any requirements under Title II. Second, by requiring open video system operators to provide carriage opportunities for video programming providers on terms that are just and reasonable, and not unjustly or unreasonably discriminatory, Congress sought to foster competition by encouraging multiple programming sources on open video systems.

3. The open video system model can provide the competitive benefits that Congress hoped to achieve: market entry by new providers, enhanced competition, streamlined regulation, investment in infrastructure and technology, diversity of programming choices and increased consumer choice. We believe that the best way to achieve Congress' goals is to give open video system operators the flexibility to enter and compete based on the demands of the marketplace. Our approach reflects the reduced regulatory burdens clearly envisioned by Congress for open video systems. Where necessary, the Commission has provided a level of guidance to parties in order to comply with Congress' particular directives under Section 653 and to give certainty to the parties.

4. On March 11, 1996, the Commission released a Report and Order and Notice of Proposed Rulemaking, seeking comment on how to implement the requirements of Section 653. *See Report and Order and Notice of Proposed Rulemaking* in CS Docket No. 96–46 and CC Docket No. 87–266 (terminated), released March 11, 1996, 61 FR 10496 (March 14, 1996) (the ''*NPRM*''). We received 61comments and 79 replies in response to the NPRM. After consideration of the comments and reply comments, we hereby adopt the Second Report and Order herein.

A. Qualifications To Be an Open Video System Operator

5. We conclude that Section 653(a)(1) authorizes the Commission to allow non-local exchange (''non-LECs'') to operate open video systems, and to allow LECs to operate open video systems outside of their telephone service areas, when the public interest, convenience, and necessity are served. We further conclude that it would serve the public interest, convenience and necessity to permit: (1) non-LECs that are not cable operators; (2) LECs outside of their telephone service areas; and (3) cable operators outside of their cable franchise areas, to own or operate open video systems. With respect to cable operators within their cable franchise areas, we conclude that it would serve the public interest, convenience, and necessity to allow a cable operator to operate an open video system in its cable franchise area if it is subject to ''effective competition'' in its cable franchise area under Section 623(l)(1) of the Communications Act, 47 U.S.C.

§ 543(l)(1). This condition shall apply even if a cable operator also provides local exchange services within its cable franchise area. In certain circumstances, particularly where the entry of a facilities-based competitor into a market served by an incumbent cable operator would likely be infeasible, we believe that it would be consistent with the public interest to allow the incumbent cable operator to convert its cable system to an open video system even if it is not subject to ''effective competition'' in its cable franchise area under Section 623(l)(1) of the Communications Act, 47 U.S.C. § 543(l)(1). We will consider petitions from cable operators seeking such a public interest finding. Our decision to allow cable operators to become open video system operators under these circumstances shall not be construed to affect the terms of any existing franchising agreements or other contractual agreements.

B. Certification Process

6. In light of the brief period (ten days) allowed for Commission review of certification filings, we conclude that Congress intended the certification process to be streamlined. We will require that certifications be verified by an officer or director of the applicant, stating that, to the best of his or her information and belief, the representations made therein are accurate. The certification must contain particular facts and representations about the system, including: (1) the applicant's name, address and telephone number; (2) a statement of ownership, including all affiliated entities; (3) if the applicant is a cable operator applying for certification within its cable franchise area, a statement that the applicant is qualified to operate an open video system under Section 76.1501 of the Commission's rules; (4) a statement that the applicant agrees to comply and to remain in compliance with each of the Commission's regulations under Section 653(b); (5) if the applicant is required under 47 CFR § 64.903(a) to file a cost allocation manual, a statement that the applicant will file changes to its manual at least 60 days prior to commencement of service; (6) a general description of the anticipated communities or areas to be served upon completion of the system; (7) the anticipated amount and type (i.e., analog or digital) of capacity (for switched digital systems, the anticipated number of available channel input ports); and (8) a statement that the applicant will comply with the Commission's notice and enrollment requirements for unaffiliated video programming providers. Applicants will be required to file for certification using FCC Form 1275 (OMB approval pending).

7. Open video system operators may apply for certification at any point prior to the commencement of service, subject to conditions. If construction of new physical plant is required, the applicant must obtain Commission approval of its certification prior to the commencement of construction. If no new construction is required, Commission approval of certification may be obtained at any point prior to the commencement of service that would allow the applicant sufficient time to comply with the Commission's notification requirements herein.

8. We will consider comments or oppositions to a certification that are filed within five days of the Commission's receipt of the certification. Disapproval of a certification will not preclude the applicant from filing a revised certification or from refiling its original submission with a statement addressing the issues in dispute. Such refilings must be served on any objecting party or parties. Any certification filing that the Commission does not disapprove within ten days will be deemed approved. If the representations contained in a certification filing prove to be materially false or materially inaccurate, the Commission retains the authority to revoke an open video system operator's certification or to impose such other penalties it deems appropriate, including forfeitures.

C. Carriage of Video Programming Providers

9. We affirm our tentative conclusion that the 1996 Act does not require that the open video system operator be prohibited from participating in the allocation of channel capacity. We believe that the statute and implementing rules will prevent an open video system operator from discriminating against unaffiliated video programming providers, notwithstanding the operator's involvement in the allocation process.

10. These rules and policies are designed to implement Sections 653(b)(1)(A) and 653(b)(1)(B) of the Communications Act. An open video system operator will file a ''Notice of Intent'' (''Notice'') with the Commission. The Commission will release the Notice to the public. The Notice will contain certain information that a video programming provider reasonably would need in order to assess whether to seek carriage on the system. The Notice must include: a heading clearly indicating that the document is a Notice of Intent; the open video system operator's name, address and telephone number; a description of the system's projected service area; a description of the system's projected channel capacity, in terms of analog, digital, and other type(s) of capacity, upon activation of the system; a description of the steps a prospective video programming provider must follow to seek carriage on the system, including the name, address and telephone number of a person to contact for further information; the starting and ending dates of the initial enrollment period; and a certification that the system operator has complied with all relevant notification requirements under our open video system regulations concerning must-carry and retransmission consent, including a list of all local commercial and non-commercial television stations served, and a certificate of service showing that the Notice of Intent has been served on all local franchising authorities entitled to establish requirements under Section 611 of the Communications Act.

11. In addition to the information in the Notice, the open video system operator will be required to provide within five business days of receiving a written request from a potential video programming provider certain information, including: the projected activation date of the system (if a system is to be activated in stages, an operator should describe each stage and the projected dates on which each stage will be activated; a preliminary rate estimate; the information a video programming provider will be required to provide to qualify as a commercially *bona fide* video programming provider; technical information that is reasonably necessary to prospective video providers to assess whether to seek capacity on the system; any transmission or reception equipment needed by a video programming provider to interface successfully with the open video system; and the equipment available to facilitate the carriage of unaffiliated video programming and the electronic forms that will be accepted for processing and subsequent transmission through the system.

12. The open video system operator may establish terms and conditions of carriage for video programming providers that are just and reasonable, and are not unreasonably or unjustly discriminatory. For instance, an open video system operator may: (1) take reasonable steps to ensure that a prospective video programming provider's request for capacity is *bona fide;* (2) generally exclude an

incumbent, competing in-region cable operator from obtaining capacity on its system when such carriage would siginificantly impede facilities-based competition; (3) require video programming providers to obtain capacity in increments of no less than one full-time channel, however, the operator may not require video programming provider to obtain capacity only in amounts greater than one full-time channel; (4) preclude unaffiliated video programming providers from selecting the programming on more capacity than the operator itself and its affiliates; (5) negotiate co-packaging agreements with unaffiliated video programming providers; and (6) require assurances that a video programming provider will deliver video programming over the open video system within some reasonable time after the system is activated.

13. At the conclusion of the open enrollment or notice period, the open video system operator will determine whether demand for carriage, including its own demand, exceeds the system's channel capacity. For this purpose, analog and digital capacity must be treated separately. Specifically, if the system contains both analog and digital capacity, the open video system operator must separately assess whether analog demand exceeds analog capacity and whether digital demand exceeds digital capacity. Analog capacity shall be measured in 6 MHz channel increments, and digital capacity shall be measured in bandwidth.

14. Further, we anticipate that concerns regarding the methods for soliciting carriage demand and allocating system capacity will be alleviated with capacity significantly higher than carriage demand. Therefore, when an open video system operator can demonstrate that, due to technology, the system's capacity is plentiful as compared to demand, we will consider waiving the rules adopted in this Order.

15. If demand for carriage does not exceed system capacity, the open video system operator may fill all video programming providers' demands for capacity, including its own. If demand for carriage exceeds capacity, the open video system operator may select the programming services on no more than one-third of the system's activated channel capacity. Public, educational, and governmental (''PEG'') and must-carry channels carried pursuant to Sections 611, 614 and 615 of the Communications Act will count in the system's total activated channel capacity for purposes of calculating the operator's one-third limit, but will not count against the operator's one-third limit. Channels carrying ''shared'' programming will count against the operator's one-third limit on a pro-rata basis, e.g., if the operator shares the channel with one other video programming provider, it will count as half of a channel against the operator's limit. The remaining two-thirds of capacity, other than PEG and must-carry channels, must be allocated to unaffiliated video programming providers on an open, fair, non-discriminatory basis. The Commission does not require a specific allocation methodology.

16. After service commencement, an open video system operator will be required to allocate open capacity, if any is available, at least every three years beginning three years after the system is activated, through an open, fair, non-discriminatory process. Such open capacity will include capacity that becomes available during the year, e.g., due to a system upgrade or the expiration of carriage contracts, and any capacity on which the open video system operator is selecting the video programming beyond one-third of activated channel capacity. Changes in an operator's PEG and must-carry obligations which cause changes in the level of available open video system capacity must be accommodated in accordance with the rules adopted in this Order. An operator must keep a list of qualified video programming providers that have sought carriage or additional carriage during the previous three year period.

17. In addition, we find that channel positioning is an important part of allocating channel capacity to video programming providers, and therefore will require an open video system operator to assign channel positions in a non-discriminatory manner. We also find that, given Section 653(b)(1)(A)'s specific exemption of must-carry and PEG from its general non-discrimination requirements, an open video system operator must comply with the channel positioning requirements contained in those rules. Finally, we find that the statute leaves to an open video system operator's discretion whether to create shared channels for some or all of the duplicative programming on its system. However, we disagree with telephone companies who argue that the statutory reference to ''*any* video programming service'' means that an open video system operator may select—in advance of any actual duplication—which program services to place on shared channels. We also note that certain cable operators and programmers argue that the placement of a program service on a shared channel must be conditioned on the approval of the program service. We take this to mean simply that each video programming provider using the shared channel has reached its own agreement with the programming service. We also find that the statutory provision requiring subscribers have ''ready and immediate'' access to programming carried on shared channels means that channel sharing must be transparent to subscribers.

18. An open video system operator may not discriminate among video programming providers with respect to technology or technical information necessary to access the system.

D. Rates, Terms, and Conditions of Service

19. We will accord a strong presumption that carriage rates are just and reasonable for open video system operators where at least one unaffiliated video programming provider, or unaffiliated programming providers as a group, occupy capacity equal to the lesser of one-third of capacity or that occupied by the open video system operator and its affiliates, and where any rate complained of is no higher than the average of the rates paid by unaffiliated programmers receiving carriage from the open video system operator.

20. We adopt our tentative conclusion that some level of rate differentiation is permissible, provided that the bases for the differences are not unjust or unreasonable. We therefore agree with those commenters that argue that open video system operators should be given flexibility to offer different carriage rates.

21. We conclude that it is unnecessary and undesirable to require open video system operators to disclose publicly its carriage contracts. In general, we agree with those telephone companies that argue that making carriage contracts public would stifle competition by forcing them to divulge sensitive information. In order to protect video programming providers from discriminatory conduct, we will require all open video system operators to make preliminary rate estimates available to potential video programming providers. If, however, a complaint is filed, regardless of which party bears the burden of proof, the open video system operator's contracts with video programming providers will be subject to discovery.

E. Applicability of Title VI Provisions

1. Public, Educational and Governmental Access Channels

22. The first issue we must address with respect to PEG use is how PEG access obligations should be established for open video systems, including the extent and amount of channel capacity and other resources that open video system operators should be required to devote to PEG use. We conclude that open video system operators should in the first instance be permitted to negotiate their PEG access obligations with the relevant local franchising authority. These negotiations may include the local cable operator if the local franchising authority, the open video system operator and the cable operator so desire.

23. We are unaware of any cable operator that charges PEG programmers for access to the PEG channels on its cable system. Therefore, because the PEG access obligations of open video system operators are to the extent possible to be no greater or lesser than those imposed on cable operators, we do not foresee open video system operators charging PEG programmers for PEG use. We recognize that certain costs will be associated with providing PEG channels. These costs may be recovered as an element of the carriage rate.

24. Although we believe that negotiation is the best way to establish the appropriate PEG access obligations for each open video system operator, we recognize that the parties may be unable to reach agreement. We therefore believe it is necessary to have a default mechanism for establishing PEG access obligations. If the open video system operator and the local franchising authority are unable to come to an agreement, we will require the open video system operator to satisfy the same PEG access obligations as the local cable operator. We believe this can be accomplished by connection to the cable operator's PEG access channel feeds and by sharing the costs directly related to supporting PEG access, including costs of PEG equipment and facilities, and equipment necessary to achieve the connection. We also determine that, under these circumstances, in order to comply with the statutory directive that to the extent possible the obligations be no greater or lesser than those imposed on cable operators, the open video system operator must provide the same amount of channel capacity for PEG access as the local cable operator is required to provide.

25. If an open video system operator builds an institutional network, the local franchising authority may require that educational and govermental access channels be designated on that network to the extent such channels are designated on the institutional network of the local cable operator.

26. In addition, absent an agreement to the contrary, the open video system operator will be subject to the same rules and procedures as those imposed on the local cable operator regarding the use of PEG channels for other programming when such channels are not being used for PEG.

27. We will require cable operators to permit open video system operators to connect with their PEG feeds. We will leave how this connection is accomplished to the discretion of the parties, allowing them to take into consideration the exact physical and technical circumstances of the cable and open video systsms involved. If the cable and open video system operators cannot agree on how this connection can best be accomplished, the local franchising authority may decide. In this context, the local franchising authority may require that the connection take place on government property or on public rights of way.

28. With regard to cost sharing, the costs of connection and maintaining PEG facilities and equipment shall be divided equitably between the cable operator and the open video system operator. This shall include captial contributions and any other costs or investments directly relating to or supporting PEG access and required by the cable operator's franchise agreement. Capital expenses incurred prior to the open video system operator's connection shall be subject to cost sharing on a pro rata basis to the extent such investments have not been fully amortized by the cable operator.

29. Where the open video system operator and the local franchising authority cannot negotiate an agreement regarding PEG access, and the open video system operator is instead satisfying its PEG access obligations by connection and cost sharing with the cable operator's PEG facilities, the open video system operator's PEG access obligations should change to the extent that the cable operator's PEG access obligations change with the franchise renewal. Accordingly, open video system operators should be prepared to adjust their systems to comply with new PEG access obligations as necessary. An open video system operator will not, however, be required to displace other programmers to accommodate PEG channels until channel capacity becomes available, whether it be due to increased channel capacity or decreased demand for channel capacity. Because PEG access channels are expressly exempt from Section 653(b)(1)(A)'s non-discrimination requirement, an open video system operator need not and should not wait until the next three-year reallocation to comply with new PEG access obligations, but should comply with such obligations whenever additional capacity is or becomes available.

30. Where there is no local cable operator and the open video system operator and the local franchising authority cannot agree on appropriate PEG access obligations, we believe that the open video system operator should make a reasonable amount of channel capacity available for PEG access, as well as provide reasonable support of PEG, services, facilities and equipment. First, the open video system operator's PEG access obligations shall depend on whether there used to be a cable franchise agreement in that franchise area. If there was, the open video system operator shall follow the PEG terms of the previously existing franchise agreement. Absent a previous cable franchise agreement, the open video system operator's PEG access obligations shall be determined by comparison to the franchise agreement(s) for the nearest operating cable system with a commitment to provide PEG access.

31. We believe that PEG access channels should be provided to all subscribers to the open video system. The provision of PEG channels to all open video system subscribers is important to ensure that the PEG access obligations imposed on open video system operators are ''no greater or lesser'' than those imposed on cable operators.

32. We also conclude that open video system operators should be subject to PEG access requirements for every franchise area with which its system overlaps. We believe that, despite open video system operators not being subject to franchise requirements, pursuant to Section 653(c)(1)(C), it is appropriate to require open video system operators to comply with these franchise by franchise requirements so that the obligations imposed on the open video system operator with respect to PEG access are ''no greater or lesser'' than those imposed on cable operators, as required by Section 653(c)(2)(A) of the Communications Act.

2. Must-Carry and Retransmission Consent

33. We find that at this time the public interest will best be served by application of the cable must-carry and

retransmission consent rules to open video systems, even though future system configurations may require modification of our regulations. If our regulations later become inadequate for open video system operators, we intend to address promptly the problem. For now, we are guided by Congress' directive that we impose obligations that are ''no greater or lesser'' than the obligations currently imposed on cable operators.

(1) Must-Carry

34. Pursuant to Section 614(b)(7) and 615(h), the operator of a cable system is required to ensure that signals carried in fulfillment of the must-carry requirements are provided to every subscriber of the system. Sections 614 and 615 also generally state the number of must-carry stations that a cable operator is required to provide. We believe that in order to apply obligations that are no greater or lesser than those imposed on cable operators, we must also apply these requirements to open video system operators. Consequently, we find that the operator of an open video system must ensure that every subscriber on the open video system receives all appropriate must-carry channels carried in accordance with our rules. An open video system operator will be required to fulfill this obligation regardless of whether or not individual subscribers on its system subscribe to the open video system operator's programming package. We do not find it necessary to prescribe a specific method to be used by an open video system operator to comply with these requirements, such as a requirement that an open video system operator must use a basic tier. We recognize that certain costs will be associated with providing must-carry channels. These costs may be recovered as an element of the carriage rate.

35. As a related matter, we leave the decision of how to offer any necessary customer premises equipment to the open video system operator, including whether the open video system operator will offer it directly or require video programming providers to provide the equipment. In addition, an open video system operator will be required to implement the channel positioning requirements contained in the must-carry rules in a manner as similar as possible to that of a cable operator, including, for example, identifying broadcast stations on the same channels as their over-the-air channel numbers, or on a channel mutually agreed upon by the station and the operator. Consistent with the statutory requirement of comparable treatment, open video systems that span multiple television markets will be subject to the same must-carry and retransmission consent rules as cable systems that span multiple markets.

(2) Retransmission Consent

36. We find that our existing retransmission consent rules should also be applied to the distribution of programming over open video systems. These rules generally prohibit multichannel video programming providers from retransmitting the signal of a commercial broadcasting station without the station's express authority. Our retransmission consent rules will apply to any video programming provider on an open video system that provides more than one channel of video programming. Given the inherent differences between cable systems and open video systems, we believe that the application of our retransmission consent rules in this fashion will impose obligations that are no greater or lesser than those imposed on cable operators. The open video system operator is charged with the responsibility for assuring that its system meets the requirements of our must-carry rules. We believe that it is also appropriate as a matter of administrative efficiency that open video system operators receive all must-carry/retransmission consent election statements that broadcast stations are required to send under our retransmission consent rules. However, open video system operators will not be responsible for making retransmission consent arrangements for all programming carried on the system. Once retransmission consent has been elected, broadcast stations will have to negotiate agreements with individual video programming providers on the open video system. Television broadcast stations are not required to make the same elections for open video systems and cable systems in the same geographic area.

3. Program Access

37. We believe that four general issues arise in the context of applying the program access rules to open video systems. The first concerns the extent to which the program access regime restricts the activities of open video system operators. The second pertains to how the program access regime restricts the conduct of open video system video programming providers. The third issue concerns the extent to which the benefits of the program access statute and rules apply to open video system video programming providers. The fourth issue raised by commenters involves certain expansions of our program access rules.

38. Section 653(c)(1)(A) applies the program access provisions to open video system operators. Given this statutory language, we conclude that the program access restrictions shall apply to the conduct of open video system operators in the same manner as they are currently applied to cable operators and common carriers or their affiliates that provide video programming directly to subscribers. Specifically, the conduct of an open video system operator shall be subject to Section 628(b), which prohibits unfair methods of competition and unfair or deceptive acts or practices. In addition, the program access provisions which preclude certain specific conduct, including undue or improper influence, and discrimination in prices, terms, or conditions, shall apply to open video system operators as well. Similarly, the limitations on exclusive contracts contained in Sections 628(c)(2) (C) and (D) shall apply to open video system operators so that open video system operators will generally be restricted from entering into exclusive contracts with satellite programmers in which an open video system operator has an attributable interest, but not in which a cable operator has an attributable interest. Thus, any practice, understanding, arrangement or activity, including exclusive contracts, between an open video system operator and a satellite programmer vertically integrated with an open video system operator that prevents an MVPD from obtaining satellite programming in an area unserved by a cable operator as of the date of enactment of the 1992 Cable Act is *per se* unlawful. Exclusive contracts between an open video system operator and a satellite programmer vertically integrated with an open video system operator which relate to an area served by cable as of the date of enactment of the 1992 Cable Act are prohibited unless the Commission first determines that such a contract is in the public interest in accordance with the factors set forth in Section 628(c)(2)(D). Moreover, Section 628 and or program access rules shall apply to any affiliate established by an open video system operator to distribute programming on its system. We also believe it is reasonable to, and will therefore insert a note in Section 76.1000(h) of our rules indicating that satellite open video system programming is included within the definition of satellite cable programming.

39. The programming relationships that are likely to occur with respect to open video systems raise additional

program access issues that are not raised by the programming relationships on cable systems. In the cable context, an agreement to carry programming is generally between a programmer and a cable operator. Restricting the activities of cable operators and satellite programmers vertically integrated with cable operators therefore addresses Congress' concern over cable operator control over video programming. In the open video system context, however, there may be many programmers providing packages of programming directly to subscribers. An agreement to carry programming may be between a programmer and an open video system operator or between a programmer who produces programming and one who will distribute it directly to subscribers. Moreover, a video programmer may provide its own programming directly to subscribers by purchasing channel capacity on an open video system platform.

40. We believe that, in order to effectuate the purposes of the program access statute in the open video context, open video system programming providers should be subject to the program access restrictions to the extent described below. In the open video system context, a vertically integrated satellite programmer will not be *per se* precluded from selling its programming exclusively to one MVPD on an open video system, as long as that MVPD is not affiliated with the same type of operator as the vertically integrated satellite programmer. Similarly, cable operators, common carrriers or their affiliates providing video programming directly to subscribers and open video system operators are not generally restricted from entering into exclusive contracts with non-vertically integrated programmers. We do not intend to foreclose challenges to exclusive contracts between vertically integrated satellite programmers and MVPDs, including unaffiliated MVPDs, on open video systems under Section 628(b) or Section 628(c)(2)(B), which prohibits, with limited exceptions, discrimination among competing MVPDs by a vertically integrated satellite programmer.

41. We believe that the purposes of the program access rules and statute are served by extending the current program access rules to apply to exclusive arrangements between satellite programmers in which a cable operator has an attributable interest and open video system programming providers in which a cable operator has an attributable interest. We believe that Section 628(b) authorizes the Commission to adopt additional rules to accomplish the program access statutory objectives should additional types of conduct emerge as barriers to competition and obstacles to the broader distribution of satellite cable and broadcast programming. We will apply the program access rules under Section 628 to exclusive contracts between a satellite programmer in which a cable operator has an attributable interest (''cable-affiliated satellite programmer'') and an open video system video programming provider in which a cable operator has an attributable interest (''cable-affiliated open video system programming provider''). Specifically, such exclusive contracts will be prohibited unless the contract pertains to an area served by a cable operator as of the date of the enactment of the 1992 Cable Act and the Commission first determines that the exclusive arrangement is in the public interest under the factors listed in Section 628(c)(4). Two types of cable-affiliated satellite programmer/cable-affiliated open video system programming provider relationships will be affected by this restriction on exclusive contracts. First, this rule will preclude a cable-affiliated satellite programmer from entering into an exclusive contract to provide its own programming to a cable-affiliated open video system programming provider with which the programmer is affiliated. Second, the new rule will preclude, absent prior Commission approval, a cable-affiliated satellite programmer from entering into an exclusive contract to provide its programming to an open video system programming provider that is affiliated with another cable operator.

42. We believe that subjecting these types of exclusive contracts to prior Commission review is necessary to fulfill the objectives of the program access rules in the open video system context. The program access requirements have at their heart the objective of releasing programming to existing or potential competitors of traditional cable systems so that the public may benefit from the development of competitive distributors. Our primary concern is that exclusive arrangements among cable-affiliated open video system programmers and cable-affiliated satellite programmers may serve to impede development of open video systems as a viable competitor to cable to the extent that popular programming services are denied to open video system operators or unaffiliated open video system programmers that seek to package such programming for distribution to subscribers. In adopting this rule, we recognize, as did Congress in enacting the program access provisions, that exclusive contracts can often have pro-competitive effects under certain market conditions. However, strategic vertical restraints can also deter entry into markets for the distribution of multichannel video programming. Accordingly, the Commission's program access policies seek to balance the likely competitive harm to consumers created by a particular vertical arrangement against its likely efficiency benefits. In the context of open video systems, unless the Commission first determines that exclusive arrangements for satellite programming which favor cable-affiliated video programming providers are in the public interest under Section 628(c)(4), the potential for competitive harm from such contracts requires their prohibition.

43. As stated above, a satellite programmer may also provide its own programming directly to subscribers by purchasing channel capacity on an open video system platform. It is therefore possible for a programmer vertically integrated with a cable operator to purchase channel capacity, to provide its own programming directly to subscribers and to refuse to sell the programming it owns to another MVPD on the open video system. Such a refusal to sell would appear to be unreasonable because it discriminates against a class of distributors, i.e., open video system programming providers. Furthermore, this type of refusal to sell would result in the same situation which we have deemed contrary to the purposes of Section 628 when achieved through an exclusive contract, i.e., restricting competitive access to vertically integrated satellite cable programming to a vertically integrated entity. We believe this would consequently be actionable under Section 628(c).

44. Open video system operators and video programming providers that provide more than one channel of programming on an open video system are MVPDs. We will not create an exception to our rules that would exclude open video system operators or open video system programming providers from the benefits of our program access rules. Accordingly, we will add a note to the definition of MVPD contained in Section 76.1000(e) of our rules to indicate that video programming providers on open video systems that provide more than one channel of programming to subscribers are MVPDs.

4. Sports Exclusivity, Network Non-Duplication and Syndicated Exclusivity

45. We believe that we can directly apply our existing cable regulations regarding sports exclusivity, syndicated exclusivity and network non-duplication to open video systems. We do not believe that open video systems that span multiple geographic zones or communities should be treated any differently than similar cable systems. The record evidence indicates that large cable systems are able to comply with these provisions, and no commenter has provided any reason why open video systems should not be required to comply with the same regulations. In addition, we find that open video system operators should be responsible for compliance with these rules.

46. In all cases, we find that television stations must notify the open video system operator of the exclusive or non-duplication rights being exercised. When the open video system operator receives such a notification, it will be required to give the appropriate video programming providers an opportunity to either substitute signals or delete signals where possible. Therefore, we require that open video system operators make all notices of exclusive or non-duplication rights received immediately available to the appropriate video programming providers on their systems. We would not expect to impose sanctions on an OVS operator for violations of the exclusivity rules by an unaffiliated program supplier if the operator provided proper notices to the program supplier and took prompt steps to stop the distribution of the infringing program once it was notified of the violation.

5. Other Title VI Provisions

47. The Commission will, as proposed in the NPRM, apply the following provisions of the Communications Act and the Commission's rules thereunder to open video systems: Section 613 (c) through (h) regarding ownership restrictions; Section 616 regarding regulation of carriage agreements; Section 623(f) regarding negative option billing; Section 631 regarding subscriber privacy; and Section 634 regarding equal employment opportunity.

6. Preemption of Local Franchising Requirements

48. Section 653 exempts an open video system operator from the requirement of obtaining a local franchise under Section 621, although the operator still must pay a gross revenue fee ''in lieu of'' a franchise fee and must satisfy obligations under Section 611. However, we believe that Congress did not intend to infringe upon local communities' prerogative to manage their rights-of-way in order to protect the public health and safety. State and local authorities may impose conditions on an open video system operator for use of the rights-of-way, so long as such conditions are applied equally to all users of the rights-of-way (i.e., are non-discriminatory and competitively neutral). Conversely, state and local authorities may not impose specific conditions on use of the rights-of-way that are unrelated to their management function or that apply to an open video system operator differently than they apply to other rights-of-way users.

49. Any state or local requirement that seeks to impose Title VI ''franchise-like'' requirements on an open video system operator would directly conflict with Congress' express direction that open video system operators need not obtain local franchises. Examples of such ''franchise-like'' requirements include constructing institutional networks, donating money to local educational or charitable institutions, or specifying the amount or type of capacity that the system must possess. Such requirements are preempted because they ''stand[ ] as an obstacle to the accomplishment of the full purposes and objectives of Congress.'' We believe the most natural reading of Section 653, in light of Congress's stated intent, is that state and local governments cannot require any open video system operator to obtain a Title VI franchise from a state or local authority for use of public rights-of-way necessary to operate its open video system.

50. The state or local government may, however, impose non-discriminatory and competitively conditions on an open video system operator for use of the rights-of-way, so long as such conditions are applied equally to all users of the rights-of-way (i.e., are non-discriminatory and competitvely neutral). For instance, a state or local government could impose normal fees associated with zoning and construction of an open video system, so long as such fees were applied in a non-discriminatory and competitively neutral manner. Conversely, state and local authorities may not impose specific conditions on the use of the rights-of-way that are unrelated to their management function or that apply to an open video system operator differently than they apply to other users of the rights-of-way.

51. Local authorities will retain their ability to address the following valid local concerns: (1) coordination of construction schedules, (2) establishment of standards and procedures for constructing lines across private property, (3) determination of insurance and indemnity requirements, (4) establishment of rules for local building codes, (5) repairing and resurfacing construction-damaged streets, (6) ensuring public safety in the use of rights-of-way by gas, telephone, electric, cable, and similar companies, and (7) keeping track of the various systems using the rights-of-way to prevent interference among facilities.

52. We will apply the fee to all gross revenues received by an open video system operator or its affiliates, including all revenues received from subscribers and all carriage revenues received from unaffiliated video programming providers. Gross revenues will not include revenues collected by unaffiliated video programming providers from their subscribers or advertisers, etc.—gross revenues will only include fees paid to the OVS operator. We will also require any gross revenues fee that the open video system operator or its affiliate collects from subscribers to be excluded from gross revenues.

53. Thus, we conclude that a state or local government requirement that directs an open video system operator to obtain a Title VI franchise, or impose Title VI ''franchise like'' requirements, to operate an open video system directly conflicts with Section 653 of the Communications Act and is preempted.

F. Information Provided to Subscribers

54. We believe, as stated in the Notice, that Section 653(b)(1)(E)(i) is intended to be a specific application of the non-discrimination requirement contained in Section 653(b)(1)(A). Specifically, we believe that this provision is meant to ensure that an open video system operator does not favor itself or its affiliates in its interaction with the customer at the point of actual program selection (i.e., when the subscriber is choosing a particular channel to watch). The type of ''material or information'' that therefore would fall within the scope of Section 653(b)(1)(E)(i) includes navigational devices, guides (electronic or paper) and menus used by the subscriber to actively select programming.

55. An open video system operator may not discriminate in favor of affiliated programming by, for example, ''burying'' unaffiliated programmers in difficult to access portions of electronic guides, navigational devices or menus, or by otherwise placing affiliated programming in more prominent

positions on the electronic guides, navigational devices or menus. To the extent that an open video system operator uses billing inserts to advertise its service generally, rather than providing inserts as a guide to program selection, we believe that such inserts fall outside the scope of Section 653(b)(1)(E)(i). We believe that a paper programming guide that is intended to be used at the point of actual channel selection would be governed by Section 653(b)(1)(E)(i).

56. Section 653(b)(1)(E)(i) prohibits the open video system operator from unreasonably discriminating in favor of its affiliated programming by means of discriminatory use of on-system advertising, if that advertising is contained in any channel selection guide, aid or menu. Accordingly, an open video system operator may not use its position as controller of a navigational device or menu to advertise its programming on the navigational device or menu, while at the same time disallowing unaffiliated programming providers comparable opportunities to advertise on the navigational device or menu.

57. Menus offered by the OVS operator may inform the viewer that other services (that the consumer has not ordered) are available on the open video system, and direct the subscriber how to access a second screen with more complete information on those other services. In addition, for programming to which the consumer has actually subscribed, no programming service on the open video system operator's navigational device should be more difficult to select than any other programming service.

58. An open video system operator is not relieved of the non-discrimination provisions of Section 653(b)(1)(E)(i) if the operator offers a navigational device that works only with affiliated video programming packages. In addition, the open video system operator may not evade its obligation to ensure that other non-affiliated programming providers are represented on a navigational device, guide or menu simply by having the service nominally provided by its affiliate.

59. We find that the ''suitable and unique'' identification requirement of Section 653(b)(1)(E)(ii) would be satisfied if an open video system operator's navigational device included a provider's name (broadcast station call letters and network affiliation, for example), but not its logo or branding device. However, if the open video system operator chooses to prohibit unaffiliated providers' logos or branding information on its navigational device, guide or menu, it would similarly have to prohibit its own logo or branding information under Section 653(b)(1)(E)(i).

G. Dispute Resolution

60. Given the short 10-day period in which the Commission must approve or disapprove a certification request, we believe that the dispute resolution process will play a key role in ensuring the success of the open video framework. In order for the Commission's review to be as efficient and thorough as possible, we adopt our suggestion in the Notice to model our open video system dispute resolution process after our rules governing program access disputes (except for must-carry complaints and petitions for special relief).

61. We will seek to dispose of as many cases as possible on the basis of a complaint, answer and reply. Parties should include all relevant evidence, including documentary evidence, in the complaint and answer to support their claims. Discovery will not be permitted as a matter of right, but on a case-by-case basis as deemed necessary by the Commission staff reviewing the complaint. Any complaint filed pursuant to Section 653(a)(2) must be filed within one year of the date on which the open video system operator's actions allegedly violated Commission rules.

62. Finally, while we encourage parties to use ADR techniques to attempt to resolve their dispute without the Commission's direct involvement, we believe that a clause in a carriage agreement requiring ADR before a dispute could be brought to the Commission would not be a ''just and reasonable'' term or condition of carriage. Such a requirement could delay an aggrieved party's right to redress significantly beyond the 180-day period mandated by Congress. In addition, permitting operators to require as a condition of carriage that all disputes be resolved through ADR, may lead operators to mandate ADR practices that give them an unfair advantage over complainants.

H. Joint Marketing, Bundling and Structural Separation

63. Section 653 is silent on the issue of joint marketing. The Act does, however, expressly impose joint marketing restrictions on telephone companies in other contexts. Given that these Sections were all enacted as part of the 1996 Act, we find it a significant indication of Congress' intent that Sections 271(e), 272(g) and 274(c) contain express joint marketing restrictions while Section 653 does not. Section 272(g)(2) specifically sets a similar competitive condition on the lifting of the joint marketing restrictions between telephone exchange and interLATA services: a BOC's authorization under Section 271(d) to provide interLATA services in an in-region State. Again, no such condition was established in Section 653.

64. Since Congress chose not to adopt joint marketing restrictions in Section 653 even though (1) it specifically applied joint marketing restrictions to other provisions of the 1996 Act, and (2) it restricted joint marketing in some provisions of the 1996 Act until the introduction of competition in the local telephone market, we decline to adopt joint marketing restrictions here. We note, however, that any entity that offers any telecommunications service will be subject to both the customer proprietary network information (''CPNI'') restrictions set forth in Section 222 of the Communications Act and any regulations the Commission establishes pursuant to Section 222. Similarly, any provider of cable or open video service will be subject to the cable privacy restrictions set forth in Section 631.

b. Bundling

65. Section 653 also does not address the issue of ''bundling,'' which we define in this context to mean the offering of video service and local exchange service in a single package at a single price. We would also treat as bundling the situation in which an entity offers one service at a discount if the customer purchases another service. We disagree that the bundling of telephone and video services will be anti-competitive, and increase the risk of cross-subsidization of the competitive service by the monopoly service. We believe that the Commission's Part 64 cost allocation rules and any amendments thereto will protect adequately regulated telephone ratepayers from a misallocation of costs that could lead to excessive telephony rates. However, we will impose certain safeguards to protect consumers in these circumstances. First, the open video system operator, where it is the incumbent LEC, may not require that a subscriber purchase its video service in order to receive local exchange service. Second, while the open video system operator may offer subscribers a discount for purchasing the bundled package, the LEC must impute the unbundled tariff rate for the regulated service.

c. Structural Separation

66. We disagree with those commenters that argue that a separate affiliate requirement nevertheless should be imposed pursuant to Section 272. We believe that Congress did not intend to impose a separate affiliate requirement on LECs providing open video service. First, Section 653 is silent on whether LECs and others must provide open video service through a separate affiliate. In fact, Congress expressly directed that Title II requirements not be applied to ''the establishment and operation of an open video system'' under Section 653. In addition, Section 272 exempts ''incidental interLATA services'' from the separate affiliate requirement, and includes certain video programming services within the definition of ''incidental interLATA services'' described in Section 271(g). Since we conclude that Congress did not intend to apply a separate affiliate requirement in this context, we need not address whether the provision of video programming would qualify as an ''information service'' under Section 272(a)(2)(C), or exercise our authority under Section 272(f)(3). Rather, we will adhere to Congress' intent and decline to impose a separate affiliate requirement here.

I. Advanced Telecommunications Incentives

67. In order to promote the development of advanced telecommunications to consumers, the Commission will consider proposals for actions to encourage open video system deployment of advanced telecommunications services as defined in Section 706 of the 1996 Act. This approach will be available on a case-by-case basis for open video system operators that can demonstrate a need for additional deregulatory measures to successfully deploy advanced telecommunications to all consumers.

Final Regulatory Flexibility Analysis

68. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. §§ 601–12, the Commission's final analysis with respect to the *Second Report and Order* is as follows:

69. *Need and purpose of this action:* The Commission, in compliance with Section 302(a) of the Telecommunications Act of 1996 pertaining to open video systems, is required to adopt rules and procedures necessary to implement this section of the Telecommunications Act of 1996.

70. *Summary of issues raised by the public in response to the Initial Regulatory Flexibility Analysis:* Collectively, the National League of Cities; the United States Conference of Mayors; the National Association of Counties; the National Association of Telecommunications Officers and Advisors; Montgomery County, Maryland; the City of Los Angeles, CA; the City of Chillicothe, OH; the City of Dearborn, Michigan; the City of Dubuque, Iowa; the City of St. Louis, MO; the City of Santa Clara, CA; and the City of Tallahassee, FL filed reply comments in response to the Initial Regulatory Flexibility Analysis. These reply comments assert that a significant number of small governmental entities will be burdened by the proposals of the Commission and commenters. The Commission has considered these reply comments and has attempted to structure the open video system rules set forth in this *Second Report and Order* so as to minimize the administrative burden upon small governmental entities.

71. *Significant alternatives considered:* Petitioners representing cable interests, telephone interests, programming interests, consumer interests and local government interests submitted several alternatives aimed at minimizing administrative burdens. In this proceeding, the Commission has considered these alternatives and has attempted both to accommodate the concerns raised by the parties and to minimize the administrative burdens upon the parties in accordance with Congress' desire for the Commission to develop a streamlined regulatory model for open video service operators.

Paperwork Reduction Act of 1995 Analysis

72. The requirements adopted in the *Second Report and Order* have been analyzed with respect to the Paperwork Reduction Act of 1995 (the ''1995 Act'') and found to impose new or modified information collection requirements on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget (''OMB'') as prescribed by the 1995 Act. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collections contained in this *Second Report and Order* as required by the 1995 Act, Public Law No. 104–13. OMB comments are due on or before August 5, 1996. Comments should address: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (2) the accuracy of the Commission's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

73. Written comments by the public on the modified information collections are due on or before June 20, 1996, and reply comments are due on or before July 1, 1996. Written comments must be submitted by OMB on modified information collections on or before August 5, 1996. A copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to dconway@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236, NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov. For additional information concerning the information collections contained herein contact Dorothy Conway at 202–418–0217, or via the Internet at dconway@fcc.gov.

Ordering Clauses

74. Accordingly, *it is ordered* that, pursuant to Sections 4(i), 4(j), 303(r), and 653 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), and 573, the rules, requirements and policies discussed in this *Second Report and Order* ARE *adopted* and Sections 76.1000 and 76.1500 through 76.1515 of the Commission's rules, 47 CFR §§ 1000, 76.1000 and 76.1500 through 76.1515 ARE AMENDED as set forth below.

75. *It is further ordered* that the requirements and regulations established in this decision shall become effective upon approval by OMB of the new information collection requirements adopted herein, but no sooner than July 5, 1996.

76. *It is further ordered* that the Secretary shall send a copy of this *Second Report and Order* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. §§ 601 through 699 (1981).

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

List of Subjects in 47 CFR Part 76

Cable television.

Appendix B

Rule Changes

Part 76 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 76—CABLE TELEVISION SERVICE

1. The authority citation for Part 76 is revised to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.1000 is amended by adding notes to paragraphs (e) and (h) to read as follows:

§ 76.1000 Definitions.

* * * * *

(e) * * *

Note to paragraph (e): A video programming provider that provides more than one channel of video programming on an open video system is a multichannel video programming distributor for purposes of this subpart O and Section 76.1507.

* * * * *

(h) * * *

Note to paragraph (h): Satellite programming which is primarily intended for the direct receipt by open video system operators for their retransmission to open video system subscribers shall be included within the definition of satellite cable programming.

* * * * *

3. Section 76.1004 is amended by designating the existing text as paragraph (a), and adding paragraph (b) to read as follows:

§ 76.1004 Applicability of program access rules to common carriers and affiliates.

* * * * *

(b) Sections 76.1002(c)(1) through (3) shall be applied to a common carrier or its affiliate that provides video programming by any means directly to subscribers in such a way that such common carrier or its affiliate shall be generally restricted from entering into an exclusive arrangement for satellite cable programming or satellite broadcast programming with a satellite cable programming vendor in which a common carrier or its affiliate has an attributable interest or a satellite broadcast programming vendor in which a common carrier or its affiliate has an attributable interest, unless the arrangement pertains to an area served by a cable system as of October 5, 1992, and the Commission determines in accordance with Section § 76.1002(c)(4) that such arrangment is in the public interest.

4. A new Subpart S is added to Part 76 to read as follows:

Subpart S—Open Video Systems

Sec.
76.1500 Definitions.
76.1501 Qualifications to be an open video system operator.
76.1502 Certification.
76.1503 Carriage of video programming providers on open video systems.
76.1504 Rates, terms and conditions for carriage on open video systems.
76.1505 Public, educational and governmental access.
76.1506 Carriage of television broadcast signals.
76.1507 Competitive access to satellite cable programming.
76.1508 Network non-duplication.
76.1509 Syndicated program exclusivity.
76.1510 Application of certain Title VI provisions.
76.1511 Fees.
76.1512 Programming information.
76.1513 Dispute resolution.
76.1514 Bundling of video and local exchange services.

Subpart S—Open Video Systems

§ 76.1500 Definitions.

(a) *Open video system.* A facility consisting of a set of transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, provided that the Commission has certified that such system complies with this part.

(b) *Open video system operator* (''operator''). Any person or group of persons who provides cable service over an open video system and directly or through one or more affiliates owns a significant interest in such open video system, or otherwise controls or is responsible for the management and operation of such an open video system.

(c) *Video programming provider.* Any person or group of persons who has the right under the copyright laws to select and contract for carriage of specific video programming on an open video system.

(d) *Activated channels.* This term shall have the same meaning as provided in the cable television rules, 47 CFR 76.5(nn).

(e) *Shared channel.* Any channel that carries video programming that is selected by more than one video programming provider and offered to subscribers.

(f) *Cable service.* This term shall have the same meaning as provided in the cable television rules, 47 CFR 76.5(ff).

(g) *Other terms.* Unless otherwise expressly stated, words not defined in this part shall be given their meaning as used in Title 47 of the United States Code, as amended, and, if not defined therein, their meaning as used in Part 47 of the Code of Federal Regulations.

§ 76.1501 Qualifications to be an open video system operator.

Any person may obtain a certification to operate an open video system pursuant to Section 653(a)(1) of the Communications Act, 47 U.S.C. 573(a)(1), except that an operator of a cable system, regardless of any other service that the cable operator may provide, may not obtain such a certification within its cable service area unless it is subject to ''effective competition,'' as defined in Section 623(l)(1) of the Communications Act, 47 U.S.C. 543(l)(1). A cable operator that is not subject to effective competition within its cable service area may file a petition with the Commission, seeking a finding that particular circumstances exist that make it consistent with the public interest, convenience, and necessity to allow the operator to convert its cable system to an open video system. Nothing herein shall be construed to affect the terms of any franchising agreement or other contractual agreement.

Note to § 76.1501: An example of a circumstance in which the public interest, convenience and necessity would be served by permitting a cable operator not subject to effective competition to become an open video system operator within its cable service area is where the entry of a facilities-based competitor into its cable service area would likely be infeasible.

§ 76.1502 Certification.

(a) An operator of an open video system must certify to the Commission that it will comply with the Commission's regulations in 47 CFR 76.1503, 76.1504, 76.1506(m), 76.1508, 76.1509, and 76.1513. If construction of new physical plant is required, the Commission must approve such certification prior to the commencement of construction. If no new construction is required, the Commission must approve such certification prior to the commencement of service at such a point in time that would allow the applicant sufficient time to comply with the Commission's notification requirements.

(b) Certifications must be verified by an officer or director of the applicant, stating that, to the best of his or her information and belief, the

representations made therein are accurate.

(c) Certifications must be filed on FCC Form 1275 and must include:

(1) The applicant's name, address and telephone number;

(2) A statement of ownership, including all affiliated entities;

(3) If the applicant is a cable operator applying for certification in its cable franchise area, a statement that the applicant is qualified to operate an open video system under Section 76.1501.

(4) A statement that the applicant agrees to comply and to remain in compliance with each of the Commission's regulations in §§ 76.1503, 76.1504, 76.1506(m), 76.1508, 76.1509, and 76.1513;

(5) If the applicant is required under 47 CFR 64.903(a) of this chapter to file a cost allocation manual, a statement that the applicant will file changes to its manual at least 60 days before the commencement of service;

(6) A general description of the anticipated communities or areas to be served upon completion of the system;

(7) The anticipated amount and type (i.e., analog or digital) of capacity (for switched digital systems, the anticipated number of available channel input ports); and

(8) A statement that the applicant will comply with the Commission's notice and enrollment requirements for unaffiliated video programming providers.

(d) Comments or oppositions to a certification must be filed within five days of the Commission's receipt of the certification and must be served on the party that filed the certification. If the Commission does not disapprove certification within ten days after receipt of an applicant's request, the certification will be deemed approved. If disapproved, the applicant may file a revised certification or refile its original submission with a statement addressing the issues in dispute. Such refilings must be served on any objecting party or parties.

§ 76.1503 Carriage of video programming providers on open video systems.

(a) *Non-discrimination principle.* Except as otherwise permitted in applicable law or in this part, an operator of an open video system shall not discriminate among video programming providers with regard to carriage on its open video system, and its rates, terms and conditions for such carriage shall be just and reasonable and not unjustly or unreasonably discriminatory.

(b) *Demand for carriage.* An operator of an open video system shall solicit and determine the level of demand for carriage on the system among potential video programming providers in a non-discriminatory manner.

(1) *Notification.* An open video system operator shall file with the Secretary of the Federal Communications Commission a ''Notice of Intent'' to establish an open video system, which the Commission will release in a Public Notice. The Notice of Intent shall include the following information:

(i) A heading clearly indicating that the document is a Notice of Intent to establish an open video system;

(ii) The name, address and telephone number of the open video system operator;

(iii) A description of the system's projected service area;

(iv) A description of the system's projected channel capacity, in terms of analog, digital and other type(s) of capacity upon activation of the system;

(v) A description of the steps a potential video programming provider must follow to seek carriage on the open video system, including the name, address and telephone number of a person to contact for further information;

(vi) The starting and ending dates of the initial enrollment period for video programming providers;

(vii) The process for allocating the system's channel capacity, in the event that demand for carriage on the system exceeds the system's capacity; and

(viii) A certification that the operator has complied with all relevant notification requirements under the Commission's open video system regulations concerning must-carry and retransmission consent (§ 76.1506), including a list of all local commercial and non-commercial television stations served, and a certificate of service showing that the Notice of Intent has been served on all local cable franchising authorities entitled to establish requirements concerning the designation of channels for public, educational and governmental use.

(2) *Information.* An open video system operator shall provide the following information to a video programming provider within five business days of receiving a written request from the provider, unless otherwise included in the Notice of Intent:

(i) The projected activation date of the open video system. If a system is to be activated in stages, the operator should describe the respective stages and the projected dates on which each stage will be activated;

(ii) A preliminary carriage rate estimate;

(iii) The information a video programming provider will be required to provide to qualify as a video programming provider, e.g., creditworthiness;

(iv) Technical information that is reasonably necessary for potential video programming providers to assess whether to seek capacity on the open video system, including what type of customer premises equipment subscribers will need to receive service;

(v) Any transmission or reception equipment needed by a video programming provider to interface successfully with the open video system; and

(vi) The equipment available to facilitate the carriage of unaffiliated video programming and the electronic form(s) that will be accepted for processing and subsequent transmission through the system.

(3) *Qualifications of video programming providers.* An open video system operator may impose reasonable, non-discriminatory requirements to assure that a potential video programming provider is qualified to obtain capacity on the open video system.

(c) *One-third limit.* If carriage demand by video programming providers exceeds the activated channel capacity of the open video system, the operator of the open video system and its affiliated video programming providers may not select the video programming services for carriage on more than one-third of the activated channel capacity on such system.

(1) *Measuring capacity.* For purposes of this section:

(i) If an open video system carries both analog and digital signals, an open video system operator shall measure analog and digital activated channel capacity independently;

(ii) Channels that an open video system is required to carry pursuant to the Commission's regulations concerning public, educational and governmental channels and must-carry channels shall be included in ''activated channel capacity'' for purposes of calculating the one-third of such capacity on which the open video system operator and its affiliates are allowed to select the video programming for carriage. Such channels shall not be included in the one-third of capacity on which the open video system operator is permitted to select programming where demand for carriage exceeds system capacity;

(iii) Channels that an open video system operator carries pursuant to the

Commission's regulations concerning retransmission consent shall be included in ''activated channel capacity'' for purposes of calculating the one-third of such capacity on which the open video system operator and its affiliates are allowed to select the video programming for carriage. Such channels shall be included in the one-third of capacity on which the open video system operator is permitted to select programming, where demand for carriage exceeds system capacity, to the extent that the channels are carried as part of the programming service of the operator or its affiliate, subject to paragraph (c)(1)(iv); and

(iv) Any channel on which shared programming is carried shall be included in ''activated channel capacity'' for purposes of calculating the one-third of such capacity on which the open video system operator and its affiliates are allowed to select the video programming for carriage. Such channels shall be included in the one-third of capacity on which the open video system operator is permitted to select programming, where demand for carriage exceeds system capacity, to the extent the open video system operator or its affiliate is one of the video programming providers sharing such channel.

Note to paragraph (c)(1)(iv): For example, if the open video system operator and two unaffiliated video programming providers each carry a programming service that is placed on a shared channel, the shared channel shall count as 0.33 channels against the one-third amount of capacity allocable to the open video system operator, where demand for carriage exceeds system capacity.

(2) *Allocating capacity.* An operator of an open video system shall allocate activated channel capacity through a fair, open and non-discriminatory process; the process must be insulated from any bias of the open video system operator and verifiable.

(i) If an open video system carries both analog and digital signals, an open video system operator shall treat analog and digital capacity separately in allocating system capacity.

(ii) *Subsequent changes in capacity or demand.* An open video system operator must allocate open capacity, if any, at least once every three years, beginning three years from the date of service commencement. Open capacity shall be allocated in accordance with this section. Open capacity shall include all capacity that becomes available during the course of the three-year period, as well as capacity in excess of one-third of the system's activated channel capacity on which the operator of the open video system or its affiliate selects programming. An operator shall maintain a file of qualified video programming providers who have requested carriage or additional carriage since the previous allocation of capacity. Information regarding how a video programming provider should apply for carriage must be made available upon request.

Note 1 to paragraph (c)(2)(ii): An open video system operator will not be required to comply with the regulations contained in this section if there is no open capacity to be allocated at the end of the three year period.

Note 2 to paragraph (c)(2)(ii): An open video system operator shall be required to accommodate changes in obligations concerning public, educational or governmental channels or must-carry channels in accordance with Sections 611, 614 and 615 of the Communications Act and the regulations contained in this part.

(iii) *Channel sharing.* An open video system operator may carry on only one channel any video programming service that is offered by more than one video programming provider (including the operator's video programming affiliate), provided that subscribers have ready and immediate access to any such programming service. Nothing in this section shall be construed to impair the rights of programming services.

Note 1 to paragraph (c)(2)(iii): An open video system operator may implement channel sharing only after it becomes apparent that one or more video programming services will be offered by multiple video programming providers. An open video system operator may not select, in advance of any duplication among video programming providers, which programming services shall be placed on shared channels.

Note 2 to paragraph (c)(2)(iii): Each video programming provider offering a programming service that is carried on a shared channel must have the contractual permission of the video programming service to offer the service to subscribers. The placement of a programming service on a shared channel, however, is not subject to the approval of the video programming service or vendor.

Note 3 to paragraph (c)(2)(iii): Ready and immediate access in this context means that the channel sharing is ''transparent'' to subscribers.

(iv) *Open video system operator discretion.* Notwithstanding the foregoing, an operator of an open video system may:

(A) Require video programming providers to request and obtain system capacity in increments of no less than one full-time channel; however, an operator of an open video system may not require video programming providers to obtain capacity in increments of more than one full-time channel;

(B) Limit video programming providers from selecting the programming on more capacity than the amount of capacity on which the system operator and its affiliates are selecting the programming for carriage; and

(C) Refuse carriage on its open video system to a competing, in-region cable operator or its affiliates that offers cable service to subscribers located in the service area of the open video system, except where the allocation of open video system capacity to a competing cable operator is consistent with the public interest, convenience, and necessity.

Note to paragraph (c)(2)(iv)(C): The Commission will except situations where it is determined that facilities-based competition will not be significantly impeded. We will provide a specific exception in a situation in which: the competing, in-region cable operator and affiliated systems offer service to less than 20% of the households passed by the open video system; and the competing, in-region cable operator and affiliated systems provide cable service to a total of less than 17,000 subscribers within the open video system's service area.

(3) Nothing in this paragraph shall be construed to limit the number of channels that the open video system operator and its affiliates, or another video programming provider, may offer to provide directly to subscribers. Co-packaging is permissible among video programming providers, but may not be a condition of carriage. Video programming providers may freely elect whether to enter into co-packaging arrangements.

Note to paragraph (c)(3): Any video programming provider on an open video system may co-package video programming that is selected by itself, an affiliated video programming provider and/or unaffiliated video programming providers on the system.

§ 76.1504 Rates, terms and conditions for carriage on open video systems.

(a) *Reasonable rate principle.* An open video system operator shall set rates, terms, and conditions for carriage that are just and reasonable, and are not unjustly or unreasonably discriminatory.

(b) *Differences in rates.*

(1) An open video system operator may charge different rates to different classes of video programming providers, provided that the bases for such differences are not unjust or unreasonably discriminatory.

(2) An open video system operator shall not impose different rates, terms, or conditions based on the content of the programming to be offered by any unaffiliated video programming provider.

(c) *Just and reasonable rate presumption.* A strong presumption will apply that carriage rates are just and reasonable for open video system operators where at least one unaffiliated video programming provider, or unaffiliated programming providers as a group, occupy capacity equal to the lesser of one-third of the system capacity or that occupied by the open video system operator and its affiliates, and where any rate complained of is no higher than the average of the rates paid by unaffiliated programmers receiving carriage from the open video system operator.

(d) *Examination of rates.* Complaints regarding rates shall be limited to video programming providers that have sought carriage on the open video system. If a video programming provider files a complaint against an open video system operator meeting the above just and reasonable rate presumption, the burden of proof will rest with the complainant. If a complaint is filed against an open video system operator that does not meet the just and reasonable rate presumption, the open video system operator will bear the burden of proof to demonstrate, using the principles set forth below, that the carriage rates subject to the complaint are just and reasonable.

(e) *Determining just and reasonable rates subject to complaints.* Carriage rates subject to complaint shall be presumed just and reasonable if they are no greater than an imputed carriage rate based on the following. The imputed rate will reflect what the open video system operator, or its affiliate, ''pays'' for carriage of its own programming. Use of this approach is appropriate in circumstances where the pricing is applicable to a new market entrant (the open video system operator) that will face competition from an existing incumbent provider (the incumbent cable operator), as opposed to circumstances where the pricing is used to establish a rate for an essential input service that is charged to a competing new entrant by an incumbent provider. With respect to new market entrants, an efficient component pricing model will produce rates that encourage market entry. If the carriage rate to an unaffiliated program provider surpasses what an operator earns from carrying its own programming, the rate can be presumed to exceed a just and reasonable level. An open video system operator's price to its subscribers will be determined by several separate costs components. One general category are those costs related to the creative development and production of programming. A second category are costs associated with packaging various programs for the open video system operator's offering. A third category related to the infrastructure or engineering costs identified with building and maintaining the open video system. Contained in each is a profit allowance attributed to the economic value of each component. When an open video system operator provides only carriage through its infrastructure, however, the programming and packaging flows from the independent program provider, who bears the cost. The open video system operator avoids programming and packaging costs, including profits. These avoided costs should not be reflected in the price charged an independent program provider for carriage. The imputed rate also seeks to recognize the loss of subscribers to the open video system operator's programming package resulting from carrying competing programming.

§ 76.1505 Public, educational and governmental access.

(a) An open video system operator shall be subject to public, educational and governmental access requirements for every cable franchise area with which its system overlaps.

(b) An open video system operator must ensure that all subscribers receive any public, educational and governmental access channels within the subscribers' franchise area.

(c) An open video system operator may negotiate with the local cable franchising authority of the jurisdiction(s) which the open video system serves to establish the open video system operator's obligations with respect to public, educational and governmental access channel capacity, services, facilities and equipment. These negotiations may include the local cable operator if the local franchising authority, the open video system operator and the cable operator so desire.

(d) If an open video system operator and a local franchising authority are unable to reach an agreement regarding the open video system operator's obligations with respect to public, educational and governmental access channel capacity, services, facilities and equipment within the local franchising authority's jurisdiction:

(1) The open video system operator must satisfy the same public, educational and governmental access obligations as the local cable operator by connecting with the cable operator's public, educational and governmental access channel feeds and by sharing the costs directly related to supporting public, educational and governmental access, including costs of public, educational and governmental access services, facilities and equipment, and equipment necessary to achieve the connection. The open video system operator must provide the same amount of public, educational and governmental access as the local cable operator is required to carry.

(2) The local franchising authority shall impose the same rules and procedures on an open video system operator as it imposes on the local cable operator with regard to the open video system operator's use of channel capacity designated for public, educational and governmental access use when such capacity is not being used for such purposes.

(3) The local cable operator is required to permit the open video system operator to connect with its public, educational and governmental access channel feeds. The open video system operator and the cable operator may decide how to accomplish this connection, taking into consideration the exact physical and technical circumstances of the cable and open video systems involved. If the cable and open video system operator cannot agree on how to accomplish the connection, the local franchising authority may decide. The local franchising authority may require that the connection occur on government property or on public rights of way.

(4) The costs of connection and maintaining public, educational and governmental access channel capacity, services, facilities and equipment shall be divided equitably between the cable operator and the open video system operator. Shared costs shall include capital contributions and any other costs or investments directly relating to or supporting public, educational and governmental access and required by the cable operator's franchise agreement. Capital expenses incurred prior to the open video system operator's connection shall be subject to cost sharing on a pro-rata basis to the extent such investments have not been fully amortized by the cable operator.

(5) The local franchising authority may not impose public, educational and governmental access obligations on the open video system operator that would exceed those imposed on the local cable operator.

(6) Where there is no existing local cable operator, the open video system operator must make a reasonable amount of channel capacity available for public, educational and governmental use, as well as provide reasonable support for services, facilities and

equipment relating to such public, educational and governmental use. If a franchise agreement previously existed in that franchise area, the open video system operator shall be required to maintain the previously existing public, educational and governmental access terms of that franchise agreement. Absent a previous cable franchise agreement, the open video system operator shall be required to provide channel capacity, services, facilities and equipment relating to public, educational and governmental access equivalent to that prescribed in the franchise agreement(s) for the nearest operating cable system with a commitment to provide public, educational and governmental access.

Note to paragraph (d)(6): If a cable system converts to an open video system, the operator will be required to maintain the previously existing terms of its public, educational and governmental access obligations.

(7) The open video system operator must adjust its system(s) to comply with new public, educational and governmental access obligations imposed by a cable franchise renewal; provided, however, that an open video system operator will not be required to displace other programmers using its open video system to accommodate public, educational and governmental access channels. The open video system operator shall comply with such public, educational and governmental access obligations whenever additional capacity is or becomes available, whether it is due to increased channel capacity or decreased demand for channel capacity.

(8) The open video system operator and/or the local franchising authority may file a complaint with the Commission, pursuant to our dispute resolution procedures set forth in § 76.1514, if the open video system operator and the local franchising authority cannot agree as to the application of the Commission's rules regarding the open video system operator's connection and/or cost sharing obligations under this section.

(e) If an open video system operator maintains an institutional network, as defined in Section 611(f) of the Communications Act, the local franchising authority may require that educational and governmental access channels be designated on that institutional network to the extent such channels are designated on the institutional network of the local cable operator.

(f) An open video system operator shall not exercise any editorial control over any public, educational, or governmental use of channel capacity provided pursuant to this subsection, provided, however, that any open video system operator may prohibit the use on its system of any channel capacity of any public, educational, or governmental facility for any programming which contains nudity, obscene material, indecent material as defined in § 76.701(g), or material soliciting or promoting unlawful conduct. For purposes of this section, ''material soliciting or promoting unlawful conduct'' shall mean material that is otherwise proscribed by law. An open video system operator may require any access user, or access manager or administrator agreeing to assume the responsibility of certifying, to certify that its programming does not contain any of the materials described above and that reasonable efforts will be used to ensure that live programming does not contain such material.

§ 76.1506 Carriage of television broadcast signals.

(a) The provisions of Subpart D shall apply to open video systems in accordance with the provisions contained in this subpart.

(b) For the purposes of this Subpart S, television stations are significantly viewed when they are viewed in households that do not receive television signals from multichannel video programming distributors as follows:

(1) For a full or partial network station—a share of viewing hours of at least 3 percent (total week hours), and a net weekly circulation of at least 25 percent; and

(2) For an independent station—a share of viewing hours of at least 2 percent (total week hours), and a net weekly circulation of at least 5 percent. See § 76.1506(c).

Note to paragraph (b): As used in this paragraph, ''share of viewing hours'' means the total hours that households that do not receive television signals from multichannel video programming distributors viewed the subject station during the week, expressed as a percentage of the total hours these households viewed all stations during the period, and ''net weekly circulation'' means the number of households that do not receive television signals from multichannel video programming distributors that viewed the station for 5 minutes or more during the entire week, expressed as a percentage of the total households that do not receive television signals from multichannel video programming distributors in the survey area.

(c) *Significantly viewed signals; method to be followed for special showings.* Any provision of § 76.54 that refers to a ''cable television community'' or ''cable community or communities'' shall apply to an open video system community or communities. Any provision of § 76.54 that refers to ''non-cable television homes'' shall apply to households that do not receive television signals from multichannel video programming distributors. Any provision of § 76.54 that refers to a ''cable television system'' shall apply to an open video system.

(d) *Definitions applicable to the must-carry rules.* Section 76.55 shall apply to all open video systems in accordance with the provisions contained in this section. Any provision of § 76.55 that refers to a ''cable system'' shall apply to an open video system. Any provision of § 76.55 that refers to a ''cable operator'' shall apply to an open video system operator. Any provision of § 76.55 that refers to the ''principal headend'' of a cable system as defined in § 76.5(pp) shall apply to the equivalent of the principal headend of an open video system. Any provision of § 76.55 that refers to a ''franchise area'' shall apply to the service area of an open video system.

(e) *Signal carriage obligations.* Any provision of § 76.56 that refers to a ''cable television system'' or ''cable system'' shall apply to an open video system. Any provision of § 76.56 that refers to a ''cable operator'' shall apply to an open video system operator. Section 76.56(d)(2) shall apply to open video systems as follows: An open video system operator shall make available to every subscriber of the open video system all qualified local commercial television stations and all qualified non-commercial educational television stations carried in fulfillment of its carriage obligations under this section.

(f) *Channel positioning.* Open video system operators shall comply with the provisions of § 76.57 to the closest extent possible. Any provision of § 76.57 that refers to a ''cable operator'' shall apply to an open video system operator. Any provision of § 76.57 that refers to a ''cable system'' shall apply to an open video system, except the references to ''cable system'' in § 76.57(d) which shall apply to an open video system operator.

(g) *Notification.* Any provision of § 76.58 that refers to a ''cable operator'' shall apply to an open video system operator. Any provision of § 76.58 that refers to a ''cable system'' shall apply to an open video system. Any provision of § 76.58 that refers to a ''principal headend'' shall apply to the equivalent of the principal headend for an open video system.

(h) *Modification of television markets.* Any provision of § 76.59 that refers to a

''cable system'' shall apply to an open video system. Any provision of § 76.59 that refers to a ''cable operator'' shall apply to an open video system operator.

(i) *Compensation for carriage.* Any provision of § 76.60 that refers to a ''cable operator'' shall apply to an open video system operator. Any provision of § 76.60 that refers to a ''cable system'' shall apply to an open video system. Any provision of § 76.60 that refers to a ''principal headend'' shall apply to the equivalent of the principal headend for an open video system.

(j) *Disputes concerning carriage.* Any provision of § 76.61 that refers to a ''cable operator'' shall apply to an open video system operator. Any provision of § 76.61 that refers to a ''cable system'' shall apply to an open video system. Any provision of § 76.61 that refers to a ''principal headend'' shall apply to the equivalent of the principal headend for an open video system.

(k) *Manner of carriage.* Any provision of § 76.62 that refers to a ''cable operator'' shall apply to an open video system operator.

(l) *Retransmission consent.* Section 76.64 shall apply to open video systems in accordance with the provisions contained in this paragraph.

(1) Any provision of § 76.64 that refers to a ''cable system'' shall apply to an open video system. Any provision of § 76.64 that refers to a ''cable operator'' shall apply to an open video system operator.

(2) Must-carry/retransmission consent election notifications shall be sent to the open video system operator. An open video system operator shall make all must-carry/retransmission consent election notifications received available to the appropriate programming providers on its system.

(3) Television broadcast stations are not required to make the same election for open video systems and cable systems in the same geographic area.

(4) An open video system commencing new operations shall notify all local commercial and noncommercial broadcast stations as required under paragraph (l) of this section on or before the date on which it files with the Commission its Notice of Intent to establish an open video system.

(m) *Sports broadcast.* Section 76.67 shall apply to open video systems in accordance with the provisions contained in this paragraph.

(1) Any provisions of § 76.67 that refers to a ''community unit'' shall apply to an open video system or that portion of an open video system that operates or will operate within a separate and distinct community or municipal entity (including unincorporated communities within unincorporated areas and including single, discrete unincorporated areas).

(2) Notification of programming to be deleted pursuant to this section shall be served on the open video system operator. The open video system operator shall make all notifications immediately available to the appropriate video programming providers on its open video system. An open video system operator shall not be subject to sanctions for any violation of these rules by an unaffiliated program supplier if the operator provided proper notices to the program supplier and subsequently took prompt steps to stop the distribution of the infringing program once it was notified of a violation.

(n) *Exemption from input selector switch rules.* Any provision of § 76.70 that refers to a ''cable system'' or ''cable systems'' shall apply to an open video system or open video systems.

(o) *Special relief and must-carry complaint procedures.* The procedures set forth in § 76.7 shall apply to special relief and must-carry complaints relating to open video systems, and not the procedures set forth in § 76.1514 (Dispute resolution). Any provision of § 76.7 that refers to a ''cable television system operator'' or ''cable operator'' shall apply to an open video system operator. Any provision of § 76.7 that refers to a ''cable television system'' shall apply to an open video system. Any provision of § 76.7 that refers to a ''system community unit'' shall apply to an open video system or that portion of an open video system that operates or will operate within a separate and distinct community or municipal entity (including unincorporated communities within unincorporated areas and including single, discrete unincorporated areas).

§ 76.1507 Competitive access to satellite cable programming.

(a) Any provision that applies to a cable operator under §§ 76.1000 through 76.1003 shall also apply to an operator of an open video system and its affiliate which provides video programming on its open video system, except as limited by paragraph (a) (1)–(3) of this section. Any such provision that applies to a satellite cable programming vendor in which a cable operator has an attributable interest shall also apply to any satellite cable programming vendor in which an open video system operator has an attributable interest, except as limited by paragraph (a) (1)–(3) of this section.

(1) Section 76.1002(c)(1) shall only restrict the conduct of an open video system operator, its affiliate that provides video programming on its open video system and a satellite cable programming vendor in which an open video system operator has an attributable interest, as follows: No open video system operator or its affiliate that provides video programming on its open video system shall engage in any practice or activity or enter into any understanding or arrangement, including exclusive contracts, with a satellite cable programming vendor or satellite broadcast programming vendor for satellite cable programming or satellite broadcast programming that prevents a multichannel video programming distributor from obtaining such programming from any satellite cable programming vendor in which an open video system operator has an attributable interest, or any satellite broadcasting vendor in which an open video system operator has an attributable interest for distribution to person in areas not served by a cable operator as of October 5, 1992.

(2) Section 76.1002(c)(2) shall only restrict the conduct of an open video system operator, its affiliate that provides video programming on its open video system and a satellite cable programming vendor in which an open video system operator has an attributable interest, as follows: No open video system operator or its affiliate that provides video programming on its open video system shall enter into any exclusive contracts, or engage in any practice, activity or arrangement tantamount to an exclusive contract, for satellite cable programming or satellite broadcast programming with a satellite cable programming vendor in which an open video system operator has an attributable interest or a satellite broadcast programming vendor, unless the Commission determines in accordance with § 76.1002(c)(4) that such a contract, practice, activity or arrangement is in the public interest.

(3) Section 76.1002(c)(3) (i) through (ii) shall only restrict the conduct of an open video system operator, its affiliate that provides video programming on its open video system and a satellite cable programming vendor in which an open video system operator has an attributable interest, as follows:

(i) *Unserved areas.* No open video system operator shall enter into any subdistribution agreement or arrangement for satellite cable programming or satellite broadcast programming with a satellite cable programming vendor in which an open video system operator has an attributable interest or a satellite broadcast programming vendor in

which an open video system operator has an attributable interest for distribution to persons in areas not served by a cable operator as of October 5, 1992.

(ii) *Served areas.* No open video system operator shall enter into any subdistribution agreement or arrangement for satellite cable programming or satellite broadcast programming with a satellite cable programming vendor in which an open video system operator has an attributable interest or a satellite broadcast programming vendor in which an open video system operator has an attributable interest, with respect to areas served by a cable operator, unless such agreement or arrangement complies with the limitations set forth in § 76.1002(c)(3)(iii).

(b) No open video system programming provider in which a cable operator has an attributable interest shall:

(1) engage in any practice or activity or enter into any understanding or arrangement, including exclusive contracts, with a satellite cable programming vendor or satellite broadcast programming vendor for satellite cable programming or satellite broadcast programming that prevents a multichannel video programming distributor from obtaining such programming from any satellite cable programming vendor in which a cable operator has an attributable interest, or any satellite broadcasting vendor in which a cable operator has an attributable interest for distribution to person in areas not served by a cable operator as of October 5, 1992.

(2) enter into any exclusive contracts, or engage in any practice, activity or arrangement tantamount to an exclusive contract, for satellite cable programming or satellite broadcast programming with a satellite cable programming vendor in which a cable operator has an attributable interest or a satellite broadcast programming vendor, unless the Commission determines in accordance with Section 76.1002(c)(4) that such a contract, practice, activity or arrangement is in the public interest.

§ 76.1508 Network non-duplication.

(a) Sections 76.92 through 76.97 shall apply to open video systems in accordance with the provisions contained in this section.

(b) Any provision of § 76.92 that refers to a ''cable community unit'' or ''community unit'' shall apply to an open video system or that portion of an open video system that operates or will operate within a separate and distinct community or municipal entity (including unincorporated communities within unincorporated areas and including single, discrete unincorporated areas). Any provision of § 76.92 that refers to a ''cable television community'' shall apply to an open video system community. Any provision of § 76.92 that refers to a ''cable television system's mandatory signal carriage obligations'' shall apply to an open video system's mandatory signal carriage obligations.

(c) Any provision of § 76.94 that refers to a ''cable system operator'' or ''cable television system operator'' shall apply to an open video system operator. Any provision of § 76.94 that refers to a ''cable system'' or ''cable television system'' shall apply to an open video system except § 76.94 (e) and (f) which shall apply to an open video system operator. Open video system operators shall make all notifications and information regarding the exercise of network non-duplication rights immediately available to all appropriate video programming provider on the system. An open video system operator shall not be subject to sanctions for any violation of these rules by an unaffiliated program supplier if the operator provided proper notices to the program supplier and subsequently took prompt steps to stop the distribution of the infringing program once it was notified of a violation.

(d) Any provision of § 76.95 that refers to a ''cable system'' or a ''cable community unit'' shall apply to an open video system or that portion of an open video system that operates or will operate within a separate and distinct community or municipal entity (including unincorporated communities within unincorporated areas and including single, discrete unincorporated areas).

§ 76.1509 Syndicated program exclusivity.

(a) Sections 76.151 through 76.163 shall apply to open video systems in accordance with the provisions contained in this section.

(b) Any provision of § 76.151 that refers to a ''cable community unit'' shall apply to an open video system.

(c) Any provision of § 76.155 that refers to a ''cable system operator'' or ''cable television system operator'' shall apply to an open video system operator. Any provision of § 76.155 that refers to a ''cable system'' or ''cable television system'' shall apply to an open video system except § 76.155(c) which shall apply to an open video system operator. Open video system operators shall make all notifications and information regarding exercise of syndicated program exclusivity rights immediately available to all appropriate video programming provider on the system. An open video system operator shall not be subject to sanctions for any violation of these rules by an unaffiliated program supplier if the operator provided proper notices to the program supplier and subsequently took prompt steps to stop the distribution of the infringing program once it was notified of a violation.

(d) Any provision of § 76.156 that refers to a ''cable community'' shall apply to an open video system community. Any provision of § 76.156 that refers to a ''cable community unit'' or ''community unit'' shall apply to an open video system or that portion of an open video system that operates or will operate within a separate and distinct community or municipal entity (including unincorporated communities within unincorporated areas and including single, discrete unincorporated areas). Any provision of §§ 76.156 through 76.158, and 76.163 that refers to a ''cable system'' shall apply to an open video system.

(e) Any provision of § 76.159 that refers to ''cable television'' or a ''cable system'' shall apply to an open video system.

(f) Any provision of § 76.161 that refers to a ''community unit'' shall apply to an open video system or that portion of an open video system that is affected by this rule.

§ 76.1510 Application of certain Title VI provisions.

The following sections within Part 76 shall also apply to open video systems: §§ 76.71, 76.73, 76.75, 76.77 and 76.79 (Equal Employment Opportunity Requirements); §§ 76.503 and 76.504 (ownership restrictions); § 76.981 (negative option billing); and §§ 76,1300, 76.1301 and 76.1302 (regulation of carriage agreements); provided, however, that these sections shall apply to open video systems only to the extent that they do not conflict with this subpart S. Section 631 of the Communications Act (subscriber privacy) shall also apply to open video systems.

§ 76.1511 Fees.

An open video system operator may be subject to the payment of fees on the gross revenues of the operator for the provision of cable service imposed by a local franchising authority or other governmental entity, in lieu of the franchise fees permitted under Section 622 of the Communications Act. Gross revenues under this paragraph means all gross revenues received by an open video system operator or its affiliates,

including all revenues received from subscribers and all carriage revenues received from unaffiliated video programming providers. Gross revenues does not include revenues collected by unaffiliated video programming providers from their subscribers. Any gross revenues fee that the open video system operator or its affiliate collects from subscribers shall be excluded from gross revenues. An operator of an open video system may designate that portion of a subscriber's bill attributable to the fee as a separate item on the bill.

§ 76.1512 Programming information.

(a) An open video system operator shall not unreasonably discriminate in favor of itself or its affiliates with regard to material or information (including advertising) provided by the operator to subscribers for the purpose of selecting programming on the open video system, or in the way such material or information is provided to subscribers.

Note to paragraph (a): ''Material or information'' as used in paragraph (a) of this section means material or information that a subscriber uses to actively select programming at the point of program selection.

(b) In accordance with paragraph (a) of this section:

(1) An open video system operator shall not discriminate in favor of itself or its affiliate on any navigational device, guide or menu;

(2) An open video system operator shall not omit television broadcast stations or other unaffiliated video programming services carried on the open video system from any navigational device, guide (electronic or paper) or menu. For programming services that an open video system subscriber has not ordered, menus provided by an open video system operator shall, at a minimum, inform the subscriber how to access an additional screen that lists the unordered programming services.

(c) An open video system operator shall ensure that video programming providers or copyright holders (or both) are able to suitably and uniquely identify their programming services to subscribers.

(d) An open video system operator shall transmit programming identification without change or alteration if such identification is transmitted as part of the programming signal.

§ 76.1513 Dispute resolution.

(a) *Complaints.* Any party aggrieved by conduct that it alleges to constitute a violation of the regulations set forth in this part or in Section 653 of the Communications Act (47 U.S.C. 573) may commence an adjudicatory proceeding at the Commission. The Commission shall resolve any such dispute within 180 days after the filing of a complaint.

(b) *Alternate dispute resolution.* An open video system operator may not provide in its carriage contracts with programming providers that any dispute must be submitted to arbitration, mediation, or any other alternative method for dispute resolution prior to submission of a complaint to the Commission.

(c) *Notice required prior to filing of complaint.* Any aggrieved party intending to file a complaint under this section must first notify the potential defendant open video system operator that it intends to file a complaint with the Commission based on actions alleged to violate one or more of the provisions contained in this part or in Section 653 of the Communications Act. The notice must be in writing and must be sufficiently detailed so that its recipient(s) can determine the specific nature of the potential complaint. The potential complainant must allow a minimum of ten (10) days for the potential defendant(s) to respond before filing a complaint with the Commission.

(d) *General pleading requirements.* Complaint proceedings under this part are generally resolved on a written record consisting of a complaint, answer, and reply, but may also include other written submissions such as briefs and written interrogatories. All written submissions, both substantive and procedural, must conform to the following standard:

(1) Pleadings must be clear, concise, and explicit. All matters concerning a claim, defense or requested remedy, should be pleaded fully and with specificity;

(2) Pleadings must contain facts which, if true, are sufficient to constitute a violation of the Communications Act or of a Commission regulation or order, or a defense to such alleged violation;

(3) Facts must be supported by relevant documentation or affidavit;

(4) Legal arguments must be supported by appropriate judicial, Commission, or statutory authority;

(5) Opposing authorities must be distinguished;

(6) Copies must be provided of all non-Commission authorities relied upon which are not routinely available in national reporting systems, such as unpublished decisions or slip opinions of courts or administrative agencies; and

(7) Parties are responsible for the continuing accuracy and completeness of all information and supporting authority furnished in a pending complaint proceeding. Information submitted, as well as relevant legal authorities, must be current and updated as necessary and in a timely manner at any time before a decision is rendered on the merits of the complaint.

(e) *Complaint.*

(1) A complaint filed under this part shall contain:

(i) The name of the complainant and each defendant;

(ii) The type of entity that describes complainant (e.g., individual, private association, partnership, or corporation), the address and telephone number of the complainant, and the address and telephone number of each defendant;

(iii) The name, address and telephone number of complainant's attorney, if complainant is represented by counsel;

(iv) Citation to the section of the Communications Act and/or the Commission regulation or order alleged to have been violated;

(v) A complete statement of facts, which, if proven true, would constitute such a violation;

(vi) Any evidence that supports the truth or accuracy of the alleged facts;

(vii) Evidence that the open video system operator's conduct at issue violated a section of the Communications Act and/or Commission regulation or order.

(viii) If discrimination in rates, terms, and conditions of carriage is alleged, documentary evidence shall be submitted such as a preliminary carriage rate estimate or a programming contract that demonstrates a differential in price, terms or conditions between complainant and a competing video programming provider or, if no programming contract or preliminary carriage rate estimate is submitted with the complaint, an affidavit signed by an officer of complainant alleging that a differential in price, terms or conditions exists, a description of the nature and extent (if known or reasonably estimated by the complainant) of the differential, together with a statement that defendant refused to provide any further specific comparative information;

(ix) If a programming contract or a preliminary carriage rate estimate is submitted with the complaint in support of the alleged violation, specific references to the relevant provisions therein; and

(x) The specific relief sought.

(2) Every complaint alleging a violation of the open video system requirements shall be accompanied by a sworn affidavit signed by an authorized

officer or agent of the complainant. This affidavit shall contain a statement that the affiant has read the complaint and that to the best of the affiant's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted under Commission regulations and policies, or is a good faith argument for the extension, modification or reversal of such regulations or policies, and it is not interposed for any improper purpose. If the complaint is signed in violation of this rule, the Commission upon motion or its own initiative, shall impose upon the complainant an appropriate sanction.

(3) The following format may be used in cases to which it is applicable, with such modifications as the circumstances may render necessary:

Before The Federal Communications Commission, Washington, D.C. 20554

In the Matter of Complainant

File No. (To be inserted by the Commission) v. Defendant.

[Insert Subject or Nature of Issue: Unjust or Unreasonable Discrimination in Rates, Terms, and Conditions; Discriminatory Denial of Carriage]

Open Video System Complaint

To: The Commission.

The complainant (here insert full name of complainant and type of entity of such complainant):

1. (Here state the complainant's post office address and telephone number).

2. (Here insert the name, address and telephone number of each defendant).

3. (Here insert fully and clearly the specific act or thing complained of, together with such facts as are necessary to give full understanding of the matter, including relevant legal and documentary support).

Wherefore, complainant asks (here state specifically the relief desired).

(Date) _____

(Name of complainant) _____

_____

(Name, address, and telephone number of attorney, if any)

(4) The complaint must be accompanied by appropriate evidence demonstrating that the required notification pursuant to paragraph (c) of this section has been made.

(f) *Answer.*

(1) Any open video system operator upon which a complaint is served under this section shall answer within thirty (30) days of service of the complaint, unless otherwise directed by the Commission.

(2) The answer shall advise the parties and the Commission fully and completely of the nature of any and all defenses, and shall respond specifically to all material allegations of the complaint. Collateral or immaterial issues shall be avoided in answers and every effort should be made to narrow the issues. Any defendant failing to file and serve an answer within the time and in the manner prescribed by these rules may be deemed in default and an order may be entered against defendant in accordance with the allegations contained in the complaint.

(3) The answer shall state concisely any and all defenses to each claim asserted and shall admit or deny the averments on which the adverse party relies. If the defendant is without knowledge or information sufficient to form a belief as to the truth of an averment, the defendant shall so state and this has the effect of a denial. When a defendant intends in good faith to deny only part of an averment, the answer shall specify so much of it as is true and shall deny only the remainder. The defendant may make its denials as specific denials of designated averments or paragraphs, or may generally deny all the averments except such designated averments or paragraphs as the defendant expressly admits. When the defendant intends to controvert all averments, the defendant may do so by general denial.

(4) Averments in a complaint are deemed to be admitted when not denied in the answer.

(5) An answer to a discrimination complaint shall state the reasons for any differential in prices, terms or conditions between the complainant and its competitor, and shall specify the particular justification relied upon in support of the differential. Any documents or contracts submitted pursuant to this paragraph (f)(5) may be protected as proprietary pursuant to paragraph (j) of this section.

(g) *Reply.* Within twenty (20) days after service of an answer, the complainant may file and serve a reply which shall be responsive to matters contained in the answer and shall not contain new matters. Failure to reply will not be deemed an admission of any allegations contained in the answer, except with respect to any affirmative defense set forth therein. Replies containing information claimed by defendant to be proprietary under paragraph (j) of this section shall be submitted to the Commission in confidence pursuant to the requirements of § 0.459 of this chapter and clearly marked ''Not for Public Inspection.'' An edited version removing all proprietary data shall be filed with the Commission for inclusion in the public file within five (5) days from the date the unedited reply is submitted, and shall be served on the defendant.

(h) *Motions.* Except as provided in this section, or upon a showing of extraordinary circumstances, additional motions or pleadings by any party will not be accepted.

(i) *Discovery.*

(1) The Commission staff may in its discretion order discovery limited to the issues specified by the Commission. Such discovery may include answers to written interrogatories or document production.

(2) The Commission staff may in its discretion direct the parties to submit discovery proposals, together with a memorandum in support of the discovery requested. Such discovery requests may include answers to written interrogatories, document production or depositions. The Commission staff will then hold a status conference with the parties, pursuant to paragraph (l) of this section, to determine the scope of discovery. If the Commission staff determines that extensive discovery is required or that depositions are warranted, the staff will advise the parties that the proceeding will be referred to an administrative law judge in accordance with paragraph (o) of this section.

(j) *Confidentiality of proprietary information.*

(1) Any materials generated or provided by a party in connection with the pre-complaint notification procedure required under paragraph (c) of this section and in the course of adjudicating a complaint under this provision may be designated as proprietary by that party if the party believes in good faith that the materials fall within an exemption to disclosure contained in the Freedom of Information Act (FOIA), 5 U.S.C. 552(b). Any party asserting confidentiality for such materials shall so indicate by clearly marking each page, or portion thereof, for which a proprietary designation is claimed. If a proprietary designation is challenged, the party claiming confidentiality will have the burden of demonstrating, by a preponderance of the evidence, that the material designated as proprietary falls under the standards for nondisclosure enunciated in the FOIA.

(2) Materials marked as proprietary may be disclosed solely to the following persons, only for use in prosecuting or defending a party to the complaint action, and only to the extent necessary to assist in the prosecution or defense of the case:

(i) Counsel of record representing the parties in the complaint action and any support personnel employed by such attorneys;

(ii) Officers or employees of the opposing party who are named by the opposing party as being directly

involved in the prosecution or defense of the case;

(iii) Consultants or expert witnesses retained by the parties;

(iv) The Commission and its staff; and

(v) Court reporters and stenographers in accordance with the terms and conditions of this section.

(3) The persons designated in paragraph (j)(2) of this section shall not disclose information designated as proprietary to any person who is not authorized under this section to receive such information, and shall not use the information in any activity or function other than the prosecution or defense in the case before the Commission. Each individual who is provided access to the information by the opposing party shall sign a notarized statement affirmatively stating, or shall certify under penalty of perjury, that the individual has personally reviewed the Commission's rules and understands the limitations they impose on the signing party.

(4) No copies of materials marked proprietary may be made except copies to be used by persons designated in paragraph (j)(2) of this section. Each party shall maintain a log recording the number of copies made of all proprietary material and the persons to whom the copies have been provided.

(5) Upon termination of the complaint proceeding, including all appeals and petitions, all originals and reproductions of any proprietary materials, along with the log recording persons who received copies of such materials, shall be provided to the producing party. In addition, upon final termination of the complaint proceeding, any notes or other work product derived in whole or in part from the proprietary materials of an opposing or third party shall be destroyed.

(k) *Other required written submissions.*

(1) The Commission may, in its discretion, require the parties to file briefs summarizing the facts and issues presented in the pleadings and other record evidence. These briefs shall contain the findings of fact and conclusions of law which that party is urging the Commission to adopt, with specific citations to the record, and supported by relevant authority and analysis.

(2) The Commission may require the parties to submit any additional information it deems appropriate for a full, fair, and expeditious resolution of the proceeding, including copies of all contracts and documents reflecting arrangements and understandings alleged to violate the requirements set forth in the Communications Act and in this part, as well as affidavits and exhibits.

(3) Any briefs submitted shall be filed concurrently by both the complainant and defendant at such time as is designated by the staff. Such briefs shall not exceed fifty (50) pages.

(4) Reply briefs may be submitted by either party within twenty (20) days from the date initial briefs are due. Reply briefs shall not exceed thirty (30) pages.

(5) Briefs containing information which is claimed by an opposing or third party to be proprietary under paragraph (j) of this section shall be submitted to the Commission in confidence pursuant to the requirements of § 0.459 of this chapter, and shall be clearly marked ''Not for Public Inspection.'' An edited version removing all proprietary data shall be filed with the Commission for inclusion in the public file within five (5) days from the date the unedited version is submitted and served on opposing parties.

(l) *Status conference.*

(1) In any complaint proceeding under this part, the Commission staff may in its discretion direct the attorneys and/or the parties to appear for a conference to consider:

(i) Simplification or narrowing of the issues;

(ii) The necessity for or desirability of amendments to the pleadings, additional pleadings, or other evidentiary submissions;

(iii) Obtaining admissions of fact or stipulations between the parties as to any or all of the matters in controversy;

(iv) Settlement of the matters in controversy by agreement of the parties;

(v) The necessity for and extent of discovery, including objections to interrogatories or requests for written documents;

(vi) The need and schedule for filing briefs, and the date for any further conferences; and

(vii) Such other matters that may aid in the disposition of the complaint.

(2) Any party may request that a conference be held at any time after the complaint has been filed.

(3) Conferences will be scheduled by the Commission at such time and place as it may designate, to be conducted in person or by telephone conference call.

(4) The failure of any attorney or party, following reasonable notice, to appear at a scheduled conference will be deemed a waiver and will not preclude the Commission from conferring with those parties or counsel present.

(5) During a status conference, the Commission staff may issue oral rulings pertaining to a variety of interlocutory matters relevant to the conduct of the complaint proceeding including, *inter alia,* procedural matters, discovery, and the submission of briefs or other evidentiary materials. These rulings will be promptly memorialized in writing and served on the parties. When such rulings require a party to take affirmative action not subject to deadlines established by another provision of this part, such action will be required within ten (10) days from the date of the written memorialization unless otherwise directed by the staff.

(m) *Specifications as to pleadings, briefs, and other documents; subscriptions.*

(1) All papers filed in a complaint proceeding under this part must be drawn in conformity with the requirements of Sections 1.49 and 1.50 of this chapter.

(2) All averments of claims or defenses in complaints and answers shall be made in numbered paragraphs. The contents of each paragraph shall be limited as far as practicable to a statement of a single set of circumstances. Each claim founded on a separate transaction or occurrence and each affirmative defense shall be separately stated to facilitate the clear presentation of the matters set forth.

(3) The original of all pleadings and submissions by any party shall be signed by that party, or by the party's attorney. Complaints must be signed by the complainant. The signing party shall state his or her address and telephone number and the date on which the document was signed. Copies should be conformed to the original. Except when otherwise specifically provided by rule or statute, pleadings need not be verified. The signature of an attorney or party shall be a certificate that the attorney or party has read the pleading, motion, or other paper; that to the best of his or her knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and that it is not interposed for any improper purpose. If any pleading or other submission is signed in violation of this provision, the Commission shall upon motion or upon its own initiative impose upon the party an appropriate sanction. Where the pleading or submission is signed by counsel, the provisions of Sections 1.52 and 1.24 of this chapter shall also apply.

(n) *Copies; service.*

(1) The complainant shall file an original plus three copies of the complaint with the Commission.

However, if the complaint is addressed against multiple defendants, complainant shall provide three additional copies of the complaint for each additional defendant.

(2) An original plus two copies shall be filed of all pleadings and documents other than the complaint.

(3) The complainant shall serve the complaint on each defendant at the same time that it is filed at the Commission.

(4) All subsequent pleadings and briefs, as well as all letters, documents or other written submissions, shall be served by the filing party on all other parties to the proceeding, together with proof of such service in accordance with the requirements of § 1.47 of this chapter.

(5) The parties to any complaint proceeding brought pursuant to this section may be required to file additional copies of any or all papers filed in the proceeding.

(o) *Referral to administrative law judge.*

(1) After reviewing the complaint, answer and reply, and at any stage of the proceeding thereafter, the Commission staff may, in its discretion, designate any complaint proceeding for an adjudicatory hearing before an administrative law judge.

(2) Before designation for hearing, the staff shall notify, either orally or in writing, the parties to the proceeding of its intent to so designate, and the parties shall be given a period of ten (10) days to elect to resolve the dispute through alternative dispute resolution procedures, or to proceed with an adjudicatory hearing. Such election shall be submitted in writing to the Commission.

(3) Unless otherwise directed by the Commission, or upon motion by the Cable Services Bureau Chief, the Cable Services Bureau Chief shall not be deemed to be a party to a complaint proceeding designated for a hearing before an administrative law judge pursuant to this paragraph.

(p) *Petitions for reconsideration.* Petitions for reconsideration of interlocutory actions by the Commission's staff or by an administrative law judge will not be entertained. Petitions for reconsideration of a decision on the merits made by the Commission's staff should be filed in accordance with §§ 1.104 through 1.106 of this chapter.

(q) *Interlocutory review.*

(1) Except as provided below, no party may seek review of interlocutory rulings until a decision on the merits has been issued by the staff or administrative law judge.

(2) Rulings listed in this paragraph are reviewable as a matter of right. An application for review of such ruling may not be deferred and raised as an exception to a decision on the merits:

(i) If the staff's ruling denies or terminates the right of any person to participate as a party to the proceeding, such person, as a matter of right, may file an application for review of that ruling:

(ii) If the staff's ruling requires production of documents or other written evidence, over objection based on a claim of privilege, the ruling on the claim of privilege is reviewable as a matter of right; and/or

(iii) If the staff's ruling denies a motion to disqualify a staff person from participating in the proceeding, the ruling is reviewable as a matter of right.

(r) *Expedited review.*

(1) Any party to a complaint proceeding under this part aggrieved by any decision on the merits issued by the staff pursuant to delegated authority may file an application for review by the Commission in accordance with Section 1.115 of this chapter.

(2) Any party to a complaint proceeding aggrieved by any decision on the merits by an administrative law judge may file an appeal of the decision directly with the Commission, in accordance with § 1.276(a) and §§ 1.277 (a) through (c) of this chapter, except that unless a stay is granted by the Commission, the decision by the administrative law judge will become effective upon release and will remain in effect pending appeal.

(s) *Frivolous complaints.* It shall be unlawful for any party to file a frivolous complaint with the Commission alleging any violation of this part. Any violation of this paragraph shall constitute an abuse of process subject to appropriate sanctions.

(t) *Statute of limitations.* Any complaint filed pursuant to this subsection must be filed within one year of the date on which the following acts or conduct occur which form the basis of the complaint:

(1) The open video system operator enters into a contract with the complainant that the complainant alleges to violate one or more of the rules contained in this part; or

(2) The open video system operator offers to carry programming for the complainant pursuant to terms that the complainant alleges to violate one or more of the rules contained in this part; or

(3) The complainant has notified an open video system operator that it intends to file a complaint with the Commission based on a request for such operator to carry the complainant's programming on its open video system that has been denied or unacknowledged, allegedly in violation of one or more of the rules contained in this part.

(u) *Remedies for violations.*

(1) Remedies authorized. Upon completion of such adjudicatory proceeding, the Commission shall order appropriate remedies, including, if necessary, the requiring carriage, awarding damages to any person denied carriage, or any combination of such sanctions. Such order shall set forth a timetable for compliance, and shall become effective upon release.

(2) Additional sanctions. The remedies provided in paragraph (u)(1) of this section are in addition to and not in lieu of the sanctions available under Title VI or any other provision of the Communications Act.

§ 76.1514 Bundling of video and local exchange services.

An open video system operator may offer video and local exchange services for sale in a single package at a single price, *provided that:*

(a) the open video system operator, where it is the incumbent local exchange carrier, may not require that a subscriber purchase its video service in order to receive local exchange service; and

(b) Any local exchange carrier offering such a package must impute the unbundled tariff rate for the unregulated service.

[FR Doc. 96–14238 Filed 6–4–96; 8:45 am]

BILLING CODE 6712–01–P

federal register

Wednesday
June 5, 1996

Part VI

The President

Executive Order 13008—Amending Executive Order No. 12880

Federal Register
Vol. 61, No. 109
Wednesday, June 5, 1996

Presidential Documents

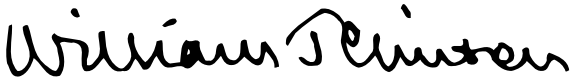
Title 3—

The President

Executive Order 13008 of June 3, 1996

Amending Executive Order No. 12880

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Narcotics Leadership Act of 1988, as amended (21 U.S.C. 1501 *et seq.*), in accordance with Executive Order No. 12992 of March 15, 1996, and in order to provide for more effective management of the international narcotics control policies of the United States, it is hereby ordered that section 1(c) of Executive Order No. 12880 is amended by deleting ''Department of State'' and inserting ''Office of National Drug Control Policy'' in lieu thereof.



THE WHITE HOUSE,
June 3, 1996.

[FR Doc. 96–14372
Filed 6–4–96; 8:45 am]
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- Limited access management of Federal fisheries in and off of Alaska
  - Gulf of Alaska and Bering Sea and Aleutian Islands groundfish; comments due by 6-13-96; published 5-15-96
- Ocean salmon off coasts of Washington, Oregon, and California; comments due by 6-10-96; published 5-24-96

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  - National priorities list update; comments due by 6-12-96; published 5-13-96

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LIST OF PUBLIC LAWS

This is a list of public bills from the 104th Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as ''slip laws'') from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 1965/P.L. 104–150

Coastal Zone Protection Act of 1996 (June 3, 1996; 110 Stat. 1380)

Last List May 31, 1996