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WHEN: October 22, 1996 at 9:00 a.m.

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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.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 102, 104, 105, and 116

[Docket No. 93–072–2]

Viruses, Serums, Toxins, and Analogous Products; Licenses, Inspections, Records, and Reports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations under the Virus-Serum-Toxin Act to clarify certain provisions concerning licenses, inspections, records, and reports. The effect of the rule is to ensure that licensees are aware of the fact that licenses are issued on the condition that the licensee permit inspection of establishments, products, and records, and that a licensee must have at least one product license in order to maintain a valid establishment license. Failure to permit inspection will make the license subject to suspension or revocation. We are also amending the regulations to specify the types of records and reports that must be available for inspection including records describing product development and preparation and market suspensions and recalls. Finally, we are amending the regulations to require that APHIS receive notification immediately if there are indications which raise questions regarding purity, safety, potency, or efficacy of a product, or if it appears there may be a problem regarding the preparation, testing, or distribution of a product. The rule is necessary to clarify and simplify certain provisions of the regulations and to describe required records with greater specificity.

EFFECTIVE DATE: November 8, 1996.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Espeseth, Deputy Director, Veterinary Biologics, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737 1237; 301–734–8245.

SUPPLEMENTARY INFORMATION:

Background

The Virus-Serum-Toxin Act of 1913 (21 U.S.C. 151–159, hereinafter the Act), as amended, is intended to ensure that veterinary biological products shipped in or from the United States are not worthless, contaminated, dangerous, or harmful. To achieve that purpose, the Act requires that such products be prepared in compliance with USDA regulations at an establishment holding an unsuspended and unrevoked USDA establishment license. No products may be imported into the United States without a permit issued by the Administrator. Provisions regarding veterinary biological product licenses, license suspensions, and inspections appear in the regulations at 9 CFR parts 102, 105, and 116.

On March 6, 1995, we published in the Federal Register (60 FR 12159–12162, Docket No. 93–072–1) a proposal to amend parts 102, 104, 105, and 116. We proposed to amend the regulations to clarify that licenses are issued on the condition that the licensee permit inspection of establishments, products, and records, and that a licensee must have at least one product license in order to maintain a valid establishment license. Failure to permit inspection will make the license subject to suspension or revocation. We also proposed to amend the regulations to broaden the scope of records and reports to include records describing product development and preparation, market suspensions, and recalls, which must be available for inspection. Finally, we proposed to amend the regulations to require that APHIS be notified immediately if there are indications which raise questions regarding purity, safety, potency, or efficacy of products, or if a biological product appears to be unsatisfactory or is found to have been prepared, tested, or distributed in violation of the Act and regulations. The rule is necessary to clarify and simplify certain provisions of the regulations.

We solicited comments concerning our proposal for 60 days ending May 5, 1995. We received nine comments by that date. They were from biologics producers, a biologics consultant, and a national trade association. We carefully considered all of the comments we received. They are discussed below.

One commenter expressed general approval of the rule as proposed. The commenter, however, requested definitions of ''raw data,'' ''data collection,'' ''method for changing raw data,'' and ''manufacturing records'' under proposed § 105.1 and ''unsatisfactory'' and ''immediately'' under proposed § 116.5(b).

In response to this comment, APHIS notes that the terms ''raw data,'' ''data collection,'' ''methods for changing raw data,'' and ''manufacturing records'' were not included in the proposed rule. Therefore, APHIS believes that it would be inappropriate for the agency to define these terms. APHIS believes that the use of the phrase ''to be unsatisfactory'' is redundant with the phrase ''to have been prepared, tested, or distributed in violation of the VSTA and regulations'' which appears in the same sentence and has therefore deleted it from the regulations to improve clarity and avoid confusion as to its meaning when used in this context. Similarly, APHIS is removing the reference to violation of the Act or regulations and changing the language regarding preparation, testing, and distribution to more accurately reflect the intent of paragraph (b) of § 116.5. The term ''immediately'' is self-explanatory in that notification should occur without delay at the time a question regarding product purity, safety, potency, or efficacy is raised. Therefore, APHIS is not adding definitions of these terms in response to this comment.

One commenter requested that the rule for license termination after 5 years of inactivity be withdrawn and replaced with a provision for recertification of the master seed to save the expense of relicensure. The commenter explained that there are situations in which a vaccine for which there has been no need suddenly comes into demand because of a disease condition. The example presented was an erysipelothrix vaccine in turkeys, the need for which is apparently resurfacing after a lapse of 10 years. Other examples of resurfacing vaccines were given, including variant chicken pox in the midwest and California, and Newcastle Disease Bronchitis Vaccine B_1 Type B_1 Strain. The commenter indicated that the latter vaccine has not been made for

17 years, but now has a significant international market.

In response to this commenter, the current regulation provides for the producer to show intent to resume production within 6 months of notification or have the product license or permit terminated. APHIS proposed to amend the regulation to provide the opportunity for the producer to resume production within 6 months of notification or ''within a mutually agreeable period'' should the producer have evidence that the vaccine might be needed in the near future. The proposed amendment allows the licensee to present a case to support a mutually agreeable period of longer than 6 months before production is resumed, if desired. If production is not resumed, the product license would be terminated without prejudice and could be reissued at a later date if master seed and master stocks are maintained and a market develops for the product. The original Outline of Production and licensing data could be resubmitted to support such applications and should only require updating to meet new licensing requirements not addressed when the product was originally licensed. The license applicant should consult with APHIS for guidance prior to applying for reissuance of such licenses. APHIS does not believe that a product license should be maintained when no product is produced or no establishment is maintained to support continuation of licensure. No change to the regulations is made in response to this comment.

One commenter felt that the language in § 116.1 lacked specificity. Another commenter stated that the types of records required for product development and manufacture should be specified. In response to these commenters, APHIS notes that the proposed amendment to § 116.1 adds permittees under the regulations and specifies the types of records that are to be maintained at the permittees place of business. No change to the regulations is made in response to these commenters.

Eight commenters raised concerns about the lack of clear criteria in the proposal for the reporting of production data and consumer complaints. One of the commenters raised the issue of how the firms' submissions of consumer reports will be handled under the Freedom of Information Act (FOIA). Another commenter indicated that many consumer reports may deal with problems related to consumer misuse that is beyond the control of the manufacturer. Consumer reports relevant to this regulation would only be those where there is a valid product-related complaint. The commenter also inquired into how complaints will be resolved by the agency and what the relationship was between consumer reports and the agency's proposed post-licensing monitoring program. One commenter stated that records related to consumer reports are already available for inspection at licensed establishments and questioned whether the submission of additional reports was necessary. Finally, several commenters suggested that the additional reporting requirements would increase the level of paperwork required of both APHIS and the manufacturer. These commenters expressed general concerns about the need to reduce paperwork submissions in order to reduce agency burden and to facilitate agency review of and response to license applications.

In response to these comments, APHIS believes that its intent with regard to reporting of certain consumer complaint reports was misunderstood. The proposed rule was not intended to require the implementation of a comprehensive postlicensing monitoring program but was only intended to ensure that licensees inform APHIS when it appears that a licensed product that has been released for marketing is involved in an unusually high number of consumer complaints or appears or has been found to be in violation of the Act or regulations. Informing APHIS under such situations provides an early warning of possible emerging product-related problems and ensures prompt action if there is a problem. Open communication between licensees and APHIS is essential for accurate responses to consumer inquiries and a rapid resolution of such situations. In response to the comment regarding access to consumer complaints under FOIA, all confidential business information would be protected. APHIS is currently working on regulations regarding FOIA requests related to the monitoring of products.

Based on the comments, APHIS is revising proposed § 116.5 concerning the submission of consumer reports with a more general statement to clarify our intent that APHIS be notified when there are indications which raise questions regarding the purity, safety, potency, or efficacy of a product, or if it appears that there may be a problem regarding the preparation, testing, or distribution of a product.

Some examples of when APHIS should be informed include when there are product-related data, information, or reports to show that a serial is contaminated, that use of a product is associated with a high incidence of adverse reactions, or that a product is associated with the failure to protect against disease. It would be necessary to provide available information describing circumstances surrounding these situations such as contributory factors and plausible options to help resolve the problem. Other examples of such circumstances when notification would be warranted are when consumer reports suggest that the use of a product may pose a risk to the public health, interest, or safety.

APHIS is removing the reference to consumer reports from paragraph (b) of § 116.5 of the proposed rule by removing the phrase ''consumer reports concerning the use of products'' and substituting the phrase ''there are indications which.'' This revision is intended to remove concerns about the reporting of all claims, including those which might be considered frivolous or invalid. The reference to ''immediately report'' has also been revised to read ''immediately notify APHIS concerning'' to provide greater flexibility in the manner in which information is provided to APHIS including telephone, E-mail, facsimile, or letter rather than by ''report'' which suggests a more formal communication. We have included in the regulations for convenience purposes the addresses and phone numbers for these alternative methods of notification. These changes should make it clear that this rule codifies current program practice and does not result in a net increase of the paperwork burden imposed on the manufacturer and the agency.

One commenter objected to use of the term, ''When requested by the Administrator,'' in § 116.5, paragraph (a). The same commenter believed that APHIS should define the rationale for submission more specifically. Another commenter objected to the use of terms, ''complete information'' and ''including but not limited to'' for being ambiguous.

In response to these comments, APHIS notes that these terms are currently used in the regulations in part 116 without further definition. In addition, APHIS believes that the rationale of proposed § 116.5, paragraph (a), is not intended to be significantly different from that of current §§ 116.1 and 116.5. These regulations were last amended in 1974 (39 FR 16853–16873, Docket No. 74–10880, May 10, 1974). Current § 116.1 reads in relevant part as follows:

> Each licensee * * * shall maintain detailed records of information necessary to give a complete accounting of the activities within each establishment. Such activities shall include, but shall not be limited to the items enumerated in this part.

(a) Records shall be made concurrently with the performance of successive steps in the preparation of a biological product. Such records shall include the date and where critical, the time that each essential step was taken, the identity and quantity of ingredients added or removed at each step, and any loss or gain from start to finish in such preparation.

Current § 116.5 reads in relevant part as follows:

When required by the Administrator, reports containing accurate information of production activities in each establishment * * * shall be prepared and forwarded to APHIS. Records necessary to make such reports shall be maintained in each establishment.

The proposed amendment to § 116.5, paragraph (a), merely specifies in greater detail the type of information that should be maintained or submitted to APHIS. As a commenter stated previously, licensed establishments already make available records of consumer reports for inspection. Therefore, much, if not all, of this information should already be available or should already have been made available to APHIS. No change to the regulations is made in response to these comments.

Based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

The rule amends the regulations in 9 CFR parts 102, 104, 105, and 116 to clarify existing provisions concerning licenses, inspections, records, and reports. Licenses are issued on condition that the licensee permit inspection of establishments, products, and records. The rule provides that the failure to permit such inspection will make the license subject to suspension or revocation. In order to hold a valid establishment license, licensees are required to have at least one unexpired, unsuspended, and unrevoked product license. Otherwise, the establishment license will be invalid. We are also making amendments concerning the content of records and reports and the availability of their inspection.

The rule will make clear and unambiguous certain regulatory provisions. No new requirements are added in the rule. Therefore, no adverse economic impact is anticipated to result from the rule.

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

Executive Order 12372

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

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0013.

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

List of Subjects

9 CFR Part 102

Animal biologics, Reporting and recordkeeping requirements.

9 CFR Part 104

Animal biologics, Imports, Reporting and recordkeeping requirements, Transportation.

9 CFR Part 105

Animal biologics.

9 CFR Part 116

Animal biologics, Reporting and recordkeeping requirements.

Accordingly, 9 CFR parts 102, 104, 105, and 116 are amended as follows:

PART 102—LICENSES FOR BIOLOGICAL PRODUCTS

1. The authority citation for part 102 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.2(d).

2. In § 102.2, the text is designated as paragraph (a) and a new paragraph (b) is added to read as follows:

§ 102.2 Licenses required.

* * * * *

(b) An applicant who applies for an establishment license must also apply for at least one product license. An establishment license will not be issued without a license authorizing the production of a biological product in the establishment.

3. In § 102.4, paragraph (f) is revised, paragraph (g) is redesignated as paragraph (h), and new paragraph (g) is added to read as follows:

§ 102.4 U.S. Veterinary Biologics Establishment License.

* * * * *

(f) When a licensee no longer holds at least one unexpired, unsuspended, or unrevoked product license authorizing the preparation of a biological product, or is in the process of obtaining a product license, the establishment license shall no longer be valid and shall be returned to the Administrator. In the case where an establishment license expires or is suspended or revoked, any product license authorizing preparation of a product at such establishment shall be invalid indefinitely or for as long as the suspension is in effect.

(g) Any license issued under this part to establishments in which biological products are prepared shall be issued on condition that the licensee permit the inspection of such establishments, products, product preparation, and all relevant records as provided in part 115 of this subchapter. Failure to permit inspection may result in the license being suspended or revoked.

* * * * *

PART 104—PERMITS FOR BIOLOGICAL PRODUCTS

4. The authority citation for part 104 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.2(d).

5. In § 104.6, paragraph (b), the words ''Veterinary Services'' are removed and the words ''Animal and Plant Health Inspection Service'' are added in their place.

6. In part 105, the heading for the part is revised to read as follows:

PART 105—SUSPENSION, REVOCATION, OR TERMINATION OF BIOLOGICAL LICENSES OR PERMITS

7. The authority citation for part 105 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.2(d).

8. In § 105.1, paragraphs (a)(4) and (a)(5) are redesignated paragraphs (a)(5) and (a)(6), new paragraph (a)(4) is added, and redesignated paragraph (a)(5) is revised to read as follows:

§ 105.1 Suspension or revocation.

* * * * *

(a) * * *

(4) The licensee, permittee, or the foreign manufacturer has failed to maintain and make available for inspection records in connection with the development and preparation of product, has failed to provide complete and accurate information when requested, or has failed to provide complete and accurate information in the Outline of Production or in reports and records;

(5) The licensee or permittee has violated or failed to comply with any provision of the Virus-Serum-Toxin Act or the regulations in this subchapter;

* * * * *

9. Section 105.4 is revised to read as follows:

§ 105.4 Termination of licenses and permits for inactivity.

(a) If a biological product has not been prepared by a licensee, or imported by a permittee for a period of 5 years or more, the Administrator may require the licensee to show intent to resume production, or the permittee to show intent to resume importation, within 6 months of notification. If the licensee does not resume preparation, or the permittee does not resume importation, within 6 months of notification, or within a mutually agreeable period, the product license, or permit, may be terminated by the Administrator.

(b) When a license or permit is terminated, the licensee or permittee shall continue to be subject to the applicable records provisions of § 116.8.

10. In part 116, the heading for the part is revised to read as follows:

PART 116—RECORDS AND REPORTS

11. The authority citation for part 116 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.2(d).

12. In § 116.1, paragraphs (a), (b), and (c) are redesignated as paragraphs (a)(1), (a)(2), and (a)(3), respectively; redesignated paragraph (a)(1) is revised; the introductory paragraph is designated as paragraph (a) and is revised; and new paragraphs (b) and (c) are added to read as follows:

§ 116.1 Applicability and general considerations.

(a) Each licensee, permittee, and foreign manufacturer of biological products imported into the United States shall maintain, at the licensed or foreign establishment in which the products are prepared, detailed records of information necessary to give a complete accounting of all the activities within each establishment. Such records shall include, but shall not be limited to, the items enumerated in this part.

(1) Records shall be made concurrently with the performance of successive steps in the development and preparation of biological products, including new products under development. Such records shall include the date and where critical, the time that each essential step was taken, the identity and quantity of ingredients added or removed at each step, and any gain or loss of product from the beginning to the end of product preparation.

* * * * *

(b) In the case of imported products, each permittee shall maintain at the permittee's place of business detailed and accurate records that are relevant to each imported product and that include, but are not limited to, importation documents, sampling records, test summaries, shipping records, and inventory and disposition records as required in § 116.2.

(c) When authorized by the Administrator, the licensee, permittee, or foreign manufacturer may maintain and retain records required under this part at an alternative location. Such authorization shall be confirmed by the filing of an addendum to the plot plan legend. The addendum shall list the location of the records and the condition of their storage and shall permit the inspection of the records by APHIS inspectors, or foreign inspectors acting on behalf of APHIS.

(Approved by the Office of Management and Budget under control number 0579–0013)

§§ 116.2, 116.3, 116.4, and 116.6 [Amended]

13. At the end of §§ 116.2, 116.3, 116.4, and 116.6, the reference to OMB control number ''0579–0059'' is removed and the number ''0579–0013'' is added in its place.

14. Section 116.5 is revised to read as follows:

§ 116.5 Reports.

(a) When required by the Administrator, reports containing accurate and complete information concerning biological products, including but not limited to, product development and preparation, and market suspensions and recalls, shall be prepared and submitted to the Animal and Plant Health Inspection Service by the licensee, permittee, or foreign manufacturer (whose products are being imported or offered for importation). Unless otherwise authorized by the Administrator, records necessary to make such reports shall be maintained in each establishment.

(b) If, at any time, there are indications which raise questions regarding purity, safety, potency, or efficacy of a product, or if it appears that there may be a problem regarding preparation, testing, or distribution of a product, the licensee, permittee, or foreign manufacturer shall immediately notify Veterinary Biologics Field Operations, APHIS, 223 South Walnut Avenue, Ames, Iowa 50010, concerning the circumstances and the action taken, if any. Notification may be either by mail, electronic mail, facsimile, or telephone. If by electronic mail, vbfo@aphis.usda.gov. If by facsimile, Area Code (515) 232–7120. If by telephone, Area Code (515) 232–5785.

(Approved by the Office of Management and Budget under control number 0579–0013)

15. In § 116.7, the second sentence is revised to read as follows:

§ 116.7 Test records.

* * * Summaries of such tests shall be prepared from such records and submitted to the Animal and Plant Health Inspection Service using APHIS Form 2008 or an acceptable equivalent form prior to release of the serial or subserial. * * *

* * * * *

16. Section 116.8 is revised to read as follows:

§ 116.8 Completion and retention of records.

All records (other than disposition records) required by this part shall be completed by the licensee, permittee, or foreign manufacturer before any portion of a serial of any product may be marketed in the United States or exported. All records shall be retained at the licensed or foreign establishment or permittee's place of business for a period of two years after the expiration date of a product, or for such longer period as may be required by the Administrator.

(Approved by the Office of Management and Budget under control number 0579–0013)

Done in Washington, DC, this 4th day of October 1996.

A. Strating,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–25931 Filed 10–8–96; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL RESERVE SYSTEM

12 CFR Part 245

[Regulation V; Docket No. R–0928]

Loan Guarantees for Defense Production

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is repealing its Regulation V on loan guarantees for defense production as obsolete. This action does not represent any policy change, but rather eliminates an outmoded regulation and reduces regulatory burden.

EFFECTIVE DATE: October 9, 1996.

FOR FURTHER INFORMATION CONTACT: Oliver Ireland, Associate General Counsel (202–452–3625), Heatherun Allison, Attorney (202–452–3565), Legal Division; for users of the Telecommunications Device for the Deaf (TDD) *only*, Dorothea Thompson (202–452–3544); Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to Section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994, requiring the Board of Governors of the Federal Reserve System (the Board) to conduct a review of its regulations and written policies in order to improve efficiency, reduce unnecessary costs, eliminate unwarranted constraints on credit availability, and to remove inconsistencies and outmoded and duplicative requirements, the Board proposed to repeal Regulation V, concerning the loan guarantee program under the Defense Production Act of 1950 (50 U.S.C. app. 2061) (the Act). The Board requested public comment on this proposed regulatory change on May 28, 1996 (61 FR 26471). Board staff also solicited the views of the guaranteeing departments and agencies (as defined in the Act) consistent with Executive Order 12919 (June 3, 1994) and Executive Order 10789 (November 14, 1958) (as amended), implementing the Act.

Authority for Regulation V

The Board promulgated Regulation V (12 CFR 245) pursuant to the Act ''to facilitate the financing of contracts or other operations deemed necessary to national defense production.'' Section 301(a)(1) of the Act allows the President to authorize ''guaranteeing agencies'' to enter into guarantees with public or private financing institutions concerning contracts ''deemed by the guaranteeing agency to be necessary to expedite or expand production and deliveries or services under Government contracts for the procurement of industrial resources or critical technology items essential to the national defense, or for the purpose of financing any contractor, subcontractor or other person in connection with or in contemplation of the termination, in the interest of the United States, of any contract made for the national defense; * * *.'' Section 301(a)(1) of the Act defines ''guaranteeing agencies'' as the Department of Defense, the Department of Energy, the Department of Commerce, ''and such other agencies of the United States engaged in procurement for the national defense as he may designate.''

Exec. Order No. 12919 (1994) provides that ''the head of each Federal department or agency engaged in procurement for the national defense * * * and the President and chairman of the Export-Import Bank of the United States'' is authorized to guarantee public or private financing institutions as provided in Section 301 of the Act.[1] In furtherance of this authorization, Exec. Order No. 12919 provides that ''The Board of Governors of the Federal Reserve System is authorized, after consultation with heads of guaranteeing departments and agencies, the Secretary of the Treasury, and the Director, OMB, to prescribe regulations governing procedures, forms, rates of interest, and fees for [loan] guarantee contracts.'' Exec. Order No. 12919, 59 FR 29525 (1994).[2] The Board exercised this authorization in implementing Regulation V in the 1950s. Regulation V was modified and streamlined in 1979.

Purpose of Regulation V

The loan guarantee provisions of the Act were intended to permit defense agencies to enter into defense-related contracts without regard to whether appropriations had been made for the underlying projects. Without the appropriations, defense agencies would lack the legal authority to make progress payments to defense contractors. Without progress payments, contractors would not have the working capital to perform their contracts unless they could obtain financing from private banking institutions, which might be reluctant to lend for the performance of contracts if the funds for the contract had not been appropriated. Thus, while the Act contemplates that defense-contract funding would be obtained from private banks, the loan guarantees provisions of the Act would enable the funding and therefore the continued production of items deemed necessary to the national defense by ensuring private banks of repayment when the contract was completed. Regulation V sets forth applicable procedures, forms, fees, charges and rates of interest for these loan guarantees, in which a Federal Reserve Bank acts as the fiscal agent of one or more specified federal departments or agencies for the guarantee by that department or agency of a defense production loan made by a private financing institution.

Decline in Use of Regulation V

The Act and the Executive Orders implementing it have periodically expired and subsequently been reauthorized. However, in 1975, the Act was amended to make the guarantee provisions unnecessary for most practical purposes. These amendments provided that ''all authority hereby or hereafter extended under title III [relating to expansion of productive capacity and supply, including loan guarantee provisions] shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts.'' 50 U.S.C. app. 2166(a). Thus, under the 1975 amendments, defense agencies that have authority to authorize loan guarantees have authority to do so only if funds have been appropriated for the contract in question. Once funds have been appropriated, however, there is little need for the guarantee, because the appropriated funds can be paid timely in accordance with the defense contracts. Notwithstanding the 1975 amendments, the loan guarantee

[1] The ''head of each Federal department or agency engaged in procurement for the national defense'' is defined as the head of each of the departments and agencies listed in Exec. Order No. 10789 (1958), consisting of the following Departments: Defense, Army, Navy, Air Force, Treasury, Interior, Agriculture, Commerce, Transportation, Nuclear Regulatory Commission, General Services Administration, National Aeronautics & Space Administration, Tennessee Valley Authority, General Printing Office, and Federal Emergency Management Agency. Exec. Order No. 10789, 23 FR 8897 (1958), as amended.

[2] A similar provision was formerly set forth in Section 302(c) of Exec. Order No. 10480 (1953). Exec. Order No. 10480 was revoked by Exec. Order No. 12919 (1994).

provisions of the Act were not deleted. No loan guarantees are currently outstanding and no applications for loan guarantees have been filed for several years.

Repeal of Regulation V

Repealing Regulation V will achieve the objectives of Section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 by improving efficiency and removing outmoded requirements while at the same time not adversely affecting the abilities of any parties to participate in a loan guarantee should the need arise. Repealing Regulation V will not affect the existence or availability of the loan guarantee program as provided by the Act. Although the 1975 amendments to the Act make it unlikely that a loan guarantee application will be filed, the Board and the Federal Reserve Banks will be able to perform their fiscal agency and application coordination responsibilities under the Act in the event such an application is filed using fiscal agency procedures already in place in other contexts and on a case-by-case basis.

II. Overview of Comments Received

The Board received 5 comment letters on the proposal. The comment letters consisted of 4 letters from Federal Reserve Banks and one letter from the National Aeronautics and Space Administration. In addition, in response to its solicitation of the views of ''guaranteeing agencies'' under the Act, the Board received a letter from the United States Government Printing Office and a letter from the Department of Agriculture. All commenters expressed support for the proposal.

III. Description of the Final Rule

The final rule deletes 12 CFR 245 as obsolete.

IV. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Board hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The final rule does not impose any requirements, but rather deletes an outmoded regulation as obsolete.

V. Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

List of Subjects in 12 CFR Part 245

Federal Reserve System, Government contracts, Loan programs-National defense, National defense.

For the reasons set forth in the preamble, and in accordance with its authority under 50 U.S.C. app. 2061 et seq., the Board of Governors of the Federal Reserve is amending Title 12 of the Code of Federal Regulations, Chapter II as follows:

PART 245—[REMOVED]

1. Part 245 is removed.

By order of the Board of Governors of the Federal Reserve System, October 3, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–25867 Filed 10–8–96; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–ANE–68; Amendment 39–9743; AD 96–18–17]

RIN 2120–AA64

Airworthiness Directives; AlliedSignal Inc. TSCP700–4B, –4E, and –5 Auxiliary Power Units

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to AlliedSignal Inc. (formerly Garrett) TSCP700–4B, –4E, and –5 auxiliary power units (APUs), that requires removal from service of certain high pressure turbine (HPT) disks identified by serial number, and replacement with serviceable parts. This amendment is prompted by the discovery of a material defect in certain HPT disk forgings that may result in HPT disk rupture prior to reaching the disk cyclic life limit. The actions specified by this AD are intended to prevent an HPT disk rupture.

DATES: Effective December 9, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 9, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from AlliedSignal Engines, P.O. Box 52181, Phoenix, AZ 85072–2181; telephone (800) 338–3378, fax (602) 231–4402. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (310) 627–5245; fax (310) 627–5210.

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 AlliedSignal Inc. (formerly Garrett) Models TSCP700–4B, –4E, and –5 auxiliary power units (APUs) was published in the Federal Register on March 26, 1996 (61 FR 13113). That action proposed to require removal from service of certain high pressure turbine (HPT) disks identified by serial number, and replacement with serviceable parts, prior to accumulating 7,500 cycles since new (CSN), or 3 years after the effective date of this AD, whichever occurs first. The actions are required to be accomplished in accordance with AlliedSignal Aerospace Service Bulletin (SB) No. TSCP700–49–A7168, dated November 7, 1995.

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

Four commenters support the rule as proposed.

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.

There are approximately 31 APUs of the affected design in the worldwide fleet. The FAA estimates that 20 APUs installed on aircraft of U.S. registry will be affected by this AD, that it will take no additional work hours if the disk is replaced during overhaul. The manufacturer has advised the FAA that they will supply required parts at no charge to the operator. The FAA has therefore determined that this AD will impose no additional cost on U.S. operators.

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:

96–18–17 AlliedSignal Inc.: Amendment 39–9743. Docket 95–ANE–68.

Applicability: AlliedSignal Inc. (formerly Garrett) Models TSCP700–4B, –4E, and –5 auxiliary power units (APUs), with high pressure turbine (HPT) disks identified by serial number in AlliedSignal Aerospace Service Bulletin (SB) No. TSCP700–49–A7168, dated November 7, 1995. These APUs are installed on, but not limited to, McDonnell Douglas DC–10, KC–10 (military), and MD–11 series, and Airbus A300 series aircraft.

Note: This airworthiness directive (AD) applies to each APU 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 APUs 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.

Compliance: Required as indicated, unless accomplished previously.

To prevent an HPT disk rupture, accomplish the following:

(a) Prior to accumulating 7,500 cycles since new (CSN), or 3 years after the effective date of this AD, whichever occurs first, remove from service affected HPT disks and replace with a serviceable part.

(b) The definition of a disk cycle may be found in the applicable AlliedSignal Inc. APU Component Maintenance Manual.

(c) Auxiliary power unit maintenance records may be used to determine if the HPT disk installed in the APU has a serial number listed in AlliedSignal Aerospace SB No. TSCP700–49–A7168, dated November 7, 1995.

(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, Los Angeles Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(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 aircraft to a location where the requirements of this AD can be accomplished.

(f) The actions required by this AD shall be done in accordance with the following AlliedSignal Aerospace SB:

Document No.	Pages	Date
TSCP700–49–A7168 Total Pages: 8.	1–8	Nov. 7, 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 AlliedSignal Engines, P.O. Box 52181, Phoenix, AZ 85072–2181; telephone (800) 338–3378, fax (602) 231–4402. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(g) This amendment becomes effective on December 9, 1996.

Issued in Burlington, Massachusetts, on September 20, 1996.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 96–25168 Filed 10–8–96; 8:45 am]

BILLING CODE 4910–13–U

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1020

Small Business

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission is issuing a rule describing how its Small Business Ombudsman and Small Business Program will assist small businesses that interact with the Commission.

EFFECTIVE DATE: The rule is effective on October 9, 1996.

FOR FURTHER INFORMATION CONTACT: Clarence T. Bishop, Deputy Executive Director and Small Business Ombudsman, Consumer Product Safety Commission, Washington, D.C. 20207; telephone 301–504–0550; telefax 301–504–0121; Web address http://www.cpsc.gov. Small businesses can obtain information from the Commission's hotline telephone system by calling 1–800–638–2772, extension 234.

SUPPLEMENTARY INFORMATION:

A. Background

In March 1996 Congress enacted the Small Business Regulatory Enforcement Fairness Act, Public Law 104–121. Congress found this legislation necessary because ''small businesses bear a disproportionate share of regulatory costs and burdens'' and ''fundamental changes * * * are needed in the regulatory and enforcement culture of Federal agencies'' to make them more responsive to small businesses. (Sections 202 (2) and (3) of the Act.)

The Consumer Product Safety Commission (''Commission'' or ''CPSC'') has been evaluating the special needs of small businesses, and working to address them. In June 1996, the Commission co-sponsored a Small Business Conference with the International Consumer Product Health and Safety Organization. More than 130 representatives of small businesses participated in panels and heard

speeches by Philip Lader, Administrator of the U.S. Small Business Administration, and George Weise, Commissioner of the U.S. Customs Service.

At the conference, CPSC Chairman Ann Brown awarded three Commendation Awards to small business individuals and companies that have made contributions to product safety. In addition, the Commission announced its establishment of the new position of Small Business Ombudsman. Deputy Executive Director Clarence T. Bishop is now serving in this position. Its purpose is to have someone at CPSC who is directly responsible for addressing the needs and problems of small businesses, who can help small businesses comply with CPSC standards, and who can help small businesses receive needed technical assistance and guidance.

To help small businesses obtain information quickly, the Commission has established a new extension on its toll-free hotline. The telephone number is 1–800–638–2772, extension 234.

B. The Rule

The rule issued below provides in one place all of the Commission's small business policies:

1. The rule highlights the Commission's objectives for its treatment of small businesses (§ 1020.1).

2. The rule summarizes the qualifications and responsibilities of the Commission's Small Business Ombudsman (§ 1020.3).

3. The rule establishes a framework and some basic principles for the Commission's small business program (§ 1020.4). And, it gives examples of how the Commission will assist small businesses.

4. The rule describes the Commission's enforcement policy for waiving or reducing penalties, in appropriate cases, that small businesses must pay when they violate the law (§ 1020.5).

The rule issued below is not intended to create any right or benefit, substantive or procedural, enforceable at law or in equity, by a party against the United States, its agencies, its officers, or any other person. More specifically, it is not intended to expand any rights or benefits conferred on a person by section 223 of the Small Business Regulatory Enforcement Fairness Act of 1996, entitled ''Rights of Small Entities in Enforcement Actions.''

Generally, the Administrative Procedure Act (APA) requires agencies to publish a notice of proposed rulemaking and provide opportunity for public comment before issuing a rule. 5 U.S.C. § 553. However, these requirements do not apply when the agency finds for good cause that they are ''impracticable, unnecessary, or contary to the public interest.'' 5 U.S.C. § 553(b)(B). The Commission finds for good cause that notice of proposed rulemaking and public participation are unnecessary because the rule issued below simply compiles small business policies that are already in effect.

C. Effective Date

The rule shall be effective on October 9, 1996. The APA requires that a substantive rule be published at least 30 days before its effective date, unless the agency finds for good cause that such delay is not needed. 5 U.S.C. § 553(d)(3). The Commission finds good cause for the rule issued below to become effective immediately because it simply compiles small business policies that are already in effect.

D. Economic Impact on Small Businesses

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, generally requires that proposed and final regulatory flexibility analyses describe the impact of the rule on small businesses and other small entities. The purpose is to require agencies, consistent with their objectives, to fit the requirements of rules to the scale of the businesses, organizations, and governmental jurisdictions subject to such rules. 5 U.S.C. 602 note.

However, the Act does not require an agency to prepare a regulatory flexibility analysis if the agency's head certifies that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. § 605.

This small business rule is designed to help small entities when they interact with the Commission. While some economic benefits may result from improvements in such contacts, the Commission does not believe that the rule will have a significant economic impact on a substantial number of small entities.

E. Environmental Impact

Under the National Environmental Policy Act (42 U.S.C. §§ 4321–4347), the Council on Environmental Quality's regulations (40 CFR Part 1500), and CPSC's procedures for environmental review (16 CFR Part 1021), the Commission has assessed the possible environmental effects associated with the small business rule. Because this rule will not change the way that firms manufacture, retrofit, or destroy products, the Commission expects no significant environmental effects from it. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 16 CFR Part 1020

Consumer protection, Penalties, Small businesses, Trade practices.

F. Conclusion

Under the authority of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121, 100 Stat. 857–874, the Commission hereby amends Title 16 of the Code of Federal Regulations, Chapter II, Subchapter A by adding a new part as follows:

PART 1020—SMALL BUSINESS

Sec.

1020.1 Why is the Commission issuing this rule?
1020.2 What is the definition of ''small business''?
1020.3 What are the qualifications and duties of the Small Business Ombudsman?
1020.4 What is the Small Business Program?
1020.5 What is the Small Business Enforcement Policy?

Authority: 5 U.S.C. 601 note.

§ 1020.1 Why is the Commission issuing this rule?

(a) To state the Commission's policies on small businesses;

(b) To assure that the Commission continues to treat small businesses fairly;

(c) To assure that small businesses do not bear a disproportionate share of any burden or cost created by a Commission regulatory, enforcement, or other action; and

(d) To assure that small businesses are given every opportunity to participate fully in the Commission's regulatory process.

§ 1020.2 What is the definition of ''small business''?

As used in this part, the term ''small business'' means any entity that is either a ''small business,'' ''small organization,'' or ''small governmental jurisdiction,'' as those terms are defined at 5 U.S.C. 601(3), (4), and (5), respectively.

§ 1020.3 What are the qualifications and duties of the Small Business Ombudsman?

(a) The Chairman will appoint a senior, full-time Commission employee as Small Business Ombudsman. The Ombudsman must:

(1) Have a working knowledge of the Commission's statutes and regulations;

(2) Be familiar with the industries and products that the Commission regulates;

(3) Develop a working knowledge of the regulatory problems that small businesses experience;

(4) Perform the Ombudsman duties in addition to, and consistently with, other Commission responsibilities; and

(5) Not work in the Office of Compliance or Office of Hazard Identification and Reduction.

(b) The duties of the Small Business Ombudsman will include, but not be limited to, the following:

(1) Developing and implementing a program to assist small businesses that is consistent with § 1020.4;

(2) Working to expedite Commission responses to small businesses and providing information, guidance, and technical assistance to small businesses;

(3) Performing a review, at least twice a year, of the Commission's regulatory agenda for actions likely to have a significant impact on small businesses; and

(4) Pursuing the interests of small businesses by maintaining a working relationship with appropriate officials in the Small Business Administration, in national trade associations that represent small businesses, and in the Commission.

§ 1020.4 What is the Small Business Program?

(a) Whenever the Commission is aware of the interests of small businesses, it will consider those interests before taking any action that will likely have a significant effect on small businesses.

(b) Small businesses may request and receive special assistance from the Commission, as appropriate and consistent with Commission resources. Examples of such assistance are:

(1) Small businesses may contact the Small Business Ombudsman to obtain information about Commission statutes, regulations, or programs; to obtain technical assistance; to determine who in the agency has particular expertise that might be helpful to the small business; or to help expedite a small business's request.

(2) Small businesses may request assistance from the Commission by using the small business extension on the Commission's hotline telephone system. The number is 1–800–638–2772, extension 234.

(3) The Small Business Ombudsman will directly provide small businesses with the requested assistance, or will direct the small business to the appropriate Commission staff for help.

(c) Whenever the Commission issues a final regulatory flexibility analysis for a rule, under the Regulatory Flexibility Act (5 U.S.C. 604), the Commission will publish a compliance guide for small businesses. The guide will explain in easy-to-understand language what action a small business must take to comply with the rule.

(d) The Commission may take other appropriate actions to assist small businesses, but such actions will not treat any other Commission constituent unfairly.

§ 1020.5 What is the Small Business Enforcement Policy?

(a) When appropriate, the Commission will, subject to all applicable statutes and regulations and paragraph (b) of this section:

(1) Waive or reduce civil penalties for violations of a statutory or regulatory requirement by a small business and/or

(2) Consider a small business's ability to pay in determining a penalty assessment against that small business,

(b) The Commission may decline to waive civil penalties or consider a small business's ability to pay, under paragraph (a) of this section, when one or more of the following circumstances applies:

(1) The small business's violations posed serious health or safety threats.

(2) The small business was subject to multiple enforcement actions by the Commission.

(3) The small business's violations involved willful or criminal conduct.

(4) The small business failed to correct violations within a reasonable time.

(5) The small business failed to make a good faith effort to comply with the law.

(6) The small business acted in any other way that would make it unfair or inappropriate for the Commission to provide a benefit under paragraph (a) of this section.

Dated: October 3, 1996.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 96–25807 Filed 10–8–96; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that certain vessels of the CSP Class and the SLWT Class are vessels of the Navy which, due to their special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with their special function as naval ships. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: September 13, 1996.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander M. W. Kerns, JAGC, U.S. Navy, Assistant Admiralty Counsel, Office of the Judge Advocate, General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that certain vessels of the CSP Class and SLWT Class are vessels of the Navy which, due to their special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with their special function as naval ships: Rules 21(a) and 23(a)(i) pertaining to placement of the masthead light; and, Annex I, paragraph 3(b) pertaining to the placement of the sidelights. The Deputy Assistant Judge Advocate General (Admiralty) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on these vessels in a manner differently from that prescribed herein will adversely affect the vessels' ability to perform their military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. Table Two of § 706.2 is amended by adding the following entries for the CSP Class and SLWT Class:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE TWO

Vessel	No.	Masthead lights, distance to stbd of keel in meters; rule 21(a)	Forward anchor light, distance below flight dk in meters; § 2(K), annex I	Forward anchor light, number of; rule 30(a)(i)	AFT anchor light, distance below flight dk in meters; rule 21(e), rule 30(a)(ii)	AFT anchor light, number of; rule 30(a)(ii)	Side lights, distance below flight dk in meters; § 2(g), annex I	Side lights, distance forward of forward masthead light in meters; § 3(b), annex I	Side lights, distance inboard of ship's sides in meters; § 3(b), annex I
* *	*		*	*		*	*		
CSP (class)	CSP–101 through CSP–182.	1.62							3.93
* *	*		*	*		*	*		
SLWT (class)	SLWT–6	1.62							3.93
SLWT (class)	SLWT–8 through SLWT–19.	1.62							3.93
SLWT (class)	SLWT–22 through SLWT–24.	1.62							3.93
SLWT (class)	SLWT–26 through SLWT–65.	1.62							3.93

3. Table Four, Paragraph 5 of § 706.2 is added as follows:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Table Four

* * * * *

5. The masthead light required by Rule 23(a)(i) is not located in the forepart of the vessel on the CSP Class and SLWT Class.

* * * * *

Dated: September 13, 1996.

Approved:

M. W. Kerns,

LCDR, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty) Acting.

[FR Doc. 96–25860 Filed 10–8–96; 8:45 am]

BILLING CODE 3810–FF–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH101–1a; FRL–5631–3]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Ohio on July 18, 1996, which amends the sulfur dioxide (SO_2) regulations applying to Ohio Edison's Sammis and Toronto Plants in Jefferson County. The revision requested July 18, 1996, involves reverting to an emission limit option presented in the Federal Implementation Plan (FIP) for Jefferson County.

DATES: The ''direct final'' approval is effective on December 9, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the revision request are available for inspection at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Ryan Bahr at (312) 353–4366 before visiting the Region 5 Office.)

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Ryan Bahr at (312) 353–4366.

SUPPLEMENTARY INFORMATION:

I. Background

The FIP containing SO_2 regulations applying to sources in Ohio was promulgated on August 27, 1976 (41 FR 36323). The relevant portion of the current SIP, Ohio Administrative Code (OAC) Rule 3745–18–47, was approved by the USEPA on January 2, 1981 (46 FR 8481). On September 12, 1979, the Governor of Ohio submitted an SO_2 control plan to USEPA for inclusion in the Ohio SIP. In this control plan, the State based its limits for the Sammis plant on equations specified in the FIP. Thus the limits applying to the Sammis plant were 1.61 pounds per million British thermal units actual heat input (#/mmBtu) for boilers 1 through 4 (stacks 1 and 2), and 4.46 #/mmBtu for boilers 5 through 7 (stacks 3 and 4). These limits were submitted to USEPA as part of OAC Rule 3745–18–47 on February 12, 1980. USEPA approved Rule 3745–18–47 and other relevant provisions of Chapter 3745–18 in the Federal Register on January 27, 1981 (45 FR 12266).

II. Summary of State Submittal

Originally, Ohio Edison chose to use two fuel sources with differing SO_2 content at the Sammis facility by using the equations presented in the FIP to formulate its emission limits. The company now wishes to make the Sammis facility's operation more efficient by using a single fuel source and has petitioned the State for a SIP revision. Ohio's July 18, 1996 submittal to USEPA amends OAC Rule 3745–18–47 by adding an additional paragraph to section (L) relating to the Ohio Edison Sammis facility, and adjusting section (M) for the Toronto facility. The revisions for the Sammis facility provide a limit of 2.91 #/mmBtu actual heat input from each boiler as an alternative to the existing boiler specific regulations. Ohio Edison is keeping both emission limit options for the Sammis facility, and is required to notify the State ninety days prior to the date of conversion. The two emission limit options for the Ohio Edison Sammis plant are the same as those promulgated in the FIP. The provisions in the State's SIP revision request relating to the Toronto plant consist of paragraphs (M)(1) and (M)(2). Paragraph (M)(1) limits the Toronto facility to a maximum SO_2 emission rate of 8.1 #/mmBtu from each boiler. Paragraph (M)(2) specifies a maximum of 2.0 #/mmBtu which goes into effect with this declaration of Federal approval.

A memorandum from the Director of the USEPA Air Quality Management Division to the Director of the USEPA Region 5 Air and Radiation Division entitled ''Response to Request for Guidance on Issues with Ohio Sulfur Dioxide Federal Implementation Plan,'' dated September 28, 1994, provides guidance on modeling issues associated with the Ohio SO_2 FIP. This memo sets forth three criteria to be met so that FIP limits for the Sammis plant can be reverted to in the SIP without new modeling. These criteria are: (1) That the FIP limits are demonstrated to be adequately protective at the time of promulgation; (2) that there is not evidence now that the FIP and the associated emission limits are inadequate to protect the SO_2 national ambient air quality standards (NAAQS); and (3) that the SIP revision is not a relaxation of existing emission limits.

The modeling presented in the SO_2 Control Strategy Technical Support Document (TSD) from August 1976 showed that no exceedences of the NAAQS would occur under either SO_2 limit option set forth in the FIP for the Sammis facility. Furthermore, there have not been any modeling analysis which show the FIP limits to be inadequate. Finally, since the FIP emission limit options were developed to have equivalent plant impacts, Ohio's July 18, 1996, submittal would neither decrease nor increase the allowable impacts of emissions from the Sammis plant, and would clearly tighten the limits at the Toronto plant. Therefore, pursuant to the guidance presented in the September 28, 1994, memorandum, the revision may be approved without submittal of a new modeling analysis. Additional modeling studies are not required in this instance because this revision merely reverts to the promulgated FIP and does not introduce any less stringent regulations than those approved in the original promulgation on August 27, 1976 (41 FR 36323).

Ohio's July 18, 1996, submittal did not include revisions to or discussion of compliance test methods. The current SIP, which includes Jefferson County limits and selected test methods that were simultaneously approved in 1981, applies the stack test method in OAC Rule 3745–18–04(D)(1) as the reference test method for evaluating compliance with the Jefferson County limits. The State's recent submittal did not request revisions to the applicable test methods. This indicates that the SIP continues to apply the test methodology in OAC Rule 3745–18–04(D)(1) as the applicable

reference test method for all of Jefferson County's sources.

On July 18, 1979, West Virginia requested to revise their SO_2 SIP and identified Ohio Edison's Sammis plant to have a significant impact on the attainment status of Hancock County, West Virginia (44 FR 43298). Portions of Hancock County are currently designated nonattainment, necessitating further revisions to the area's SIP. If the modeling conducted by West Virginia to address this requirement demonstrates that the emission limits for the Sammis Plant do not protect the NAAQS, then USEPA will require further revisions to the emission limits which apply to the Sammis Plant as necessary.

III. Final Rulemaking Action

The USEPA is approving Ohio's July 18, 1996, SO_2 SIP revision submittal, which amends OAC Rule 3745–18–47. The USEPA has found that the emission limits for Ohio Edison's Sammis plant specified in this SIP revision reinstate FIP limits promulgated previously by USEPA that are equivalent to the limit in the existing SIP, and that the emissions limits for Ohio Edison's Toronto plant have been lowered, and concludes that these revisions may be approved without further modeling support.

The USEPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, USEPA is publishing a proposal to approve the SIP revision should significant adverse or critical comments which have not been previously addressed be filed. This action will be effective December 9, 1996, unless, by November 8, 1996, such adverse or critical comments are received.

If USEPA receives such comments, this action will be withdrawn by publishing a subsequent document that will withdraw the final action. Public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The USEPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective December 9, 1996.

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.

IV. Administrative Requirements

A. Executive Order 12866

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 D. Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant 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 sections 110 and 301, 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 flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, USEPA must undertake various actions in association with 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. 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 the private sector, result from this action.

D. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 9, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2))

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Sulfur dioxide.

Dated: September 25, 1996.

David A. Ullrich,

Acting Regional Administrator.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.1870 is amended by adding paragraph (c)(111) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(111) On July 18, 1996, the Ohio Environmental Protection Agency submitted a site specific State Implementation Plan revision for Ohio Edison's Sammis and Toronto plants for Sulfur Dioxide. The revisions for the Sammis plant provide ''as an alternative'' to the existing boiler specific regulations a limit of ''2.91 #/mmBtu actual heat input from each boiler''. The regulation for the Toronto plant reduces allowable emissions to 2.0 #/mmBtu.

(i) Incorporation by reference.

(A) Ohio Administrative Code (OAC) Rule 3745–18–47, effective July 25, 1996.

[FR Doc. 96–25940 Filed 10–8–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 271

[FRL–5630–4]

Oklahoma: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: The State of Oklahoma has applied for Final authorization of revision to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), and the Environmental Protection Agency (EPA) has reviewed Oklahoma's application and decided that its hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Unless adverse written comments are received during the review and comment period provided for public participation in this process, EPA intends to approve Oklahoma's hazardous waste program revision subject to the authority retained by EPA in accordance with Hazardous and Solid Waste Amendments of 1984 (HSWA). The Oklahoma's application for the program revision is available for public review and comment.

DATES: This final authorization for Oklahoma is effective December 23, 1996, unless EPA publishes a prior Federal Register (*FR*) action withdrawing this Immediate Final Rule. All comments on the Oklahoma's program revision application must be received by the close of business November 25, 1996.

ADDRESSES: Copies of the Oklahoma program revision application and the materials which EPA used in evaluating the revision are available for inspection and copying from 8:30 a.m. to 4 p.m. Monday through Friday at the following addresses: State of Oklahoma Department of Environmental Quality, 1000 Northeast Tenth Street, Oklahoma City, Oklahoma 73117–1212, phone (405) 271–5338 and EPA, Region 6 Library, 12th Floor, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 65202, phone (214) 665–6444. Written comments, referring to Docket Number OK–96–1, should be sent to Alima Patterson, Authorization Coordinator, Grants and Authorization Section (6PD–G), EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, Phone number: (214) 665–8533.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Authorization Coordinator, Grants and Authorization Section (6PG–G), EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, Phone number: (214) 665–8533.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the RCRA, 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260–268, and 270.

B. Oklahoma

Oklahoma initially received Final Authorization on January 10, 1985, (49 *FR* 50362) to implement its base hazardous waste management program. Oklahoma received authorization for revisions to its program on June 18, 1990 (55 *FR* 14280), November 27, 1990 (55 *FR* 39274), June 3, 1991 (56 *FR* 13411), November 19, 1991 (56 *FR* 47675), effective December 21, 1994 (59 *FR* 51116–51123) and (60 *FR* 2699–2701), effective April 27, 1995. The authorized Oklahoma RCRA program was incorporated by reference into the Code of Federal Regulations effective December 13, 1993. On March 13, 1996, Oklahoma submitted a final complete program revision application for additional program approvals. Today, Oklahoma is seeking approval of its program revision in accordance with § 271.21(b)(3).

Specific statutory language which addressed adoption of Federal Regulations by reference was formerly found at 63 Oklahoma Statutes (O.S.), Supp. 1992 § 1–2005. This section was repealed by House Bill 1002, effective July 1, 1993. Adoption by reference was continued through the general rule making language of 27A O.S. Supp. 1993 § 2–7–106. 27A O.S. Supp. § 2–2–104 was enacted to clarify the adoption by reference abilities of the Oklahoma Department of Environmental Quality (ODEQ). See Rules 252:200–3–2 through 252:200–3–6 adopt the Federal Requirements by reference.

The EPA reviewed ODEQ's application, and made an immediate final decision that ODEQ's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final Authorization. Consequently, EPA intends to grant Final Authorization for the additional program modifications to Oklahoma. The public may submit written comments on the EPA's final decision until November 25, 1996. Copies of Oklahoma's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

Approval of ODEQ's program revision shall become effective 75 days from the date this notice is published, unless an adverse written comment pertaining to the State's revision discussed in this document is received by the end of the comment period. If an adverse written comment is received, EPA will publish either (1) A withdrawal of the immediate final decision or (2) a notice containing a response to the comment that either affirms that the immediate final decision takes effect or reverses the decision.

Oklahoma's program revision application includes State regulatory changes that are equivalent to the rules promulgated in the Federal RCRA implementing regulations in 40 CFR Parts 124, 260–262, 264, 265, 266 and 270 that were published in the *FR* through June 30, 1994. This proposed approval includes the provisions that are listed in the chart below. This chart also lists the State analogs that are being recognized as equivalent to the appropriate Federal requirements.

Federal citation	State analog
1. Requirements for Preparation, Adoption, and Submittal of Implementation Plans, [58 FR 38816] July 20, 1993. (Checklist 125).	Oklahoma Hazardous Waste Management Act (OHWMA), as amended, 27A Oklahoma Statutes (O.S.), Supp. 1994, §§ 2–7–107(A), (4) and 5), and 2–2–104, effective July 1, 1994; and Oklahoma Administrative Code (OAC) Rules 252:200–3–1 through 252:200–3–6, effective May 26, 1994.
2. Testing and Monitoring Activities, [58 FR 46040] August 31, 1993. (Checklist 126).	OHWMA, as amended, 27A O.S., Supp. 1994, §§ 2–2–106, effective July 1, 1994, OAC Rules 252:200–3–1 through 252:200–3–6, effective May 26, 1994.

Federal citation	State analog
3. Burning of Hazardous Waste in Boilers and Industrial Furnaces, [58 FR 59598] November 9, 1993. (Checklist 127).	OHWMA, as amended, 27A O.S., Supp. 1994, §§ 2–2–104, and 2–7–107(A)(5), effective July 1, 1994, and OAC Rules 252:200–3–1 through 252:200–3–6, effective May 26, 1994.
4. Hazardous Waste Management Systems; Identification and Listing of Hazardous Waste; Waste from Wood Surface Protection, [59 FR 458] January 4, 1994. (Checklist 128).	OHWMA, as amended, 27A O.S., Supp. 1994, §§ 2–2–104 and § 2–7–106, effective July 1, 1994, and OAC Rules 252:200–3–1 through 252:200–3–6, effective May 26, 1994.
5. Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Treatability Studies Sample Exclusion, [59 FR 8362] February 18, 1994. (Checklist 129).	OHWMA, as amended, 27A O.S., Supp. 1994, §§ 2–2–104 and 2–7–106, effective July 1, 1994, and OAC Rules 252:200–3–1 through 252:200–3–6, effective May 26, 1994.
6. Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards, [59 FR 10550] March 4, 1994. (Checklist 130).	OHWMA, as amended, 27A O.S., Supp. 1994, §§ 2–2–104, and 2–7–107(A)(5) effective July 1, 1994, and OAC Rules 252:200–3–1 through 252:200–3–6, effective May 26, 1994.
7. Recordkeeping Instructions, [59 FR 13891] March 24, 1994. (Checklist 131).	OHWMA, as amended, 27A O.S., Supp. 1994, §§ 2–2–104, and 2–7–105(5), and 2–7–106, effective July 1, 1994, and OAC Rules 252:200–3–1 through 252:200–3–6, effective May 26, 1994.
8. Hazardous Waste Management System; Identification and Listing of Hazardous Wastes; Wastes from Wood Surface Protection; Correction, [59 FR 28484] June 2, 1994. (Checklist 132).	OHWMA, as amended, 27A O.S., Supp. 1994, § 2–7–106, and 2–2–104, effective July 1, 1994, and OAC Rules 252:200–3–1 through 252:200–3–6, effective May 26, 1994.
9. Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities, Underground Storage, Tanks, and Underground Injection Control Systems; Financial Assurance; Letter of Credit, [59 FR 29958] June 10, 1994. (Checklist 133).	OHWMA, as amended, 27A O.S., Supp. 1994, §§ 2–2–104, effective July 1, 1994, and OAC Rules 252:200–3–1 through 252:200–3–6, effective May 26, 1994.
10. Hazardous Waste Management System; Correction of Listing of P015–Beryllium Powder, [59 FR 31551–31552] June 20, 1994. (Checklist 134).	OHWMA, as amended, 27A O.S., Supp. 1994, §§ 2–2–104, and 2–7–106, effective July 1, 1994, and OAC Rules 252:200–3–1 through 252:200–3–6, effective May 26, 1994.

Oklahoma is not authorized to operate the Federal program on Indian lands. This authority remains with EPA.

C. Decision

I conclude that ODEQ's application for a program revision meets the statutory and regulatory requirements established by RCRA. Accordingly, ODEQ is granted Final Authorization to operate its hazardous waste program as revised. Oklahoma now has responsibility for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Oklahoma also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under Section 3007 of RCRA, and to take enforcement actions under Sections 3008, 3013 and 7003 of RCRA.

D. Codification in Part 272

The EPA uses 40 CFR part 272 for codification of the decision to authorize ODEQ's program and for incorporation by reference of those provisions of its Statutes and regulations that EPA will enforce under Sections 3008, 3013, and 7003 of RCRA. Therefore, EPA is reserving amendment of 40 CFR part 272, subpart LL until a later date.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P. L. 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, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of the EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The

EPA does not anticipate that the approval of Oklahoma's hazardous waste program referenced in today's notice will result in annual costs of $100 million or more.

Today's rule contains no Federal mandates for State, local or tribal governments or the private sector. The Act excludes from the definition of a ''Federal mandate'' duties that arise from participation in a voluntary Federal program, except in certain cases where a ''federal intergovernmental mandate'' affects an annual federal entitlement program of $500 million or more that are not applicable here. Oklahoma's request for approval of a hazardous waste program is voluntary; if a state chooses not to seek authorization for administration of a hazardous waste program under RCRA Subtitle C, RCRA regulation is left to EPA.

The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures $100 million or more for state, local, and tribal governments in the aggregate, or the private sector in any one year. The EPA does not anticipate that the approval of Oklahoma's hazardous waste program referenced in today's notice will result in annual costs of $100 million or more. The EPA's approval of state programs generally may reduce, not increase, compliance costs for the private sector since the State, by virtue of the approval, may now administer the program in lieu of the EPA and exercise primary enforcement. Hence, owners and operators of treatment, storage, or disposal facilities TSDFs generally no longer face dual federal and state compliance requirements, thereby reducing overall compliance costs. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Certification Under the Regulatory Flexibility Act

The EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. The EPA recognizes that small entities may own and/or operate TSDFs that will become subject to the requirements of an approved state hazardous waste program. However, since such small entities which own and/or operate TSDFs are already subject to the requirements in 40 CFR Parts 264, 265 and 270, this authorization does not impose any additional burdens on these small entities. This is because EPA's authorization would result in an administrative change (i.e., whether the Environmental Protection Agency or the state administers the RCRA Subtitle C program in that state), rather than result in a change in the substantive requirements imposed on small entities. Once EPA authorizes a state to administer its own hazardous waste program and any revisions to that program, these same small entities will be able to own and operate their TSDFs under the approved state program, in lieu of the federal program. Moreover, this authorization, in approving a state program to operate in lieu of the federal program, eliminates duplicative requirements for owners and operators of TSDFs in that particular state.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Oklahoma's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the EPA submitted a report containing this rule and other required information to the U.S. Senate, the U. S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

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

Dated: September 26, 1996.

Jerry Clifford,

Deputy Regional Administrator.

[FR Doc. 96–25791 Filed 10–8–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 300

[FRL–5632–5]

National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Deletion for Chemet Company Superfund Site, Fayette County, Tennessee, from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 4 announces the deletion of the Chemet Company Superfund Site from the National Priorities List (NPL), (Appendix B of 40 CFR Part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP)). EPA and the State have determined that all appropriate Fund-financed responses under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, have been implemented and that no further cleanup is appropriate. Moreover, EPA and the State have determined that remedial actions conducted at the site to date have been protective of public health, welfare and the environment. This deletion does not preclude future action under Superfund.

EFFECTIVE DATE: September 30, 1996.

FOR FURTHER INFORMATION CONTACT: Robert West, Remedial Project Manager, U.S. Environmental Protection Agency, Region 4, North Site Management Branch, 100 Alabama Street, S.W., Atlanta, Georgia 30303, (404) 562–8806.

SUPPLEMENTARY INFORMATION: The Site to be deleted from the NPL is: Chemet Company Superfund Site in Fayette County, Tennessee.

A Notice of Intent to Delete for this site was published on August 21, 1996, 61 FR 43205 (FR–5556–4). The closing date for comments on the Notice of Intent to Delete was September 20, 1996. EPA received no comments.

EPA identifies sites that appear to present a significant risk to the public health, welfare and the environment and it maintains the NPL as the list of those sites. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the future. Section 300.425(e)(3) of the NCP states that

Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

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

Dated: September 25, 1996.

Michael V. Peyton,

Acting Deputy Regional Administrator, U.S. EPA Region 4.

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

PART 300—[AMENDED]

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

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

Appendix B—[Amended]

2. Table 1 of appendix B to part 300 is amended by removing the site for the Chemet Company, Moscow, Tennessee.

[FR Doc. 96–25795 Filed 10–8–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 300

[FRL–5632–6]

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

AGENCY: Environmental Protection Agency.

ACTION: Notice of Deletion of Gold Coast Oil Corporation Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region IV announces the deletion of the Gold Coast Oil Corporation Site, Dade County, Florida, from the National Priorities List (NPL). The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the State of Florida Department of Environmental Protection (FDEP) have determined that the Site poses no significant threat to public health or the environment and therefore, further response measures pursuant to CERCLA are not appropriate.

EFFECTIVE DATE: October 9, 1996.

ADDRESSES: Richard D. Green, Acting Director, Waste Management Division, U.S. Environmental Protection Agency, 100 Alabama St., SW., Atlanta, Georgia 30303. Comprehensive information on this Site is available through the Region IV public docket, which is available for viewing at the Gold Coast Oil Corporation Site information repositories at two locations. Locations and phone numbers are: USEPA Record Center, 100 Alabama Street SW., Atlanta, Georgia 30303, (404) 562–8862, and Florida International University, University Park Campus Library, Rm. AT–235, Miami, Florida, 33199. Appointments can be scheduled to review the documents locally by contacting the library at (305) 348–2463.

SUPPLEMENTARY INFORMATION: The Gold Coast Oil Corporation Site in Dade County, Florida, is being deleted from the NPL.

A Notice of Intent to Delete for this site was published on August 21, 1996 (61 FR 43203). The closing date for comments on the Notice of Intent to Delete was September 20, 1996. EPA received no comments and therefore did not prepare a Responsiveness Summary.

The EPA identifies sites which appear to present a significant risk to public health welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous 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 301.425(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

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous Waste, Intergovernmental relations, Penalties, Reporting and record keeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 27, 1996.

A. Stanley Meiburg,

Acting Regional Administrator, USEPA Region IV.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

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

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

Appendix B—[Amended]

2. Table 1 of appendix B to part 300 is amended by removing the Site for ''Gold Coast Oil Corporation, Miami, Florida''.

[FR Doc. 96–25793 Filed 10–8–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[GC Docket No. 96–101, FCC 96–376]

Implementation of Section 34(a)(1) of the Public Utility Holding Company Act of 1935, as Added by the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Report & Order (R&O) adopts regulations which implement new section 34(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA), 15 U.S.C. 79 *et seq.*, as added by section 103 of the Telecommunications Act of 1996. Under new section 34, registered public utility holding companies may now enter the telecommunications industry without prior Securities and Exchange Commission (''SEC'') approval by acquiring or maintaining an interest in an ''exempt telecommunications company'' (''ETC''). Moreover, exempt public utility holding companies, by owning or acquiring an interest in an ETC, may now acquire a ''safe harbor'' from potential SEC regulation under PUHCA section 3(a). Section 34(a)(1) requires the Commission to promulgate rules implementing procedures for determining ETC status within one year of the date of enactment of the Telecommunications Act of 1996.

EFFECTIVE DATE: November 8, 1996.

FOR FURTHER INFORMATION CONTACT: Lawrence J. Spiwak, Competition

Division, Office of General Counsel, at (202) 418–1870.

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I. Introduction

1. In this order, we adopt regulations to implement new Section 34(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA).[1] Under new Section 34, registered public utility holding companies may enter the telecommunications industry without prior Securities and Exchange Commission (SEC) approval by acquiring or maintaining an interest in an ''exempt telecommunications company'' (ETC).[2] Moreover, exempt public utility holding companies, by owning or acquiring an interest in an ETC, may now acquire a ''safe harbor'' from potential SEC regulation under PUHCA Section 3(a).[3] The new law vests the Commission with jurisdiction to determine whether a company warrants ETC status based on specific statutory criteria.

II. Background

2. As explained in the Notice of Proposed Rulemaking (NPRM),[4] Congress designed PUHCA to prevent financial abuse among public utility holding companies and their affiliates.[5] PUHCA accomplished this goal by, among other things, restricting the activities and investments that utility holding companies are permitted to make outside of their core public utility businesses.[6] Prior to the Telecommunications Act of 1996, the provisions of PUHCA strongly deterred entry by registered public utility holding companies into the telecommunications industry.[7] Somewhat anomalously, however, utilities that are not registered public utility holding companies have always been free to enter the telecommunications industry without prior SEC approval, regardless of their size or scope.

3. Section 103 of the Telecommunications Act of 1996, which adds new PUHCA Section 34(a)(1), ends this disparate treatment among different types of utility companies by allowing previously restricted holding companies to enter telecommunications industries without prior SEC permission through the acquisition or maintenance of an interest in an ''exempt telecommunications company.'' Under Section 34(a)(1), an ETC is any person determined by the Commission to be engaged directly or indirectly, wherever located, through one or more affiliates (as defined in Section 2(a)(11)(B) of PUHCA [8]), and exclusively in the business of providing one or more of the following: (A) telecommunications services; [9] (B) information services; [10] (C) other services or products subject to the jurisdiction of the Commission; or (D) products or services that are related or incidental to the provision of a product or service described in (A), (B), or (C).

4. Section 34(a)(1) provides that an applicant who has applied in good faith for a determination of ETC status is deemed an ETC until the Commission makes its determination. Section 34(a)(1) requires the Commission to render this determination within 60 days of the receipt of an application. Section 34(a)(1) also requires the Commission to notify the SEC whenever it determines that a person is an ETC. Finally, Section 34(a)(1) requires the Commission to promulgate rules implementing the procedure for determining ETC status within one year of the date of enactment of the Telecommunications Act of 1996.

5. In the NPRM, the Commission proposed to implement Section 34(a)(1) by providing a simple procedure for ETC determination, under which applicants briefly describe their planned activities and certify that they satisfy the specific statutory requirements and any applicable Commission regulations. The Commission stated that because it believes that its responsibilities under Section 34(a)(1) are limited to whether the applicant meets the express statutory criteria for ETC status, an ETC determination ''should not involve an inquiry into the public interest merits of entry by the applicant.'' [11] The Commission further stated that neither the public interest nor the intent of Congress would be served if this process became a regulatory barrier to significant new entry into the telecommunications industry.[12] Accordingly, the proposed rules were limited to the filing requirements and procedures for persons seeking exempt telecommunications company status. The Commission stated that it believed this to be the best approach to expedite Congress's policy of allowing holding companies to become vigorous competitors in the telecommunications industry and thus promote the public interest.[13]

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[1] 15 U.S.C. 79 *passim*, as amended by Section 103 of the Telecommunications Act of 1996, Public Law No. 104–104, 110 Stat. 56 (1996).

[2] *See* PUHCA § 34(d).

[3] *See* PUHCA § 34(c).

[4] *In re Implementation of Section 34(a)(1) of the Public Utility Holding Company Act of 1935, as added by the Telecommunications Act of 1996, Notice of Proposed Rulemaking*, GC Docket No. 96–101, 61 FR 24743–01 (May 16, 1996).

[5] *Id., citing Arcadia, Ohio* v. *Ohio Power*, 498 U.S. 73, 87 (1990) (Stevens, J. concurring) (citations omitted).

[6] Under PUHCA, there are two types of public utility holding companies: registered and exempt. As a presumptive matter, all public utility holding companies are considered to be ''*registered*'' under the terms of PUHCA. Registered public utility holding companies must comply with the restrictions contained in PUHCA and are subject to regulation by the SEC. However, if a public utility holding company satisfies one of the five statutory exemptions contained in Section 3(a) of PUHCA, 15 U.S.C. 79(d), (as all but fifteen utilities do), then that company is considered to be an exempt public utility holding company, because that company is generally exempt from the regulatory restrictions of PUHCA and regulation by the SEC.

[7] *See* PUHCA §§ 3(a), 11(b)(1).

[8] PUHCA § 2(a)(11)(B) defines ''affiliate'' as ''any company 5 per centum or more of whose outstanding voting securities are owned, controlled, or held with power to vote, directly or indirectly, by such specified company.''

[9] *See* Communications Act of 1934 § (3)(51), as added by the Telecommunications Act of 1996, which provides that the term ''telecommunications service'' means the ''offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used to transmit the telecommunications service.''

[10] See Communications Act of 1934 § (3)(41), as added by the Telecommunications Act of 1996, which provides that the term ''information service'' means the ''offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telephone system or the management of a telecommunications service.''

[11] *See* NPRM at ¶2 (*citing* Report of the Committee on Commerce, Science and Transportation on S. 652, S. Rep. No. 23, 104th Cong., 1st Sess. at 8 (1995) (''*Senate Report*'')).

[12] *Id.*

[13] *Id.*

6. The Commission solicited comment on the issues raised in the NPRM. Eleven parties filed comments and seven parties filed reply comments. A list of the commenters is provided in the Attachment below.

III. Discussion

A. Scope of ETC Inquiry

1. The NPRM

7. In the NPRM, the Commission cited its earlier holding that its responsibilities under Section 34(a)(1) do not appear to extend beyond a determination of whether an applicant complies with the limited certification criteria enumerated above.[14] The Commission reasoned that this conclusion is evident not only from the unambiguous language of Section 34(a)(1), but from other provisions of Section 34, which preserve other statutory provisions where the scope of an ETC's activities can be evaluated. For example, Section 34(n) preserves the Commission's and affected states' authority to regulate the activities of an ETC under provisions of the Communications Act of 1934 and any applicable state laws. In addition, Section 34(j) retains the jurisdiction of the Federal Energy Regulatory Commission (FERC) and state commissions to determine whether a public utility company may recover in its rates the costs of products or services purchased from or sold to an associate or affiliate company that is an ETC, regardless of whether such costs are incurred through the direct or indirect purchase or sale of products or services from the affiliate or associate company. Finally, Section 34(m) grants state commissions authority to conduct independent audits of public utility holding companies and their affiliates. The Commission requested comment on whether its existing interpretation of the scope of its inquiry under Section 34(a)(1) is correct.[15]

2. Comments

8. Several commenters support the Commission's interpretation of its responsibilities under Section 34(a)(1).[16] They agree that the scope of public comment and this agency's review is appropriately limited to whether an applicant meets the statutory requirements of Section 34 of PUHCA, and that substantive issues associated with the applicant's entry can be addressed in other proceedings.[17] Other commenters disagree, arguing that the Commission must examine the public interest merits of holding company entry into telecommunications markets.[18]

9. Other commenters argue that before the Commission can grant an application for ETC status, the Commission must impose safeguards to protect against potential cross-subsidization between the ETC and its holding company parent. For example, New Jersey argues that ETC applicants should be required to file more information because the initial application is the best place to collect information which various federal and state authorities may eventually require.[19] Other commenters argue that ETC applicants should simply certify that the safeguards protecting against cross-subsidization contained in Section 34 will be met.[20]

10. Third, two commenters argue that incumbent LECs must be treated in the same manner as ETCs. For example, BellSouth argues that while holding company entry will increase competition, such entry could have the undesired effect of slowing competition if the Commission and state commissions fail to adopt an approach of ''regulatory parity.''[21] Similarly, CBT argues that while Section 34 includes some safeguards against cross-subsidization, they are not the same as those currently applicable to incumbent LECs. CBT submits that as long as incumbent LECs must comply with the Commission's accounting safeguards, those same rules should be made equally applicable to the holding companies and their ETC affiliates.[22]

11. Finally, several commenters argue that the Commission should not permit a utility to enter a telecommunications market until it affirmatively demonstrates its compliance with the pole attachment requirements contained in Section 224 of the Communications Act of 1935, as added by Section 703 of the 1996 Act.[23] Other parties reject claims that pole attachment obligations should be incorporated into the ETC process as beyond the statutory mandate and the scope of this proceeding.[24] These parties argue that nothing in the plain language of Section 34(a)(1) suggests that pole access should be a factor in the determination of ETC status. Furthermore, they argue that issues relating to pole access are addressed comprehensively in Section 224, and implementation of these provisions are the subject of other, distinct rulemakings. Finally, these commenters contend that there are numerous infrastructure owners not subject to PUHCA restrictions on entry into telecommunications markets and it would be unfair and nonsensical to single out registered holding companies for special obligations relating to pole access in the ETC context.[25]

3. Discussion

12. After review, we reaffirm our original conclusion that the Section 34(a)(1) inquiry is a limited one. Contrary to some commenters' arguments, we do not believe that it is our role to examine the public interest merits of entry under Section 34(a)(1). Congress already concluded in enacting Section 103 that, as a general matter, competitive entry by public utility holding companies is in the public interest.[26] Indeed, the legislative history states that:

> *Allowing * * * holding companies to become vigorous competitors in the telecommunications industry is in the public interest.* Consumers are likely to benefit when more well-capitalized and experienced providers of telecommunications services actively compete. Competition to offer the same services may result in lower prices to consumers. Moreover, numerous competitors may offer consumers a wider choice of services and options.[27]

Moreover, as we previously recognized, and as commenters point out, to the extent particular transactions raise public interest concerns, Congress preserved state and federal jurisdiction to examine these issues in other, more appropriate, proceedings. For these reasons, we reject commenters' arguments in opposition to this point.

[14] *See* NPRM at 15 (*citing Entergy Technology Company* (FCC 96–163, released April 12, 1996) (''*Entergy*'')).

[15] *Id.*

[16] *See* Southern Comments at 5–6; Entergy Comments at 5–6; New Jersey Comments at 2 (1996 Act simply eliminates the provision in PUHCA that registered holding company obtain SEC approval before entering the telecommunications business).

[17] *Id.*

[18] *See, e.g.,* CBT Comments at 2–3; ACSI Comments at 3–11 (if Commission does not consider whether granting ETC status to a particular utility affiliate will serve the public interest in fostering effective local competition, Commission reduces its function to that of a rubber stamp and renders the entire process meaningless).

[19] New Jersey Comments at 2–5.

[20] USTA Comments at 1–2; CBT at 5; *see also* ACSI Reply at 11.

[21] BellSouth Comments at 3–5.

[22] CBT Comments at 3, n.10.

[23] ACSI Comments at 3–10; ALTS Comments at 1–7; *see also* MCI Reply at 4; CBT Comments at 5 (public utility holding companies must make their poles, conduits, and right-of-way available to competing telecommunications service providers at least to the same extent and under the same terms and conditions as is required of incumbent LECs).

[24] Southern Reply at 6–7; Entergy Reply at 3–4.

[25] *Id.*

[26] *See* Entergy Reply at 2–3; *see also* NEES Reply at 4.

[27] *Senate Report* at 7 (emphasis supplied).

13. We also believe that commenters' arguments regarding potential cross-subsidization are misplaced. First, as we stated earlier, we believe our inquiry under the statute is limited to a determination as to whether an applicant meets the enumerated statutory criteria. In addition, there are other provisions in Section 34 which adequately protect against issues of cross-subsidization. For example, Section 34(j) retains the jurisdiction of FERC and state commissions to determine whether a public utility company may recover in its rates the costs of products or services purchased from or sold to an associate or affiliate company that is an ETC, regardless of whether such costs are incurred through the direct or indirect purchase or sale of products or services from the affiliate or associate company. Moreover, Section 34(e)(4) gives the SEC jurisdiction to ensure that costs are fairly and equitably allocated among companies that are associate companies of a registered holding company. Finally, Section 34(m) provides state commissions the authority to conduct independent audits of public utility holding companies and their affiliates.

14. We also reject BellSouth's and CBT's claim that we must either: (a) place the same regulatory restrictions on ETCs as we do on LECs; or, in the name of regulatory parity, (b) reduce the levels of reporting requirements currently imposed on LECs. First, generically grouping all ETCs as potential LECs oversimplifies the process and ignores the wide range of potential services that ETCs can provide. Indeed, the applications received to date generally involved services other than local exchange access services.[28] Second, as several commenters point out, to the extent that ETCs decide to compete for local loop service, they will inevitably have to compete with an incumbent, dominant LEC.[29] Finally, as mentioned above, because our statutory authority is limited, we do not believe that this proceeding is the appropriate forum to impose additional conditions on the ETC process.

15. Finally, we do not agree that pole attachment obligations should be incorporated into the ETC process. Again, this inquiry is beyond our limited responsibility under Section 34(a)(1). Pole attachments is an issue generic to all utilities as well as LECs, so whether or not an entity is an ETC has no bearing on whether that entity must make its poles available in a non-discriminatory manner. Accordingly, we believe that this issue is better addressed in other proceedings.[30] We see no reason to visit this issue in this proceeding.

B. Application Process

1. General Procedures

a. The NPRM

16. In the NPRM, the Commission noted that PUHCA Section 34(a)(1) is similar to the ''exempt wholesale generator'' provision of PUHCA Section 32 which permits, *inter alia,* public utility holding companies to enter into the independent power production business.[31] FERC, the federal agency responsible for implementing PUHCA Section 32, interpreted that statute as intended to give it only circumscribed authority, and therefore implemented a procedure whereby an applicant need only briefly describe its planned activities and certify that it satisfies the requisite statutory criteria.[32] In the NPRM, the Commission stated that it believed that similar filing requirements should be required under Section 34(a)(1).[33]

17. Accordingly, the draft rules proposed, first, that an applicant provide a brief description of the planned activities of the eligible company or companies owned or operated by the applicant. Second, the rules proposed that any person seeking ETC status (applicant) must file a sworn statement, by a representative legally authorized to bind the applicant, attesting to any facts or representations presented to demonstrate eligibility for ETC status, including a representation that the applicant is engaged directly, or indirectly, wherever located, through one or more affiliates (as defined in Section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935), and exclusively in the business of providing: (A) telecommunications services; (B) information services; (C) other services or products subject to the jurisdiction of the Commission; or (D) products or services that are related or incidental to the provision of a product or service described in (A), (B), or (C). Finally, the draft rules proposed to require an applicant (as all Commission applicants in all contexts) to provide a sworn statement, by a representative legally authorized to bind the applicant, certifying that the applicant satisfies part 1, subpart P, of the Commission's regulations, 47 CFR § 1.2001 through § 1.2003, regarding the Anti-Drug Abuse Act of 1988, 21 U.S.C. 862.

b. Comments

18. Many commenters focus on the requirement contained in the proposed rules that applicants provide a ''brief description'' of their planned activities.[34] For example, Southwestern Bell argues that applicants should be required to file more than a ''brief description'' of their planned activities in order to allow states to determine whether their participation in the FCC proceedings is warranted and to help states carry out their own responsibilities under the 1996 Act.[35]

19. BellSouth also criticizes the proposed requirement that applicants need only provide a ''brief description'' of their planned activities. BellSouth disputes the Commission's holding in *Entergy* that there is no parallel concept to the EWG requirement that facilities must fall within a specific definition of ''eligible facilities.'' According to BellSouth, Section 34(a)(1) does contain a parallel concept, in that a determination of ETC status hinges on the definition and provision of ''telecommunications services'' and other services contemplated in the Act.[36]

20. Southern opposes these suggestions and urges the Commission to adopt the rules regarding descriptions of proposed activities in their proposed format.[37] Southern argues that the issue in the application process is whether the ETC's business activities fall within the scope of the categories contained in Section 34(a)(1). According to Southern,

[28] *See, e.g., Entergy; Southern Information Holding Company et al.,* DA 96–951 (released June 14, 1996); *Allegheny Communications Connect, Inc.,* DA 96–953 (released June 14, 1996).

[29] Southern Reply at 12; Entergy Reply at 7–8.

[30] *See, e.g., In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report & Order* at ¶¶ 1119–1249 (FCC No. 96–325, released Aug. 8, 1996), 61 FR 45,476–01 (August 29, 1996).

[31] *See* PUHCA Section 32, as added by Section 711 of the Energy Policy Act of 1992, 15 U.S.C. 79z-5a.

[32] *See Filing and Ministerial Procedures for Persons Seeking Exempt Wholesale Generator Status, Order No. 550,* 58 FR 8,897–01 (February 18, 1993); *order on reh'g, Order No. 550–A,* 58 FR 21,250 (April 20, 1993); *see also* 18 C.F.R. § 365.1 through § 365.7.

[33] NPRM at ¶ 9.

[34] *See, e.g.,* Southwestern Bell Comments and BellSouth Comments.

[35] Southwestern Bell Comments at 2–3 (ETC applications should include a listing and description of the types of services that the ETC applicant plans to provide, and the geographic locations where the ETC applicant intends to provide them).

[36] BellSouth Comments at 12–14 (ETC applications should provide, at minimum: (a) a description of the facilities which will be utilized in the provision of the described service; (b) an indication of whether the facilities will be those of the ETC or its affiliate; and (c) an indication of which, if any, facilities are owned by the holding company (or its affiliates other than the applicant) with which the applicant is affiliated).

[37] Southern Reply at 7–8.

requiring extensive and extraneous detail concerning proposed activities would unnecessarily limit the ETC's flexibility and improperly and needlessly force the release of proprietary business information to competitors. Such a result would, in Southern's view, be contrary to the policies underlying the Act and should not be adopted.[38]

c. Discussion

21. We reject claims that we must require prospective applicants to file more than a brief description of their planned activities in order to demonstrate that they qualify for ETC status. Given the scope of our ETC inquiry, it is only necessary that applicants be required to provide information sufficient for the Commission to make an informed decision. Our proposed rules are designed to do exactly that. Requiring anything more would unduly place additional burdens on applicants without providing any benefits to the public. On the other hand, we stated that applicants must do more than recite the statutory definition for ETC status. Rather, the ''brief description'' contemplated by our rules must contain facts that are sufficient for the Commission to determine that the applicant meets the statutory criteria. To the extent applications are inadequate in this respect, the Commission may either deny the application or request that the applicant provide additional information.

22. We also reject BellSouth's argument that additional information is required so that affected states can determine whether they should participate in a particular ETC proceeding. Section 1.4002 of our rules will specifically require ETC applicants to serve a copy of their application on affected state commissions.[39] Given that public comment in these proceedings is limited to the adequacy or accuracy of the application, we believe that service upon state commissions should provide sufficient notice.

2. Compliance with the Statutory Definition

a. Comments

23. With regard to an applicant's compliance with the statutory definition, many commenters debate what it is to be exclusively ''engaged'' in the business of providing a permitted service. For example, BellSouth argues that the Commission should require that the applicant be formed for the exclusive purpose of providing the relevant services at the time it files its application with the Commission, but that the grant of ETC status be conditioned on the entity actually providing the service within a reasonable period of time.[40] Southern, however, urges the Commission to reject such an approach, contending that the condition urged by BellSouth would place an unwarranted burden upon ETCs to commence activities within some undefined ''reasonable period of time'' under peril of losing their ETC status. Such a condition, argues Southern, is likely to chill or hinder competition, rather than foster it, and therefore should not be adopted.[41]

24. Second, Entergy argues that there may be appropriate circumstances where the Commission should grant a determination of ETC status, even though the applicant at the time of filing is not ''exclusively'' engaged in permitted ETC activities.[42] Entergy notes that some telecommunications companies may engage in non-telecommunications activities that are not material to their overall business and which could easily be discontinued or divested without substantially disrupting business operations. Entergy argues that because it may not always be practical to accomplish such a divestiture prior to, or as a condition of, a proposed holding company investment, the Commission's inquiry should not be rigidly confined to an examination of the applicant's operation at the time the application is filed.[43]

25. Entergy proposes that the Commission require applicants to describe their proposed future business activities and the actions they propose to take, if appropriate, to divest (or otherwise discontinue) or limit their investment or participation in any non-telecommunications related activities that would not qualify as ''related or incidental'' within the meaning of Section 34(a)(1)(D). Moreover, Entergy argues that the terms ''related and incidental'' should receive a broad interpretation, so that entities that are predominantly telecommunications enterprises may not be excluded from ETC status. According to Entergy, in the event that such additional operations are to be divested, a statement by a representative legally authorized to bind the applicant would verify that divestiture of the non-telecommunications business components would be accomplished within a specified reasonable period of time and that, following such divestiture, the applicant would be qualified as an ETC and fully satisfy the requirements of 34(a)(1). Entergy further argues that if the investment by a registered holding company consists of a minority interest in a predominantly telecommunications enterprise where divestiture of the non-telecommunications portion of the business would not be reasonable or practicable or under the control of the registered holding company, such circumstances should be described by the applicant and the Commission should permit such investment without divestiture on the theory that such an interest would represent only an incidental activity and would be in furtherance of congressional intent.[44]

26. New Orleans disagrees with Entergy's argument.[45] New Orleans contends that under the plain language of the statute, Congress determined that an ETC must be ''exclusively'' in the business of providing telecommunications, information, or other related or incidental products or services.[46]

27. Cinergy argues that the rules should expressly permit an application to be filed ''by, or on behalf of,'' one or more affiliate companies of a registered holding company, whether or not such companies are in existence at the time of the filing.[47] According to Cinergy, this is the same approach used by the SEC in its rules implementing the ''foreign utility company'' provisions of the Energy Policy Act of 1992.[48] BellSouth disagrees with Cinergy's proposal. According to BellSouth, Cinergy's proposal is contrary to the clear language of the 1996 Act. BellSouth argues that the Commission should not grant ETC status to unformed entities for the sole purpose of enabling a holding company to ''bank'' this status for potential future entities.[49]

b. Discussion

28. *Extent to which applicants must be currently engaged in ETC activities.* In Entergy, the Commission rejected the argument that under Section 34(a)(1), applicants must actually be currently engaged in the telecommunications or information business before they may apply for ETC status. The Commission reasoned, based on the language, structure and purpose of Section 34,

[38] *Id.*

[39] See discussion in section III.B.5 below.

[40] BellSouth Comments at 9–12.

[41] Southern Reply at 8–9.

[42] Entergy Comments at 6–7.

[43] *Id.*

[44] *Id.* at 7–8.

[45] New Orleans Reply at 4–5.

[46] *Id.*

[47] Cinergy Comments at 2–3.

[48] *Id.*

[49] BellSouth Reply at 5.

that an entity is ''engaged in the business of providing'' telecommunications or other covered activities if the entity is established for the exclusive purpose of providing such services at the time it files its application with this Commission.[50] We reaffirm our conclusion here.

29. In *Entergy,* we concluded that a contrary interpretation would be antithetic to Congress's intent in promulgating Section 34 as part of Part II of the Telecommunications Act of 1996, entitled ''Development of Competitive Markets.'' As the Commission recognized, prior to the Telecommunications Act of 1996, the provisions of PUHCA strongly deterred entry by registered public utility holding companies into the telecommunications industry by requiring stringent regulatory oversight by the Securities and Exchange Commission.[51] By obtaining ETC status, holding companies can avoid prior SEC approval and quickly become vigorous competitors in the telecommunications industry, and, with such competition, bring more benefits to consumers.[52] Accordingly, the Commission concluded that adoption of the ''actually engaged'' interpretation would defeat the core purpose of Section 34, as such an interpretation would force registered holding companies to begin operations before they could file for ETC status. Under that approach, SEC pre-operations review would be required before seeking ETC status, which would effectively vitiate in major respects the purpose of the ETC provisions in the statute.[53]

30. Section 34(a)(1) only requires that an ETC ''be engaged * * * in the business of providing'' one or more permitted services. We believe that a company that has been formed for the purpose of providing such a service is engaged in that business for purposes of Section 34(a)(1). For example, a holding company may seek to form an ETC to participate in Commission spectrum auctions. While such a firm is not actually providing service, the acts of incorporating, filing short-form applications, and bidding are all activities that involve ''being engaged'' in the business of telecommunications.

31. Against this backdrop, we reject BellSouth's argument that we condition ETC determinations to require ETCs to begin actually providing service within a specific period of time. We have no reason to believe that ETCs who are not yet actually providing service will unreasonably delay doing so. We believe that the imposition of such a requirement on an ETC—or on any other lawful business for that matter—could have a chilling effect on entry with no countervailing benefits. However, to the extent that parties in the future believe that an ETC determination may be a ''sham,'' in that an ETC unreasonably delays engaging in permitted activities, then those parties may bring this information to the Commission's attention for appropriate action.[54]

32. *Treatment of firms not exclusively engaged in ETC activities.* We are also confronted with the question of the appropriate treatment of an acquisition of, or investment in, a telecommunications or information services provider which is not exclusively engaged in the business or providing telecommunications services, information services, other services or products subject to the Commission's jurisdiction, or products and services related or incidental thereto. Consistent with the clear congressional mandate that holding company entry into telecommunications markets promotes the public interest, in appropriate circumstances—related to the relative size of the non-telecommunications or information services portion of the business and the firm's commitment to divest these assets—grant of ETC status would likely be warranted, to the extent the firm otherwise meets the criteria for ETC status. However, as such a determination wholly depends on the facts of a specific case, we do not believe that it is appropriate for us to formulate a rule of general applicability in this proceeding. Rather, such issues will be addressed on a case-by-case basis as they arise.

33. Similarly, we also do not believe that we should formulate a rule of general applicability regarding Entergy's request that we grant ETC status where a registered holding company holds a minority interest in a predominantly telecommunications enterprise and divestiture of the non-telecommunications portion of the business would not be reasonable or practicable or under the control of the registered holding company. As in the situation discussed above, applicants must demonstrate on a case-specific basis that an activity falls within a permitted activity or is, at a minimum, ''related or incidental thereto.'' However, unlike the situation above, we do not presently see circumstances where grant of ETC status would likely be appropriate in such a case.

34. Finally, we reject Cinergy's argument that the rules should expressly permit an application to be filed ''by, or on behalf of,'' one or more affiliate companies of a registered holding company, whether or not such companies are in existence at the time of the filing. As BellSouth argues, Cinergy's argument runs contrary to the clear language of the 1996 Act: Section 34(a) provides that ''No person shall be deemed to be an exempt telecommunications company under this Section *unless such person has applied* to the [Commission] for a determination under this paragraph.'' (Emphasis supplied.) The ETC, therefore, should, at a minimum, be in existence in order to apply. We similarly see no reason to allow firms to apply on behalf of other unrelated entities. It is the ETC that is required to apply. Accordingly, regardless of the reasons supporting the SEC's rules referred to by Cinergy,[55] Cinergy has not proffered any reason here that would lead us to a contrary conclusion.

3. Prior State Approval

a. The NPRM

35. The Commission recognized in the NPRM that we held in Entergy that our responsibilities do not extend beyond a determination of whether an applicant complies with the relatively limited certification criteria enumerated in Section 34(a).[56] Thus, we concluded, following our prior decision in *Entergy,* that under the plain language of the statute, PUHCA Section 34 does not require prior state approval as a condition precedent before we may make a determination of ETC status.[57]

b. Comments

36. New Orleans and CBT both argue that the Commission's rejection of calls for prior state approval in previous orders must be re-evaluated.[58] They

[50] *Entergy* at ¶ 30.

[51] *See* PUHCA §§ 3(a); 11(b)(1).

[52] *See Senate Report* at 7–8.

[53] *Entergy* at ¶ 30. The Commission also noted that FERC was confronted with a similar question in the EWG context. There, parties requested a ruling that an applicant could obtain EWG status for a facility that is not yet planned as long as the applicant properly attests that any such future facility will be an eligible facility. The reason behind this argument, stated the parties, was that developers must often obtain determination of EWG status prior to construction in order to obtain financing. In response, FERC held that applicants may request a determination of EWG status for facilities that have not been built. *See Id.* at ¶ 30 n.33 (*citing Filing and Ministerial Procedures for Persons Seeking Exempt Wholesale Generator Status, Order No. 550,* 58 Fed. Reg. 8,897–01 (Feb. 18, 1993); *order on reh'g, Order No. 550–A,* 58 Fed. Reg. 21,250 (April 20, 1993)).

[54] See discussion in section III.D.2 below.

[55] Cinergy Comments at 2–3.

[56] *See* NPRM at ¶ 4.

[57] *See Entergy* at ¶¶ 21–28.

[58] New Orleans Comments at 7–9; CBT Comments at 2–4. *See also* MCI Reply at 4.

argue that state approval must be obtained before an applicant may apply for a determination of ETC status. They recommend that documentation indicating that applicants have obtained the appropriate state approvals should accompany an ETC application, as this requirement would ensure that the state regulators had the opportunity to review the activities proposed by the applicant and decide if those activities are in the public interest, particularly as they relate to the ratepayers of the applicant's public utility affiliates. CBT also contends that while Section 34 may not explicitly condition the granting of ETC status on state approval of the proposed activity, it does not preclude the Commission from requiring such approval. According to CBT, requiring prior state approval would not impose a significant barrier to entry, because the Commission could rely on the public interest determinations of the state commissions which are generally in a better position to assess the public interest impacts of entry on the constituents.[59]

37. Two commenters dispute these arguments.[60] They argue that the Commission has no authority under Section 34(a)(l) to make such an inquiry, because the application review process must, in accordance with Section 34(a)(l), be limited to a discrete inquiry by this Commission concerning the nature of the activities in which the applicant proposes to engage. Moreover, they argue that were it Congress's intent that issues concerning state review should be part of the application process, Section 34(a)(l) would have contained an indication to that effect. To the extent that Congress intended for there to be prior state review, these commenters contend that such concerns are provided for elsewhere in Section 34, in the 1996 Act, in PUHCA, or in other federal or state laws.[61]

c. Discussion

38. In *Entergy*, several parties argued that PUHCA requires ETC applicants to obtain prior state approval before they may file for a determination of ETC status. The Commission rejected this argument, finding that this position runs counter to the plain language of Section 34(a)(l).[62] We affirm that conclusion here.

39. Commenters based their arguments on Section 32 of PUHCA,[63] which permits holding companies to obtain ''exempt wholesale generator'' (''EWG'') status. Unlike Section 34, however, Section 32 expressly makes state approval a prerequisite to the findings necessary for an EWG determination. Under the plain language of PUHCA Section 32, if an EWG seeks to utilize assets that are already in its holding company parent's rate-base, Congress required state approval as a condition precedent to a determination of EWG status.[64] Because PUHCA Section 34 differs from Section 32 in a number of material respects, it is apparent that, in contrast to the EWG context, state approval is not a prerequisite to a determination of ETC status. Most significantly, under Section 32, the state approval process is an integral part of whether a firm can be accorded EWG status. On the other hand, the plain language of Section 34 does not condition the grant of ETC status on the receipt of state approval in this circumstance. Indeed, unlike the EWG provision, where EWG status is directly linked to state-approved eligible facilities, there is no similar link, explicit or otherwise, between the grant of ETC status and state approval of asset sales to an ETC. Rather, our inquiry under the statute is limited to the four enumerated criteria set forth in Section 34(a)(l).[65]

40. Moreover, interpreting the statute to require or permit the Commission to require prior state approval would not further, and indeed would be inconsistent with, the purposes of Section 34. In this regard, we noted in *Entergy* that assets that were previously in the rate-base may not be the only assets by which an ETC might enter the telecommunications business. There are undoubtedly alternative means of entry, whether by the use of or acquisition of assets that are outside of a particular state's jurisdiction, that do not require that state's approval.[66] Moreover, as discussed in *Entergy*, to the extent state issues are raised, states' rights are well-preserved under other provisions of Section 34.[67]

41. Finally, Section 34 was intended to foster holding company entry into telecommunications markets, because such entry could ''significantly promote and accelerate competition in telecommunications services and deployment of advanced networks'' and could also result in lower prices and greater choice for consumers.[68] Requiring an applicant to obtain all state approvals—including those that might only hypothetically be required—would slow down holding company entry into telecommunications markets, and would frustrate Section 34's central purpose of removing PUHCA as a barrier to holding company entry into telecommunications markets.[69] Moreover, given that holding company entry as an ETC might be accomplished *independently* of assets over which the states have jurisdiction, we see no reason why state approval must be a condition precedent to obtaining a determination of ETC status.[70] Accordingly, as we recognized in *Entergy*, it would not be appropriate to use the ETC approval process as a backstop to those procedural avenues states currently have to address issues associated with utility company entry into telecommunications markets. Indeed, the Commission stated that to add prior state approval as a condition precedent to ''the Commission's ETC approval process would appear to be unnecessary, redundant, and contrary to the explicit de-regulatory thrust of the Telecommunications Act of 1996.'' [71]

4. Consolidated Applications

a. The NPRM

42. The Commission also sought comment on whether it should adopt rules governing applications seeking ETC status filed by different entities that are or will be affiliates of a common holding company parent.[72] While the Act apparently contemplates that every entity seeking ETC status must apply to the Commission, the Commission saw no reason why this should require separate entities affiliated with the same holding company parent to seek ETC status through separate applications and proceedings. Such a process seems administratively wasteful and duplicative. Accordingly, the Commission proposed to allow multiple entities seeking ETC status that are affiliated with the same public utility holding company parent to seek a determination for all such entities through a single consolidated application. In such a case, the NPRM proposed that any consolidated application should contain for each affiliate sufficient information as required by our rules to make a separate ETC determination for that affiliate.[73]

[59] CBT Comments at 2–4.
[60] Southern Reply at 4–5; Entergy Reply at 4–5.
[61] Id.
[62] *See Entergy* at ¶¶ 21–28.
[63] 15 U.S.C. 79z–5a.
[64] *Entergy* at ¶¶ 22–23.
[65] *Id.* at ¶ 25.
[66] *Id.* at ¶ 26.
[67] *Id.* at ¶ 28.
[68] *Id.* at ¶ 27.
[69] *Id.*
[70] *Id.*
[71] *Id. at ¶ 28.*
[72] NPRM at ¶ 11.
[73] *Id.*

b. Comments

43. Several commenters support the Commission's proposal to permit a single, consolidated application by one or more subsidiaries affiliated with the same holding company parent.[74] However, New Orleans argues that in instances where more than one holding company affiliate seeks ETC status, any consolidated application must contain adequate information regarding each affiliate, including the proposed activities of each. According to New Orleans, comprehensive or summary descriptions or representations would not permit the Commission to make necessary findings regarding each of the entities seeking ETC status.[75]

c. Discussion

44. As reflected in the support for this proposal, common sense dictates that we should allow multiple entities seeking ETC status that are affiliated with the same public utility holding company parent to seek a determination for all such entities through a single consolidated application. Nothing in the statute requires a contrary result. On the other hand, as New Orleans points out, the statute does require that we have sufficient information about each entity seeking ETC status to make a determination that the statutory criteria are met. We agree with New Orleans that comprehensive or summary descriptions or representations would not permit the Commission to make necessary findings regarding each of the entities seeking ETC status. Therefore, consistent with our earlier statement in the NPRM, the Commission will permit consolidated applications, but any such applications must contain, for each affiliate, sufficient information as required by our rules to make a separate ETC determination for that affiliate.

5. Service on other Agencies

a. The NPRM

45. The Commission asked parties to comment on whether the proposed rules should require applicants to serve a copy of their ETC application on the SEC and affected State commissions.[76] The Commission defined an affected State commission as the State commission of each state in which the ETC will be located or do business.[77] The Commission reasoned that although service of applications on the SEC and State commissions is not required by law, Section 34 of PUHCA specifically contemplates a role for the SEC and State commissions insofar as certain eligible companies are concerned. It also contemplates that the SEC be made aware of ETC determinations. The Commission therefore found no reason not to inform these agencies of pending ETC applications at an early stage, particularly since the copying and mailing costs associated with serving filings on the SEC and affected State commissions will be minimal.[78]

b. Comments

46. New Jersey endorses the proposed requirement that ETC applicants serve a copy of their application on the SEC and affected State commissions.[79] Entergy states that while it does not object to the Commission's proposal that applicants be required to serve a copy of their applications on affected State commissions, because the SEC has no authority to review ETC applications, no purpose would be achieved by requiring the filing of ETC applications with the SEC.[80] Entergy contends that it should be sufficient that the SEC is notified upon grant of an application pursuant to Section 1.4005 of the proposed rules. BellSouth disagrees with Entergy's position, however, noting that serving the SEC with the application is entirely appropriate given the SEC's otherwise plenary jurisdiction over holding companies.[81] Finally, CBT argues that in addition to requiring ETC applicants to serve a copy of their application on the SEC and affected State commissions, the Commission should also require applicants to file a copy of their application with FERC, since FERC retains certain rate authority under Section 34(j).[82]

c. Discussion

47. We agree with BellSouth and reject Entergy's argument that an ETC should not be required to file a copy of its application with the SEC. The SEC has plenary jurisdiction over holding companies, even though there is an increasing trend by Congress to permit holding companies to engage in businesses other than their core utility operations. Indeed, in this regard, we note that FERC's final rules for EWG status—a policy designed to permit holding companies to invest in independent power production ventures without prior SEC approval—also require persons seeking a determination of EWG status to file a copy with the SEC for essentially the same reasons we set forth in the NPRM.[83] Accordingly, we reject Entergy's claim that ETC applicants should not be required to file a courtesy copy of their application with the SEC.

48. On the other hand, we reject CBT's argument that we should require ETC applicants to file a copy of their application with FERC. First, unlike the SEC, Congress did not impose a statutory obligation to notify FERC whenever we make a determination of ETC status. Second, New Jersey specifically asked that it be served and one other state, Mississippi, has actually participated in an ETC proceeding.[84] In contrast, FERC has filed no request that applicants file an additional copy of their application with them, and, in the absence of such a request, we decline to impose the suggested requirement.[85] Thus, we will require service of applications on relevant state commissions but not on FERC.

C. Public Notice and Comment

1. The NPRM

49. In the NPRM, the Commission asked whether there should be a public notice and comment procedure for ETC applications.[86] The Commission noted that while staff had placed all of the applications received prior to issuing the NPRM on public notice for comment, there is no requirement in the 1996 Telecommunications Act that the Commission do so. On the other hand, the Commission also noted that neither is there any prohibition on the Commission's discretion to do so. The proposed rules therefore provide for public notice and comment on ETC applications, but limit consideration of any submissions to the adequacy or accuracy of the certification made to satisfy the statutory criteria. Given the limited focus of the Commission's inquiry under Section 34(a)(1), the Commission believed that it would be inappropriate to allow persons to raise issues that fall outside the purview of the statutorily fixed determination, and that go to the public interest merits of an applicant's proposed entry. Comments on the adequacy of the representations may include whether the application is within the scope of the ETC criteria—e.g., the extent to

[74] *See* Cinergy Comments at 2–3; Entergy Comments at 8–9.

[75] New Orleans Comments at 9.

[76] NPRM at ¶ 12.

[77] *Id.*

[78] *Id.*

[79] New Jersey Comments at 5.

[80] Entergy Comments at 9–10.

[81] BellSouth Reply at 6–7.

[82] CBT Comments at 5–6.

[83] *See* 18 C.F.R. § 365.3(a).

[84] *See, e.g.,* New Jersey Comments at 5.

[85] In addition, in response to an informal inquiry made to staff in FERC's Office of General Counsel responsible for such matters by Commission staff, FERC staff did not request that FERC be served with copies of ETC applications. *See* August 8, 1996 Memorandum from Commission staff to William F. Caton, Acting Secretary.

[86] NPRM at ¶ 13.

which applicant's services constitute telecommunications services or products, information services or products, certain services subject to FCC jurisdiction, or services or products related or incidental to these services or products. Applicants would then have the opportunity to respond to any comments filed. Finally, the Commission also requested comments on the length of the time period which should be set for such comments.[87]

2. Comments

50. Commenters were strongly divided on these issues. On the one hand, several commenters disagree with the Commission's tentative conclusion to limit comments to the adequacy or accuracy of the representations contained in ETC applications. For example, New Orleans argues that commenters should be able to submit additional information—*e.g.*, evidence of impermissible activities not referenced in the application—related to the requirements of obtaining ETC status and related to the Commission's regulation of these new entities.[88] Similarly, MCI argues that interested parties should also be able to provide information indicating whether the applicant has engaged in anticompetitive actions with regard to its ratepayers, shareholders, or potential competitors in its preparation for entry into the telecommunications business.[89] Finally, ACSI argues that the Commission should give ETC commenters at least 30 days from public notice to file comments, because the 15 day interval is inadequate to allow interested parties to investigate and comment meaningfully on ETC applications.[90]

51. Entergy states that while there is value in providing for public notice and comment, the Commission should continue to limit comments to the adequacy and accuracy of representations used to demonstrate that an applicant's planned activities are within the scope of the statutory criteria.[91] Entergy argues that the Commission should not consider comments that raise issues outside the purview of the statutorily fixed determination, such as comments relating to the costs of the applicant's business activities, the applicant's proposed financing arrangements, or comments raising public policy considerations. Moreover, Entergy argues that without supporting evidence, mere allegations challenging the information presented by an applicant should not cause the Commission to deny an application. Finally, Entergy argues that given the limited focus of the Commission's review and the goal of developing a streamlined ETC process, the Commission should limit the comment period to 25 days or less and that the Commission should not entertain any requests for hearing.[92]

3. Discussion

52. Upon review, we reject arguments that we should expand the scope of comments beyond the adequacy and accuracy of the representations contained in the application. As we have said numerous times in evaluating ETC applications, and have reiterated above, it is not our role to examine the public interest merits of holding company entry. Moreover, comments on the adequacy and accuracy are not as limited as commenters appear to believe. For example, New Orleans' argument that commenters should be able to file additional information—*e.g.*, evidence of impermissible activities not referenced in the application—related to the requirements of obtaining ETC status, is exactly the type of information relevant to the Commission's consideration of an ETC application.

53. On the other hand, we reject MCI's suggestion that interested parties should also be able to provide information indicating whether the applicant has engaged in anticompetitive actions with regard to its ratepayers, shareholders, or potential competitors in its preparation for entry into the telecommunications business. Such information has no relevance to our ETC determination. The type of information that MCI would proffer has no relationship with the ETC statutory criteria.

54. Finally, we believe that the time period proposed in the draft rules is adequate for effective notice and comment. Indeed, given: (a) the limited focus of the Commission's inquiry under the statute; (b) that we only have sixty days to complete this inquiry; and (c) that the statute does not require public comment, we believe that fifteen days is sufficient for interested parties to file comments on the adequacy and accuracy of the representations contained in the application. Our experience to date indicates that entities wishing to oppose ETC applications are able to present their arguments within this time frame.

D. Implementation Issues

1. Notice to State Commissions

a. The NPRM

55. Proposed Section 1.4005 requires the Secretary of the Commission to notify the SEC whenever an application for ETC status is granted, as explicitly required by Section 34(a)(1) of PUHCA.

b. Comments

56. Southwestern Bell argues that the Commission should modify proposed rule 1.4005 to require the Commission to also inform affected state commissions, in addition to the SEC, whenever it determines that an entity is an ETC. According to Southwestern Bell, this step would serve as further notice to the states that they may need to take additional actions to implement, in their states, the requirements of the 1996 Act.[93]

c. Discussion

57. We reject Southwestern Bell's argument that the Commission should also notify affected state commissions whenever the Commission determines that an applicant merits ETC status. We believe that requiring applicants to serve affected state commissions with their applications should constitute adequate notice to the states. Indeed, our reasoning behind this requirement is that if applicants serve affected state commissions when they file for a determination of ETC status, then states will have an opportunity, if they so desire, to meaningfully participate in our proceeding or monitor its status. We believe this procedure is especially appropriate given our previous determination that applicants are not required to obtain prior state approval before they file with this Commission. Accordingly, we reject Southwestern Bell's argument.

2. Change in Circumstances

a. The NPRM

58. In the NPRM, the Commission noted that an ETC determination is based on the facts that are presented to the Commission, and therefore any material variation from those facts may render an ETC determination invalid.[94] Accordingly, proposed Section 1.4006 requires ETCs, within 30 days of any material change in facts that may affect an ETC's eligibility for ETC status under Section 34(a)(1) to either: (a) apply to the Commission for a new determination of ETC status; (b) file a written explanation with the

[87] *Id.*

[88] New Orleans Comments at 6–7. *See also* ACSI Comments at 10–11.

[89] MCI Reply at 5–6.

[90] *Id.* at 11.

[91] Entergy Comments at 10–11.

[92] *Id.*

[93] Southwestern Bell at 1–2.

[94] NPRM at ¶ 16.

Commission of why the material change in facts does not affect the ETC's status; or (c) notify the Commission that it no longer seeks to maintain ETC status. To the extent persons other than the ETC applicant inform the Commission of a material change of circumstances, the ETC will be given the opportunity to respond and the Commission will take further action as appropriate.[95]

b. Comments

59. Southern criticizes the proposed rules requiring notification after a ''material'' change in facts.[96] Southern states that while it does not take issue with the general concept, the meaning of ''material'' is open to different interpretations. According to Southern, this could result in unnecessary uncertainty for ETCs and could be used by third parties to impede the creation of ETCs by the filing of specious claims. Accordingly, Southern urges the Commission to give more guidance on the phrase ''material change in circumstance.'' Southern believes that an ETC should, for example, be able to expand service offerings (*e.g.*, adding long-haul fiber to a wireless service it may already be providing) without this being considered a ''material'' change in circumstances. Southern also encourages the Commission to establish a presumption favoring ETC status in the context of such challenges and to resolve such contentions in the spirit of Congressional intent underlying Section 34.[97]

60. Similarly, Cinergy argues that the rules should expressly provide that notification of a material change in facts is required only if such change calls into question the continuing validity of the sworn statement under Section 1.4002(a)(2) of the proposed regulations.[98] Cinergy argues that this requirement does not apply with respect to the ''brief description of planned activities,'' which is intended for illustrative purposes only. Therefore, argues Cinergy, the fact that an applicant may subsequently choose not to pursue the particular activities described in response to Section 1.4002(a)(1) should not affect its status as an ETC so long as it continues to engage in other ETC authorized activities.[99]

61. Entergy also does not object in principle to the proposed notification rules regarding a material change in facts.[100] However, Entergy argues that a material change in circumstances which is only of temporary duration should not negate ETC status—*i.e.*, an ETC seeks to acquire other interests in other predominantly telecommunications companies that incidentally engage in certain non-qualifying business activities. Entergy submits that, under these circumstances, the acquiring ETC should be permitted (in support of the required explanation that the acquisition does not or should not affect its ETC status) to represent that it will divest or discontinue any non-qualifying business operations within a reasonable period of time following completion of the proposed acquisition.[101]

62. BellSouth disputes both Cinergy's and Entergy's arguments.[102] Specifically, BellSouth contends that if an ETC departs from the ''brief description'' of the planned activities contained in proposed rule 1.4002, that would constitute ''a material change in facts.'' BellSouth argues that if an applicant certifies that it intends to undertake a certain set of permissible activities, but nonetheless subsequently undertakes a wholly different set of permissible activities, such actions render the ETC application process meaningless.[103]

63. BellSouth argues that the proposed rules should provide an opportunity for interested persons to comment in connection with any filing in which the ETC asserts that materially changed circumstances do not affect its ETC status. Accordingly, BellSouth argues that the proposed rules should be changed to provide for a reasonable period of time (fifteen days) for interested parties to comment on the matter.[104] Southern disagrees with BellSouth's proposal. Southern argues that the Commission has the authority to place matters on public notice and to solicit comment thereon when, in its discretion, it is appropriate to do so. Southern points out that there may be instances in which changes in circumstances are so unusual or sweeping as to warrant such an opportunity. Southern is concerned that such a mechanism could be used as a vehicle for specious challenges to ETC status, thereby hindering competition by ETCs. Southern therefore argues that in light of the Commission's existing authority, there is no need for an automatic comment provision.[105]

64. Finally, BellSouth argues that the Commission did not impose a duty to inform the Commission of any material change in facts on the applications the Commission granted before issuing its proposed rules. BellSouth argues that the Commission must impose a similar duty on these ETCs as well.[106] Southern disputes this position, arguing that the plain language of the statute and Commission precedent make clear that the rules implementing Section 34(a)(1) apply only to applications filed after the rules become effective.[107]

c. Discussion

65. Commenters raise several significant points. Accordingly, we take this opportunity to explain what we expect from ETCs and other interested parties in these circumstances.

66. First, we agree with Southern and Cinergy that the term ''material change in fact'' should not apply to the ''brief description of activities'' required in rule 1.4002. Rather, we believe a material change in fact has occurred only when, in the ETC's judgment, its activities fall outside of the scope of the criteria for ETC status set forth in Section 34(a)(1). We believe that, if we were to adopt BellSouth's position that any change from the description is a material change, we would discourage holding company diversification into telecommunications or information businesses. In our view, the original determination of ETC status is much like a certificate of incorporation. In the past, states required corporations to file a new certificate each time a corporation deviated even slightly from the enumerated activities set forth in the original certificate. Over time, states came to realize that this requirement was extremely burdensome to both corporations and to state administrators, and acted as a deterrent to economic growth and innovation.[108] In our view, this situation is analogous to a situation when, for example, an ETC states that it will provide ''long-line'' service in its application, but actually provides local loop functions. We note that to the extent an ETC diversifies beyond the activities listed in its application into non-ETC activities, it risks revocation of its ETC status as well as adverse action by the SEC under other provisions of PUHCA.

[95] *Id.*

[96] Southern Comments at 6–7.

[97] *Id.*

[98] Cinergy Comments at 4; *see also* Southern Reply at 10–11.

[99] *Id.*

[100] Entergy Comments at 12–13.

[101] *Id.*

[102] BellSouth Reply at 5–6.

[103] *Id.*

[104] BellSouth Comments at 14–15.

[105] Southern Reply at 9–10.

[106] BellSouth Comments at 14–15.

[107] Southern Reply at 10.

[108] *See generally* Robert C. Clark, Corporate Law at 17–19 (1986).

67. However, we reject Entergy's argument that a material change in circumstances which is only of temporary duration should not necessarily negate ETC status. Similar to the situations described above in section III.B.2, we believe that we should not adopt a rule of general applicability in this proceeding, but rather examine the merits of particular facts on a case-by-case basis. For these reasons, our rules specifically provide that in those situations where there is a question as to a potential material change in circumstances, an ETC must either: (a) apply to the Commission for a new determination of ETC status; (b) file a written explanation with the Commission of why the material change in facts does not affect the ETC's status; or (c) notify the Commission that it no longer seeks to maintain ETC status.

68. Third, we reject BellSouth's argument that the proposed rules should automatically provide for an explicit opportunity for interested persons to comment in connection with any filing in which the ETC asserts that the material changed circumstances do not affect its ETC status. Southern is correct that the Commission has the authority to place matters on public notice and to solicit comment thereon when, in its discretion, it is appropriate to do so. Indeed, the Commission has put out for public notice and comment all of the applications for determination of ETC status filed to date, even though the statute did not require us to do so. Thus, as a general matter, we expect that when ETCs notify us of a potential material change in circumstances, we will ask for public notice and comment. However, we do not believe that it is necessary to require such a process in all situations. In addition, as we stated in the NPRM, to the extent persons other than the ETC applicant inform the Commission of a material change of circumstances, the ETC will be given the opportunity to respond and the Commission will take further action as appropriate.

69. Finally, we note that BellSouth argues that while the Commission did not impose a duty to inform the Commission of any material change in facts on the applications the Commission granted before issuing its proposed rules, the Commission should nonetheless impose a similar duty on these ETCs as well. Southern disputes this position, arguing that the plain language of the statute and Commission precedent make clear that the rules implementing Section 34(a)(1) apply only to applications filed after the rules become effective. As explained below, we believe that we can, and should, impose a continuing duty on *all* ETCs to notify the Commission whenever there is a material change in fact, including those parties who acquired ETC status prior to the adoption of these rules.

70. Section 34(a)(1) states that this Commission ''shall promulgate rules implementing the provisions of this paragraph which shall be applicable *to applications* filed under this paragraph after the effective date of such rules.'' (Emphasis supplied.) We think that the purpose of the limitation in this provision contained in the second part of the sentence was to prevent us from retroactively applying application procedures to previously granted applications, and taking actions adverse to existing ETCs based on new procedural rules. However, we do not believe that this language curtails our authority to act when a person *ceases* to be an ETC. Indeed, we do not believe that it would be rational to interpret the statute so as to create two classes of ETCs—those subject to our on-going rules and those not subject, because their applications were filed before our rules were adopted.

71. This interpretation is consistent with our intent in our earlier holding in *Entergy*, where we rejected arguments, based on the language contained in Section 34(a)(1), that we should condition any proposed ETC determination on that applicant's compliance with the requirements of the implementing rules, even if the determination is made prior to the enactment of those rules.[109] In that case, we simply intended that, to the extent we promulgated final rules in the future, we would not revisit Entergy's applications and retroactively apply any new qualification criteria.

72. Finally, from a practical standpoint, it makes administrative sense for ETCs to have an affirmative duty to inform the Commission of any material change in fact. As noted above, prior to the enactment of the Telecommunications Act of 1996, PUHCA effectively deterred many holding companies from expanding into telecommunications markets. The Act now permits them to do so, but makes quite clear that this is a limited exception—*i.e.*, they may not engage in any other unrelated business. Accordingly, such a duty ensures that an entity's ETC determination remains in good standing and avoids any potential adverse actions by the SEC.

73. In light of the above, we impose a continuing duty on all entities who have received a determination of ETC status, including those who received such status prior to the adoption of these final rules, to report any potential material change in fact—regardless of when that determination of ETC status was received. In addition, to the extent applicable, we exercise our independent authority contained in Sections 1, 4(i) and 303(r) of the Communications Act.

3. Additional Reporting Requirements

a. Comments

74. BellSouth argues that the Commission should require ETCs to file reports with the Commission so that the Commission will be able to fulfill its obligations under Sections 401 and 402 of the 1996 Act.[110] In this way, argues BellSouth, the Commission will be able to make informed decisions as to when to forbear and eliminate unnecessary regulation. According to BellSouth, these reports should include objective information concerning the status of the development of ETCs' businesses in order to enable a determination by the Commission as to the state of competition in the relevant market. Such information should include the status of facilities constructed and utilized by the telecommunications providers (including, for example, the number of miles of fiber laid) and information concerning the customer base, expenses and revenues of the entity.[111]

75. Several commenters oppose BellSouth's proposal.[112] First, they argue that BellSouth's proposal falls beyond the scope of this proceeding, in that it consists of proposals for the imposition of on-going obligations following a determination of ETC status, rather than for the application process. Second, they contend that the suggested reporting requirements are excessive and not authorized by Section 34. According to these commenters, Section 34 provides adequate reporting and disclosure requirements to the FCC, the SEC, and to state agencies to protect consumer welfare.[113]

b. Discussion

76. We do not believe that we should impose any additional reporting requirements beyond those already incorporated in our proposed rules. Under the plain terms of the statute, we have no authority to collect such data in the context of an ETC application proceeding. Rather, the SEC is the agency responsible for collecting the

[109] *See Entergy* at ¶ 31.

[110] 47 U.S.C. §§ 160, 161.

[111] BellSouth Comments at 8–9; *see also* MCI Reply at 4.

[112] Southern Reply at 11; Cinergy Reply at 6; NEES Reply at 2–3.

[113] *Id.*

type of data proposed by commenters.[114] Moreover, upon a closer examination, it appears that BellSouth seeks nothing more than to have these new entrants file their business plans, a rule that, if adopted, might inhibit potential entry. Accordingly, as we do not believe that new entrants should be saddled with any additional burdens which could delay entry, we will reject BellSouth's proposal for additional reporting requirements.

4. Effect of Filing

a. The NPRM

77. The proposed rules specify that the Commission must act within 60 days of receipt of an application. Applications that do not meet the requirements of the proposed rule set forth in proposed Section 1.4002 will be rejected. Under the proposed rules, if the Commission does not act within 60 days, the application is deemed to have been granted.

b. Discussion

78. Under the plain terms of Section 34(a)(1), a person applying in good faith for a determination of ETC status is ''deemed to be'' an ETC until the Commission makes an official determination. We must make this determination within 60 days of receipt of this application. Accordingly, consistent with the terms of the statute, we adopt Rule 1.4004.

III. Conclusion

79. In sum, the rules we adopt today establish a simple, straight-forward and expeditious mechanism to accelerate the entry of public utilities into telecommunications markets. We believe that these rules closely follow Congress's mandate, and are consistent with the pro-competitive, de-regulatory thrust of the Telecommunications Act of 1996.

A. Legal Authority

80. Authority for issuance of this *Order* is contained in Section 34(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA), as amended by Section 103 of the Telecommunications Act of 1996, Public Law No. 104–104, 110 Stat. 56 (1996), and Sections 1, 4(i), 4(j) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and 303(r).

B. Further Information

81. For further information concerning this proceeding, contact Lawrence J. Spiwak, Competition Division, Office of General Counsel at (202) 418–1870.

C. Regulatory Flexibility Certification

82. The NPRM incorporated an initial regulatory flexibility analysis (IFRA)[115] of the proposed rules. No comments were received in direct response to the IFRA. Section 604 of the Regulatory Flexibility Act, as amended,[116] requires a final regulatory flexibility analysis in a notice and comment rulemaking proceeding unless we certify that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.''[117] The Regulatory Flexibility Act generally defines the term ''small entity'' as having the same meaning as ''small-business concern'' under the Small Business Act,[118] which defines ''small business concern'' as ''one which is independently owned and operated and which is not dominant in its field of operation * * *''[119] and which meets any additional criteria established by the Small Business Administration (SBA).[120] We believe that the rules we adopt today will not have a significant economic impact on a substantial number of small entities.

83. As noted above, the primary purpose of Section 103 is to permit registered public utility holding companies to diversify into telecommunications industries without having to seek prior SEC approval by acquiring or maintaining an interest in an ETC.[121] By permitting such diversification in the 1996 Act, Congress removed a significant (and anomalous) regulatory disparity between registered public utility holding companies (of which there are fifteen) and utilities that are not registered public utility holding companies—who have always been free to enter the telecommunications industry without prior SEC approval, regardless of their size or scope.[122] Accordingly, the primary reason for any entity—regardless of size—to obtain a determination of ETC status is to facilitate a merger or investment by a public utility holding company.

84. As such, in order to facilitate Congress's clear mandate to expedite the entry of public utility holding companies into telecommunications and information services, the rules we adopt today establish a simple, straight-forward and expeditious mechanism consistent with the pro-competitive, de-regulatory thrust of the Telecommunications Act of 1996. Accordingly, the rules adopted here impose, at most, de minimis compliance costs on those entities seeking a determination of ETC status. For example, in order to comply with these final rules, prospective applicants need not hire any accountants or engineers to facilitate the filing of an application. Rather, applicants need only provide a brief description of their planned activities, and certify that they satisfy the enumerated criteria and any other applicable Commission regulation.

85. Accordingly, we therefore certify, pursuant to Section 605(b) of the Regulatory Flexibility Act, as amended by the Contract with America Advancement Act of 1996 (CWAAA), Public Law No. 104–121, 110 Stat. 847 (1996),[123] that the rules will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). The Secretary shall send a copy of this Notice, including this certification and statement, to the Chief Counsel for Advocacy of the SBA.[124] A copy of this certification will also be published in the Federal Register.[125]

D. Ordering Clause

86. In light of the foregoing, the amendments to part 1 of our rules, as set forth below, are ADOPTED, effective November 8, 1996.[126]

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Telecommunications.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part I of Title 47 of the Code of Federal Regulations is amended as follows:

[114] *See* PUHCA Section 34(f).

[115] 5 U.S.C. 603.

[116] 5 U.S.C. 604.

[117] 5 U.S.C. 605(b).

[118] 5 U.S.C. 601(3), adopting 15 U.S.C. 632(a)(1).

[119] 15 U.S.C.632(a)(1).

[120] 15 U.S.C.632(a)(2).

[121] As noted above, it is the person who seeks a determination of ETC status—and not the utility holding company—who files an application. These persons may include small entities. However, we note that of the first fifteen applications for a determination of ETC status received, fourteen were wholly-owned subsidiaries of registered public utility holding companies. These companies are not considered small businesses under the Small Business Act.

[122] *See supra* paras. 2–4.

[123] Subtitle II of the CWAAA is the ''Small Business Regulatory Enforcement Fairness Act of 1996.

[124] 5 U.S.C. 605(b).

[125] *Id.*

[126] Approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act has been obtained. (OMB Control No. 3060–0711.)

PART I—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.*, and 47 U.S.C. 151, 154(i), 154(j), and 303(r).

2. A new subpart S, consisting of Sections 1.4000 through 1.4007, is added to part 1 to read as follows:

Subpart S—Exempt Telecommunications Companies

Sec.
1.4000 Purpose.
1.4001 Definitions.
1.4002 Contents of application and procedure for filing.
1.4003 Effect of filing.
1.4004 Commission action.
1.4005 Notification of Commission action to the Securities and Exchange Commission.
1.4006 Procedure for notifying Commission of material change in facts.
1.4007 Comments.

Subpart S—Exempt Telecommunications Companies

§ 1.4000 Purpose.

The purpose of part 1, subpart S, is to implement Section 34(a) of the Public Utility Holding Company Act of 1935, 15 U.S.C. § 79 et seq., as added by Section 103 of the Telecommunications Act of 1996, Public Law No. 104–104, 110 Stat. 56 (1996).

§ 1.4001 Definitions.

(a) For the purpose of this part, the terms ''telecommunications services'' and ''information services'' shall have the same meanings as provided in the Communications Act of 1934, as amended;

(b) Commission shall be defined as the Federal Communications Commission; and

(c) ''ETC'' shall be defined as an exempt telecommunications company.

§ 1.4002 Contents of application and procedure for filing.

(a) A person seeking status as an exempt telecommunications company (applicant) must file with the Commission with respect to the company or companies which are eligible companies owned or operated by the applicant, and serve on the Securities and Exchange Commission and any affected State commission, the following:

(1) A brief description of the planned activities of the company or companies which are or will be eligible companies owned and/or operated by the applicant;

(2) A sworn statement, by a representative legally authorized to bind the applicant, attesting to any facts or representations presented to demonstrate eligibility for ETC status, including a representation that the applicant is engaged directly, or indirectly, wherever located, through one or more affiliates (as defined in Section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935), and exclusively in the business of providing:

(i) Telecommunications services;

(ii) Information services;

(iii) Other services or products subject to the jurisdiction of the Commission; or

(iv) Products or services that are related or incidental to the provision of a product or service described in paragraph (a)(1)(i), (a)(1)(ii), or (a)(1)(iii); and

(3) A sworn statement, by a representative legally authorized to bind the applicant, certifying that the applicant satisfies part 1, subpart P, of the Commission's regulations, 47 CFR 1.2001 through 1.2003, regarding implementation of the Anti-Drug Abuse Act of 1988, 21 U.S.C. 862.

§ 1.4003 Effect of filing.

A person applying in good faith for a Commission determination of exempt telecommunications company status will be deemed to be an exempt telecommunications company from the date of receipt of the application until the date of Commission action pursuant to § 1.4004.

§ 1.4004 Commission action.

If the Commission has not issued an order granting or denying an application within 60 days of receipt of the application, the application will be deemed to have been granted as a matter of law.

§ 1.4005 Notification of Commission action to the Securities and Exchange Commission.

The Secretary of the Commission will notify the Securities and Exchange Commission whenever a person is determined to be an exempt telecommunications company.

§ 1.4006 Procedure for notifying Commission of material change in facts.

If there is any material change in facts that may affect an ETC's eligibility for ETC status under Section 34(a)(1) of the Public Utility Holding Company Act of 1935, the ETC must, within 30 days of the change in fact, either:

(a) Apply to the Commission for a new determination of ETC status;

(b) File a written explanation with the Commission of why the material change in facts does not affect the ETC's status; or

(c) Notify the Commission that it no longer seeks to maintain ETC status.

§ 1.4007 Comments.

(a) Any person wishing to be heard concerning an application for ETC status may file comments with the Commission within fifteen (15) days from the release date of a public notice regarding the application, or such other period of time set by the Commission. Any comments must be limited to the adequacy or accuracy of the application.

(b) Any person who files comments with the Commission must also serve copies of all comments on the applicant.

(c) An applicant has seven (7) days to reply to any comments filed regarding the adequacy and accuracy of its application, or such other period of time as set by the Commission. Such reply shall be served on the commenters.

This Attachment will not be published in the Code of Federal Regulations.

Attachment—List of Commenters

Comments

United States Telephone Association (USTA)
Cinergy Corporation
City of New Orleans
Entergy Corporation
Cincinnati Bell Telephone (CBT)
Association for Local Telephone Services (ALTS)
Southwestern Bell Telephone Company
American Communications Services, Inc. (ACSI)
BellSouth Corporation
The Southern Company (Southern)
New Jersey Ratepayer Advocate

Reply Comments

MCI Telecommunications Corporation
BellSouth Corporation
City of New Orleans
The Southern Company
Entergy Corporation
American Communications Services, Inc.
Massachusetts Electric Company, *et al.*

[FR Doc. 96–25560 Filed 10–8–96; 8:45 am]

BILLING CODE 6712–01–P

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47 CFR Part 73

[MM Docket No. 96–14; RM–8746]

Television Broadcasting Services; Memphis, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Cossitt Library d/b/a Memphis Shelby County Library, allots Channel *56 to Memphis, Tennessee, and reserves the channel for noncommercial educational use. *See* 61 FR 08230, March 4, 1996. Channel 56* can be allotted to Memphis in compliance with the minimum distance separation requirements of Sections

73.610 and 73.698 of the Commission's Rules without the imposition of a site restriction. The coordinates for Channel 56* at Memphis are 35–08–58 and 90–02–56. With this action, this proceeding is terminated.

DATES: Effective November 12, 1996. The period for filing applications will open on November 12, 1996. If no acceptable application is filed by December 13, 1996, there will be no additional opportunity to file applications for this allotment.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 96–14, adopted September 20, 1996, and released September 27, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of TV Allotments under Tennessee, is amended by adding Channel 56* at Memphis.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–25822 Filed 10–8–96; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 96–31; RM–8761]

Television Broadcasting Services; Wittenberg, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action allots UHF Channel 55 to Wittenberg, Wisconsin, in response to a proposal filed by David R. Magnum d/b/a Shawano County Television Company. *See* 61 FR 10301, March 13, 1996. Canadian concurrence has been obtained for Channel 55 at coordinates 45–01–56 and 89–18–44. There is a site restriction 25.8 kilometers (16 miles) northwest of the community. With this action, this proceeding is terminated.

DATES: Effective November 12, 1996. The period for filing applications will open on November 12, 1996. If no acceptable applications are filed by December 13, 1996, there will be no additional opportunity to file applications for this channel allotment. If an application for a new station is filed within this time period, we will continue our normal process as provided in the *Sixth Further Notice* of issuing a Public Notice (cutoff list) that establishes an additional time period for the filing of competing mutually-exclusive applications.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* MM Docket No. 96–31, adopted September 20, 1996, and released September 27, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of TV Allotments under Wisconsin, is amended by adding Wittenberg, Channel 55.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–25821 Filed 10–8–96; 8:45 am]

BILLING CODE 6712–01–F

Proposed Rules

Federal Register
Vol. 61, No. 197
Wednesday, October 9, 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.

FEDERAL ELECTION COMMISSION

11 CFR Part 104

[Notice 1996–19]

Recordkeeping and Reporting by Political Committees: Best Efforts

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission requests comments on proposed changes to its regulations requiring treasurers of political committees to exercise best efforts to obtain and report the complete identification of each individual who contributes more than $200 per calendar year. The proposed revisions would modify the required statement which must accompany solicitations for contributions. The draft rules which follow do not represent a final decision by the Commission. Further information is provided in the supplementary information which follows.

DATES: Comments must be received on or before December 6, 1996.

ADDRESSES: Comments must be made in writing and addressed to: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, N.W., Washington, D.C. 20463.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is publishing today the text of proposed revisions to its regulations at 11 CFR 104.7(b)(1) and (3), which set forth steps needed to ensure that political committees use their best efforts to obtain and report the names, addresses, occupations and employers of individuals who contribute more than $200 per calendar year. These regulations implement section 432(i) of the Federal Election Campaign Act of 1971, as amended (''the Act'' or ''FECA''). 2 U.S.C. 432(i).

The FECA specifies that reports filed by political committees disclose ''the identification of each * * * person (other than a political committee) who makes a contribution to the reporting committee * * * whose contribution or contributions [aggregate over $200 per calendar year] * * * together with the date and amount of any such contribution.'' 2 U.S.C. 434(b)(3)(A). For an individual, identification means his or her full name, mailing address, occupation and employer. 2 U.S.C. 431(13).

The Commission's current regulations at 11 CFR 104.7(b)(1) implement these statutory requirements by requiring the inclusion of the following statement on all solicitations: ''Federal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of $200 in a calendar year.'' Recently, the Court of Appeals for the D.C. Circuit concluded that this mandatory statement is inaccurate and misleading. *Republican National Committee* v. *Federal Election Commission,* 76 F.3d 400, 406 (D.C. Cir. 1996), *petition for cert. filed,*_____ U.S.L.W._____(U.S. Sept. 9, 1996) (No. 96–_____). The court pointed out that the FECA only requires committees to use their best efforts to collect the information and to report whatever information donors choose to provide. Other provisions of the ''best efforts'' regulations were upheld by the court.

Consequently, the Commission proposes revising paragraph (b)(1) of section 104.7 by requiring political committees to include in their solicitations an accurate statement of the statutory requirements. Either of the following two examples would satisfy this requirement, but would not be the only allowable statements: 1) ''Federal law requires us to use our best efforts to collect and report the name, mailing address, occupation and name of employer of individuals whose contributions exceed $200 in a calendar year.'' 2) ''To comply with Federal law, we must use best efforts to obtain, maintain, and submit the name, mailing address, occupation and name of employer of individuals whose contributions exceed $200 per calendar year.'' Comments are sought, however, on whether it would be preferable to simply require all political committees to use one or the other of these two formulations. Please note that statements such as ''Federal law requires political committees to ask for this information,'' without more, do not provide contributors with a complete statement regarding Federal law, and hence, do not meet the requirements of proposed 11 CFR 104.7(b)(1).

The Commission also proposes revising paragraph (b)(3) of section 104.7 to indicate that separate segregated funds are expected to report contributor information in the possession of their connected organizations. This would include corporations (including corporations without capital stock), labor organizations, trade associations, cooperatives and membership organizations. In some situations, it may be more efficient for separate segregated funds to obtain the missing contributor information from their connected organizations than from the contributors.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) Regulatory Flexibility Act

The attached proposed rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that any small entities affected are already required to comply with the requirements of the Act in these areas.

List of Subjects in 11 CFR Part 104

Campaign funds, Political candidates, Political committees and parties, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, it is proposed to amend Subchapter A, Chapter I of Title 11 of the *Code of Federal Regulations* as follows:

PART 104—REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)

1. The authority citation for Part 104 would be revised to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(d), 432(i), 434, 438(a)(8), 438(b), 439a.

2. Section 104.7 would be amended by revising paragraphs (b)(1) and (b)(3) to read as follows:

§ 104.7 Best efforts (2 U.S.C. 432(i)).

* * * * *

(b) * * *

(1) All written solicitations for contributions include a clear request for

the contributor's full name, mailing address, occupation and name of employer, and include an accurate statement of Federal law regarding the collection and reporting of individual contributor identifications, such as: ''Federal law requires us to use our best efforts to collect and report the name, mailing address, occupation and name of employer of individuals whose contributions exceed $200 in a calendar year,'' or ''To comply with Federal law, we must use best efforts to obtain, maintain, and submit the name, mailing address, occupation and name of employer of individuals whose contributions exceed $200 per calendar year.'' The request and statement shall appear in a clear and conspicuous manner on any response material included in a solicitation. The request and statement are not clear and conspicuous if they are in small type in comparison to the solicitation and response materials, or if the printing is difficult to read or if the placement is easily overlooked.

* * * * *

(3) The treasurer reports all contributor information not provided by the contributor, but in the political committee's possession, or in its connected organization's possession, regarding contributor identifications, including information in contributor records, fundraising records and previously filed reports, in the same two-year election cycle in accordance with 11 CFR 104.3; and

* * * * *

Dated: October 4, 1996.

Lee Ann Elliott,

Chairman, Federal Election Commission.

[FR Doc. 96–25921 Filed 10–8–96; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[CO–24–96, CO–25–96, CO–26–96]

RIN 1545–AU31, 1545–AU32, 1545–AU33

Consolidated Returns—Limitations on the Use of Certain Losses and Deductions; Regulations Under Section 1502 of the Internal Revenue Code of 1986; Limitations on Net Operating Loss Carryforwards and Certain Built-in Losses and Credits Following an Ownership Change of a Consolidated Group; Regulations Under Section 382 of the Internal Revenue Code of 1986; Application of Section 382 in Short Taxable Years and With Respect to Controlled Groups; Hearing Cancellation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to deductions and losses of members; limitations on net operating loss carryforwards and certain built-in losses and credits following an ownership change with respect to consolidated groups; and the application of section 382 in short taxable years and with respect to controlled groups. The public hearing originally scheduled for October 17, 1996, beginning at 10:00 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Evangelista C. Lee of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7190, (not a toll free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed amendments to the Income Tax Regulations under sections 25, 382 and 1502 of the Internal Revenue Code. A notice of public hearing appearing in the Federal Register on Thursday, June 27, 1996 (61 FR 33393), (61 FR 33395), and (61 FR 33391), announced that the public hearing on proposed regulations under sections 25, 382, 1502 of the Internal Revenue Code would be held on Thursday, October 17, 1996, beginning at 10:00 a.m., in the NYU Classroom, Room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, D.C. 20224.

The public hearing scheduled for Thursday, October 17, 1996, is cancelled.

Michael L. Slaughter,

Acting Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 96–25943 Filed 10–8–96; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH101–1b; FRL–5631–4]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA is proposing to approve a Sulfur Dioxide State Implementation Plan (SIP) revision request submitted by the State of Ohio on July 18, 1996. This requested revision allows Ohio to revert to an emission limit from the Federal Implementation Plan for Ohio Edison's Sammis plant and tightens the emission limit for Ohio Edison's Toronto plant. In the Final Rules section of this Federal Register, USEPA is approving the State's SIP revision as a direct final rule without prior proposal because the agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. However, if the USEPA receives significant adverse comments which have not been previously addressed, the direct final rule will be withdrawn and the public comments received will be addressed in a subsequent final rule based on this proposed rule. The USEPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by November 8, 1996.

ADDRESSES: Copies of the revision request are available for inspection at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Fayette Bright at (312)

886–6069 before visiting the Region 5 Office.)

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Ryan Bahr at (312) 353–4366.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this Federal Register.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 25, 1996.

David A. Ullrich,

Acing Regional Administrator.

[FR Doc. 96–25939 Filed 10–8–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 648 and 649

[Docket No. 960926275–6275–01; I.D. 091196A]

RIN 0648–AI83

Fisheries of the Northeastern United States; Amendments to the Northeast Multispecies, Atlantic Sea Scallop, and American Lobster Fishery Management Plans

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 8 to the Northeast Multispecies, Amendment 6 to the Atlantic Sea Scallop, and Amendment 6 to the American Lobster Fishery Management Plans (FMPs) to provide a framework abbreviated rulemaking process to address gear conflicts in the New England and Mid-Atlantic regions. These amendments propose to: Add an objective to the Atlantic Sea Scallop and Northeast Multispecies FMPs to allow management of gear conflicts in these fisheries (the American Lobster FMP currently has an objective sufficiently broad in scope to allow management of gear conflicts), adapt the framework process currently in place for the Northeast multispecies and Atlantic sea scallop conservation management programs to allow implementation of a gear conflict management program for all three FMPs, and add a list of management measures to each FMP from which the Council could select future solutions to gear conflicts through the framework adjustment process. The intent of this action is to provide mechanisms to reduce the economic loss caused by gear conflicts.

DATES: Comments on the proposed rule must be received on or before November 18, 1996.

ADDRESSES: Comments on the proposed rule, the amendments, and/or their supporting documents should be sent to Dr. Andrew A. Rosenberg, Director, Northeast Region, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on Gear Conflict Amendments.''

Copies of the amendments, their regulatory impact review and the environmental assessment are available from Christopher Kellogg, Acting Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, Saugus, MA 01906–1097.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 508–281–9273.

SUPPLEMENTARY INFORMATION: The amendments were prepared by the New England Fishery Management Council (Council) in consultation with the Mid-Atlantic Fishery Management Council. On June 6, 1996, the Council voted to approve the amendments for submission to the Secretary of Commerce. This action would amend all of the FMPs currently in effect within the jurisdiction of the Council.

Background

Recent increases in gear conflicts have been attributed to the decline in traditional fisheries, new regulations, and changes in markets that created new incentives to pursue alternative fisheries. These factors, as well as the dissolution of a voluntary agreement between industry sectors, have precipitated the need for gear conflict frameworks.

A framework action could be used to address gear conflicts occurring only in Federal waters. NMFS assumes that the Council intends us to use the proposed gear conflict framework procedure to address true gear conflicts and not as a procedure for addressing essentially allocation issues between users. NMFS solicits comments concerning its interpretation of the Council's intent.

For the purpose of these proposed amendments, the definition of gear conflict (at 50 CFR 600.10) is any incident at sea involving one or more fishing vessels: (1) In which one fishing vessel or its gear comes into contact with another vessel or the gear of another vessel, and (2) that results in the loss of, or damage to, a fishing vessel, fishing gear, or catch.

The amendments would establish a framework process that could be used to devise specific programs tailored to specific gear conflict situations. This process would be similar to the framework process currently in place for management measures designed to meet conservation objectives. At least two publicly announced meetings would be required to be held to discuss and receive comment on any proposal before submission of any framework measures to the Director, Northeast Region, NMFS, for submission as a final rule. In addition, the Council would be required to provide the public with appropriate justification and the economic and biological analysis of the measures. Since any proposed measure would affect fisheries under at least two FMPs, the measures would be required to be evaluated and approved by the relevant committees with oversight authority for the affected FMPs. If there is disagreement between committees, the Council would return the proposed framework measures to the standing or ad hoc gear conflict committee for further review and discussion. The management measures submitted by the Council could be published as final rules under certain conditions and would take immediate effect, within the constraints of applicable law.

The measures that could be implemented by framework action to manage gear conflicts would be: (1) Designation of restricted areas in increments no larger than 1-degree squared (2700 mi^2 (5000.4 km^2)), (2) monitoring of a radio channel by fishers, (3) fixed gear location reporting and plotting requirements, (4) standards of operation when gear conflicts occur, (5) fixed gear marking and setting practices, (6) gear restrictions for specific areas (including time and area closures), (7) vessel monitoring systems, (8) restrictions on the number of fishing vessels or amount of gear, and (9) special permit conditions.

Approval of these amendments would establish a process and provide a list of measures as potential options that could be used to resolve gear conflicts. These proposed amendments would not implement any of the measures listed above, but would establish a process requiring opportunities for the public to participate in the adoption and implementation of the measures listed.

To implement one or more of the measures listed, an individual framework action, as described above, would require documentation and analyses sufficient to determine compliance and consistency with all applicable laws.

Classification

Section 304(a)(1)(D) of the Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that regulations proposed by a Council be published within 15 days of the receipt of the amendment and regulations. At this time, NMFS has not determined that the amendments this rule would implement are consistent with the national standards, other provisions of the Magnuson Act and other applicable law. NMFS, in making that determination, will take into account the information, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The proposed action, by itself, will have no impact on overall revenues. A primary purpose of the framework process and the actions taken under the process is to reduce costs associated with fishing. The impact of any measures to be taken under this proposed framework process would be analyzed at the time such frameworks are proposed. There may be some increases in production costs, e.g. supply costs to properly mark gear, but these would be offset by the anticipated reduction in gear loss. The proposed action is unlikely to materially reduce annual revenues or increase production and compliance costs. Therefore, the economic impacts on small business are not considered to be significant.

List of Subjects

50 CFR Part 649

Fisheries.

50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 3, 1996.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 648 and 649 are proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.55, paragraphs (d) through (f) are redesignated as paragraphs (f) through (h), respectively, new paragraphs (d) and (e) are added, and the section heading and newly redesignated paragraph (f)(3) are revised to read as follows:

§ 648.55 Framework specifications.

* * * * *

(d) The Council may make recommendations to the Regional Director to implement measures in accordance with the procedures described in this subpart to address gear conflict as defined under § 600.10. In developing such recommendation, the Council shall define gear management areas, each not to exceed 2700 mi^2 (5000.4 km^2), and seek industry comments by referring the matter to its standing industry advisory committee on gear conflict, or to any ad hoc industry advisory committee that may be formed. The standing industry advisory committee or ad hoc committee on gear conflict shall hold public meetings seeking comments from affected fishers and develop findings and recommendations on addressing the gear conflict. After receiving the industry advisory committee findings and recommendations, or at any other time, the Council shall determine whether adjustments to, or additional management measures are necessary to address, gear conflicts and in which FMPs modifications are necessary to address such conflicts. If the Council determines that adjustments or additional measures are necessary, it shall develop and analyze appropriate management actions for the relevant FMPs over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of the recommendation and the appropriate justification and economic and biological analyses, and opportunity to comment on them prior to and at the second or final Council meeting before submission to the Regional Director. The Council's recommendation on adjustments or additions to management measures for gear conflicts must come from one or more of the following categories:

(1) Monitoring of a radio channel by fishing vessels.

(2) Fixed gear location reporting and plotting requirements.

(3) Standards of operation when gear conflict occurs.

(4) Fixed gear marking and setting practices.

(5) Gear restrictions for specific areas (including time and area closures).

(6) Vessel monitoring systems.

(7) Restrictions on the maximum number of fishing vessels or amount of gear.

(8) Special permitting conditions.

(e) The measures shall be evaluated and approved by the relevant committees with oversight authority for the affected FMPs. If there is disagreement between committees, the Council may return the proposed framework adjustment to the standing or ad hoc gear conflict committee for further review and discussion.

(f) * * *

(3) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts.

* * * * *

3. In § 648.90, the introductory text to paragraph (b), and paragraph (b)(1) are revised, paragraphs (b)(2) and (b)(3) are redesignated as paragraphs (b)(3) and (b)(4), respectively, a new paragraph (b)(2) is added and newly redesignated paragraph (b)(3)(iii) is revised to read as follows:

§ 648.90 Framework specifications.

* * * * *

(b) *Within season management action.* The Council may, at any time, initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the Northeast Multispecies FMP or to address gear conflicts as defined under § 600.10.

(1) *Adjustment process.* After a management action has been initiated, the Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analysis and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures, other than to address gear conflicts, must come from one or more of the following categories: DAS changes, effort monitoring, data reporting, possession limits, gear restrictions, closed areas, permitting restrictions, crew limits, minimum fish sizes, onboard observers, minimum hook size and hook style, the use of crucifiers in the hook-gear fishery, fleet sector shares, recreational fishing measures, area

closures and other appropriate measures to mitigate marine mammal entanglements and interactions, and any other management measures currently included in the FMP.

(2) *Adjustment process for gear conflicts.* The Council may develop a recommendation on measures to address gear conflict in accordance with the procedure specified in § 648.55, paragraphs (d) and (e).

(3) * * *

(iii) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts.

* * * * *

PART 649—AMERICAN LOBSTER FISHERY

1. The authority citation for part 649 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 649.44, the section heading is revised, paragraphs (e) through (g) are redesignated as paragraphs (f) through (h), respectively, new paragraph (e) is added, and newly redesignated paragraph (f)(3) is revised to read as follows:

§ 649.44 Framework specifications.

* * * * *

(e) The Council may develop a recommendation on measures to address gear conflicts as defined under 50 CFR 600.10 in accordance with the procedure specified in § 648.55, paragraphs (d) and (e).

(f) * * *

(3) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts; and

* * * * *

[FR Doc. 96–25823 Filed 10–3–96; 4:51 pm]

BILLING CODE 3510–22–W

Notices

Federal Register
Vol. 61, No. 197
Wednesday, October 9, 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

Animal and Plant Health Inspection Service

[Docket No. 96–080–1]

Calgene, Inc.; Addition of One Genetically Engineered Tomato Line to Determination of Nonregulated Status

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Animal and Plant Health Inspection Service is announcing that it has added one additional genetically engineered tomato line to those subject to its October 19, 1992, interpretive ruling that the subject FLAVR SAVR™ lines need no longer be regulated. The effect of this action is that one additional delayed softening tomato line, which has been modified by the incorporation of genetic material described by Calgene, Inc., in its initial request for an interpretive ruling, will no longer be subject to regulation under 7 CFR part 340.

FOR FURTHER INFORMATION CONTACT: Dr. Subhash Gupta, Biotechnologist, Biotechnology Permits, BBEP, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1237; (301) 734–7612.

SUPPLEMENTARY INFORMATION: On October 19, 1992, the Animal and Plant Health Inspection Service (APHIS) published in the Federal Register (57 FR 47608–47616, Docket No. 92–087–2) a notice announcing the issuance of an interpretive ruling that previously field tested lines of the Calgene, Inc., FLAVR SAVR™ tomato do not present a plant pest risk and are not regulated articles under the regulations contained in 7 CFR part 340. This action was in response to a petition submitted by Calgene seeking a determination from APHIS that its FLAVR SAVR™ tomato no longer be deemed a regulated article, based on an absence of plant pest risk. The effect of that action was that previously field tested lines of the FLAVR SAVR™ tomato and their progeny would no longer be regulated under these regulations.

FLAVR SAVR™ tomatoes were defined by Calgene in its initial petition to include any tomatoes transformed with one of seven identified plasmid vectors that all carry an antisense copy of the tomato polygalacturonase gene and a bacterial neomycin phosphotransferase gene with associated regulatory sequences. Calgene's initial request to APHIS in 1992 was for a determination pertaining to all FLAVR SAVR™ transformants produced in tomatoes using any one of the seven plasmid vectors. Calgene indicated in its petition that data provided to the Agency were representative of the data gathered for all lines tested up to that time. The initial determination announced by APHIS on October 19, 1992, only applied to those lines that had already been field tested. However, APHIS indicated that new lines were likely to exhibit properties similar to those of lines already field tested under permit. The determination also allowed for cross-breeding of the identified FLAVR SAVR™ tomato lines with any other lines or cultivars of tomato without a permit. Since the publication of the October 19, 1992, determination, a total of 32 additional FLAVR SAVR™ tomato lines have been added to the original determination. Those additions were announced in notices published in the Federal Register on October 3, 1994 (59 FR 50220, Docket No. 94–096–1); November 18, 1994 (59 FR 59746, Docket No. 94–125–1); March 23, 1995 (60 FR 15284, Docket No. 95–015–1); and July 28, 1995 (60 FR 38788–38789, Docket No. 95–056–1).

The additional FLAVR SAVR™ tomato line that is the subject of this notice was constructed using the plasmid vector pCGN4109, which was one of the seven included in Calgene's initial petition to APHIS. In our determination of October 19, 1992, the lines using these vectors were not deregulated because they had not been field tested. These lines have since been field tested in accordance with APHIS regulations at 7 CFR part 340, and data provided to APHIS indicate that the new transformant, produced in a manner identical to the earlier transformant lines, behaves similarly to those earlier FLAVR SAVR™ tomato lines to which the determination initially applied. Reports from field trials and other data indicate that the new tomato line grows normally, exhibits the expected morphological, reproductive, and physiological properties, and does not have unexpected pest or disease susceptibility or symptoms. Therefore, the APHIS determination of nonregulated status of October 19, 1992, applies as well to this new transformed line.

Done in Washington, DC, this 4th day of October 1996.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–25933 Filed 10–8–96; 8:45 am]

BILLING CODE 3410–34–P

[Docket No. 96–073–1]

Availability of Environmental Assessments and Findings of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that three environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the release into the environment of nonindigenous biological control agents. The environmental assessments provide a basis for our conclusion that the release into the environment of the biological control agents will not present a risk of introducing plant pests into the United States or disseminating plant pests within the United States and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and

4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Flanders, Entomologist, Biological Assessment and Taxonomic Support, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236, (301) 734–8896. For copies of any of the environmental assessments and findings of no significant impact, write to Ms. Deborah Knott at the same address. Please refer to the title of the environmental assessment when ordering copies.

SUPPLEMENTARY INFORMATION: Under the Federal Plant Pest Act, as amended (7 U.S.C. 150aa *et seq.*) and the Plant Quarantine Act, as amended (7 U.S.C. 151 *et seq.*) (the Acts), the U.S. Department of Agriculture (USDA) has broad authority to regulate the importation, interstate movement, and release into the environment of organisms it has reason to believe are plant pests in order to prevent the dissemination of plant pests into the United States or interstate. The Animal and Plant Health Inspection Service (APHIS) regulates plant pests under regulations promulgated pursuant to the Acts and contained in 7 CFR part 330 (referred to below as the regulations). The regulations require, among other things, that a permit be obtained for the movement of a plant pest into or through the United States or interstate. The regulations and Acts also allow the Department to include in the permit conditions to prevent the dissemination of plant pests.

Under the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), APHIS typically prepares an environmental assessment before issuing a permit for the release in the United States of nonindigenous organisms.

In accordance with applicable regulations, APHIS has received applications for permits for the release into the environment of nonindigenous biological control agents. In the course of reviewing each permit application, APHIS assessed the plant pest risk posed by each organism and the impact on the environment of releasing each organism under the conditions described in the permit application. APHIS has issued permits for the release into the environment of the organisms listed below after concluding that their release in accordance with conditions on the permits will not present a risk of the introduction or dissemination of plant pests within the United States and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicant and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impact and plant pest risk associated with releasing the biological control agents into the environment.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits for the release into the environment of the following biological control agents with plant pest potential:

Organism	Title of environmental assessment	Date of finding of no significant impact
Eteobalea intermediella and *Eteobalea serratella.*	''Field Release of the Exotic Moths, (*Eteobalea intermediella* and *E. serratella* (Lepidoptera: Cosmopterigidae), for Biological Control of Dalmatian Toadflax, *Linaria dalmatica,* and Yellow Toadflax, *L. vulgaris* (Scrophulariaceae)'' (April 1996).	4/26/96
Mecinus janthinus	''Field Release of the Exotic Weevil, *Mecinus janthinus* (Coleoptera: Curculionidae), for Biological Control of Dalmatian Toadflax, *Linaria dalmatica,* and Yellow Toadflax, *L. vulgaris* (Scrophulariaceae)'' (April 1996).	4/26/96
Septoria passiflorae	''Release of the Phytopathogenic Fungus *Septoria passiflorae* for Biological Control of Banana Poka, *Passiflora tripartita* var. *Tripartita (Passifloraceae),* in Hawaii'' (February 1996).	2/23/96

The environmental assessments and findings of no significant impact have been prepared in accordance with : (1) NEPA, (2) Regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 4th day of October 1996.

A. Strating,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–25932 Filed 10–8–96; 8:45 am]

BILLING CODE 3410–34–P

Forest Service

National Forest System Timber Sale Program Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Forest Service will host a meeting at the Kimball Conference Center, October 30–31, 1996, to generate ideas for a new project to identify and evaluate innovative ways of improving how national forest timber is sold. At the meeting, agency personnel will outline issues relevant to the project and encourage an open dialogue among attendees concerning their individual views on enhancing the efficiency and administrative flexibility of the agency's timber sale program.

DATES: The meeting will be held from 8:00 a.m. to 5:00 p.m. October 30–31, 1996. Written comments from those not in attendance must be received by December 20, 1996.

ADDRESSES: The meeting will be held at the Kimball Conference Center, 1400 16th Street, NW., Washington, DC 20036. Comments or questions concerning this meeting and requests for a summary of the meeting should be directed to Cliff Hickman, Meeting Coordinator, Timber Management Staff, USDA Forest Service, P.O. Box 96090, Washington, DC 20090–6090; via Internet at Hickman__Cliff/wo@fs.fed.us; via the Forest Service home page at www.fs.fed.us; or by calling (202) 205–1162.

FOR FURTHER INFORMATION CONTACT: Cliff Hickman, Meeting Coordinator, Timber Management Staff, (202) 205–1162.

SUPPLEMENTARY INFORMATION: The sale of timber on National Forest System land helps meet the nation's demand for wood; achieves important stewardship

objectives requiring vegetative manipulation; and provides posts, poles, and other forest products to individuals for their own use. The Forest Service manages timber and other vegetation on 191.6 million acres in the National Forest System. The changing nature of the timber program under ecosystem management, the persistent rise in timber program unit costs, and changing national and regional priorities have given rise to the need to explore new and innovative ways to achieve national forest timber-related vegetative management goals.

The Forest Service has scheduled an October meeting to gather ideas for improving the efficiency and administrative flexibility of the national forest timber sale program. To ensure that a broad array of interested parties are represented in the deliberations, there will be a number of invited participants. Other individuals interested in the meeting will be accommodated up to the limitations of the available space.

Anyone unable to attend the meeting may submit written comment to the agency's meeting coordinator named in this notice. To facilitate this process, a meeting summary will be available by November 20, 1996, and may be obtained by contacting the meeting coordinator.

Dated: October 3, 1996.

David G. Unger,

Associate Chief.

[FR Doc. 96–25946 Filed 10–8–96; 8:45 am]

BILLING CODE 3410–11–M

Rural Utilities Service

Notice of Intent To Conduct Public Meetings and Prepare an Environmental Impact Statement

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Intent to conduct public scoping workshops and prepare an Environmental Impact Statement.

SUMMARY: The Rural Utilities Service (RUS) intends to hold public scoping workshops and prepare an Environmental Impact Statement (EIS) in connection with a project in Alaska proposed by the seven electric utilities that are collectively known as the Intertie Participants Group (IPG). The IPG consists of Chugach Electric Association, Inc. (Chugach), Municipality of Anchorage—Municipal Light and Power, City of Seward—Seward Electric System, Matanuska Electric Association, Inc., and the Municipality of Fairbanks—Fairbanks Municipal Utilities System, Golden Valley Electric Association, Inc. (GVEA), and Homer Electric Association, Inc. (HEA). GVEA and HEA intend to apply for RUS financing assistance for the proposed project. Chugach will act as the construction manager for the proposed project. The proposal, which is referred to as the Southern Intertie Project, consists of the construction and operation of a 230 kV transmission line to be operated initially at 138 kV between Anchorage and a location on the Kenai Peninsula in Alaska.

DATES: RUS will conduct three public scoping workshops as follows:

November 12, 1996, 5:00 p.m. to 9:00 p.m., Spenard Community Recreation Center, 2020 West 48th Avenue, Anchorage, Alaska, Tel: (907) 343–4160

November 13, 1996, 5:00 p.m. to 9:00 p.m., Cooper Landing Community Hall, Bean Creek Road, Cooper Landing, Alaska, Tel: (907) 595–1257

November 14, 1996, 5:00 p.m. to 9:00 p.m., Kenai Peninsula Borough Chambers, 144 N. Binkley Street, Soldotna, Alaska, Tel: (907) 262–4441.

FOR FURTHER INFORMATION CONTACT: Nurul Islam, Environmental Protection Specialist, RUS, Engineering and Environmental Staff, 1400 Independence Avenue, SW, Stop 1571, Washington, DC 20250–1571, telephone (202) 720–1784, or Dora Gropp, Chugach Electric Association, Inc., 5601 Minnesota Drive, P.O. Box 196300, Anchorage, Alaska 99519–6300, telephone, (800) 478–7494/(907) 762–4626.

SUPPLEMENTARY INFORMATION: GVEA and HEA, along with the other five IPG members, are proposing to construct a 230 kV transmission line between Anchorage and a location on the Kenai Peninsula. Alternatives to be considered by RUS include no action, energy conservation, local generation, system alternatives, transmission alternatives, and alternative routes. Comments regarding the proposed project may be submitted orally or in writing within 30 days after the November 14, 1996, workshop to RUS at the address provided in this notice.

The IPG and their consultants have prepared a report entitled, ''Southern Intertie Route Selection Study'' (Study) for the project. The Environmental Section Report and the Executive Summary Section Report from that Study are available for public review at RUS or Chugach, at the addresses provided in this notice. These reports are also available at the other participants' offices and local libraries. Please consult local notices for locations.

Based on the study mentioned above and input from interested local, state, and Federal agencies and the public, the IPG and their consultants will prepare an Environmental Analysis to be submitted to RUS for review. RUS will prepare a Draft EIS based on the Environmental Analysis and any other information available to RUS. The Draft EIS will be available for public review for 45 days. The Final EIS will then be prepared considering all the comments received, and made available for public review and comment at least for 30 days. At the end of 30-day comment period a Record of Decision will be issued on the project.

This proposal will require compliance with Title 11 of Alaska National Interest Lands Conservation Act if lands under the jurisdiction of the U.S. Fish and Wildlife Service are crossed.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal environmental laws and regulations and completion of environmental review procedures as prescribed by the Council on Environmental Quality Regulations and RUS Environmental Policies and Procedures.

Dated: October 4, 1996.

Adam M. Golodner,

Deputy Administrator, Program Operations.

[FR Doc. 96–26012 Filed 10–8–96; 8:45 am]

BILLING CODE 3410–15–P

ASSASSINATION RECORDS REVIEW BOARD

Sunshine Act Meeting

DATE: October 15–16, 1996.

PLACE: ARRB, 600 E Street, NW., Washington, DC.

STATUS: Open (Room 206) and Closed.

MATTERS TO BE CONSIDERED:

October 15, 9:00 a.m.—Closed Meeting
1. Review and Accept Minutes of Closed Meeting
2. Review of Assassination Records
3. Other Business

October 16, 9:00 a.m.—Continuation of Closed Meeting

October 16, 2:00 p.m.—Open Meeting
1. Procedures for handling records whose relevance to the assassination cannot be determined
2. Other issues

CONTACT PERSON FOR MORE INFORMATION: Eileen Sullivan, Assistant Press and Public Affairs Officer, 600 E Street, NW., Second Floor, Washington, DC

20530. Telephone: (202) 724–0088; Fax: (202) 724–0457.

David G. Marwell,

Executive Director.

[FR Doc. 96–26101 Filed 10–7–96; 2:13 pm]

BILLING CODE 6118–01–P–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 71–96]

Foreign-Trade Zone 29—Louisville, Kentucky Application for Expansion and Request for Manufacturing Authority (Military Ordnance)

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Louisville and Jefferson County Riverport Authority, grantee of Foreign-Trade Zone 29, requesting authority to expand FTZ 29, Louisville, Kentucky, to include three additional sites, including a Naval Ordnance facility which is used for military weapons repair and maintenance activity. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on September 26, 1996.

FTZ 29 was approved on May 26, 1977 (Board Order 118, 42 FR 29323, 6/8/77), and expanded on January 31, 1989 (Board Order 429, 54 FR 5992, 2/7/89). The zone project currently consists of the following two sites in the Louisville, Kentucky area: *Site 1* (1,319 acres)—located within the Riverport Industrial Complex; and *Site 2* (675 acres)—located at the junction of Gene Snyder Freeway and La Grange Road in eastern Jefferson County.

The applicant is now requesting authority to expand the general-purpose zone. The three additional sites requested are: Proposed *Site 3* (142 acres, 1,629,000 sq. ft.)—the United States Navy Ordnance Facility (currently in the process of being privatized), located at 5403 Southside Drive, Louisville; Proposed *Site 4* (2,311 acres, 6,184,406 sq. ft.)—consisting of the Louisville International Airport and three other airport-related parcels (*Parcel A* (1,626 acres)—the Louisville International Airport, including the Airport's industrial park area; *Parcel B* (94 acres)—the Dixie Warehouse & Cartage Co. public warehousing facility located at Grade Lane, Louisville; *Parcel C* (475 acres)—the UPS Airport Tank Farm and maintenance facilities located at the Louisville International Airport; and, *Parcel D* (116 acres)—the UPS Outer Loop warehousing facility located at Stennett Lane, Louisville); and, Proposed *Site 5* (70 acres)—the Ashland Inc. Tank Farm (1.3 million barrels) and pipelines, located at 4510 Algonquin Parkway along the Ohio River, Louisville, which supplies part of the airport's fuel system.

Ownership of the Naval Ordnance Facility (Site 3) is currently being transferred to the Louisville/Jefferson County Redevelopment Authority for use by private firms that are authorized by the Department of Defense (DOD) to conduct weapons repair activity for the U.S. military, as well as for foreign governments. The facility would also be available for authorized non-military commercial activity.

Authorization is being requested for activity at Site 3, which will involve the repair, overhaul and refurbishing of military weapons systems under FTZ procedures. The weapons include cannons, gun systems (20mm to 5 inches), missiles, missile hardware, missile and torpedo launchers, radar, navigational equipment and sights. The components and materials sourced from abroad include cannons, launchers, guided missile parts, telescopic sights, mechanical devices, fabricated structures, air or vacuum pumps, air conditioning machines, electric motor generators, computer automated data processing machines, gaskets, magnets, and batteries, transformers, electrical apparatus for line telephony, headphones and parts, recording media transmission apparatus, radar apparatus, indicator panels, capacitors, resistors, printed circuits, displays cathode ray tubes, meters diodes and transistors, insulators and fittings, optical fibers, lenses and mirrors lenses for projection, test instruments, oscilloscopes, analyzers, and measuring/checking instruments. FTZ procedures would provide duty-free treatment for export shipments, and for shipments to the U.S. military. While operated as a Naval facility, activity was conducted under special Customs procedures applicable to DOD. FTZ status will allow the activity to continue on a similar Customs basis after conversion takes place.

FTZ procedures will exempt the foreign components used in production for export from Customs duties. With respect to domestic sales, most shipments would qualify for duty-free treatment under DOD's military certificate program rather than being subject to the duty rate that would otherwise apply to the foreign components (duty-free to 15%). The application indicates that the savings from zone procedures would help improve the facility's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is December 9, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to December 23, 1996).

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, 601 W. Broadway, Room 634B, Louisville, Kentucky 40202

Office of the Executive Secretary, Foreign-Trade Zone Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, N.W., Washington, DC 20230.

Dated: October 3, 1996.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–25956 Filed 10–8–96; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 70–96]

Proposed Foreign-Trade Zone—Spokane, Washington; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Spokane Airport Board, on behalf of the City and County of Spokane, Washington, to establish a general-purpose foreign-trade zone in Spokane, Washington, within the Spokane Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on September 25, 1996. The applicant is authorized to make the proposal under Section 24.46.020 of the Revised Code of Washington.

The proposed zone would consist of 3 sites (5,710 acres) in Spokane: *Site 1* (4,700 acres)—Spokane International Airport, West 9000 Airport Drive; *Site 2* (600 acres)—Spokane International Airport Business Park, Airport Corporate Center, South 3707 Godfrey

Blvd.; and, *Site 3* (410 acres)—Felts Field Airport, East 6105 Rutter Avenue. All three sites are jointly owned by the City of Spokane and Spokane County, and the Airport Board plans to serve as overall zone operator.

The application contains evidence of the need for foreign-trade zone services in the Spokane area. Several firms have indicated an interest in using zone procedures for warehousing/distribution activity. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on October 24, 1996, at 2:00 p.m., Spokane City Council Chambers, West 808 Spokane Falls Boulevard, Spokane, Washington 99201.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 8, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to November 25, 1996.

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations:

Office of the Port Director, U.S. Customs Service, 601 W. First Avenue, Suite 507, Spokane, WA 99204–0317

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: October 2, 1996.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–25955 Filed 10–8–96; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

A–588–810

Mechanical Transfer Presses From Japan; Final Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review; Mechanical Transfer Presses from Japan.

SUMMARY: On April 4, 1996, the Department of Commerce (the Department) published the preliminary results of review and termination in part of the review of the antidumping duty order on mechanical transfer presses (MTPs) from Japan. The review covers four manufacturers/exporters of the subject merchandise to the United States and the period February 1, 1994 through January 31, 1995. We gave interested parties an opportunity to comment on the preliminary results of review. We received comments from petitioner and three respondents. Based on our analysis, we have changed the final results from those presented in the preliminary results of review. We have determined that sales have not been made below normal value (NV). We will instruct U.S. Customs to assess antidumping duties equal to the differences between the export price and NV.

EFFECTIVE DATE: October 9, 1996.

FOR FURTHER INFORMATION CONTACT: Elisabeth Urfer or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–4733.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Background

On April 4, 1996, the Department published the preliminary results and termination in part of the review of the antidumping duty order on MTPs from Japan (61 FR 15034, April 4, 1996). The Department has now completed this administrative review in accordance with section 751 of the Act.

Scope of Review

Imports covered by this review include MTPs currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 8462.99.0035 and 8466.94.5040. The HTS numbers are provided for convenience and for U.S. Customs purposes. The written description remains dispositive of the scope of the order.

The term ''mechanical transfer presses'' refers to automatic metal-forming machine tools with multiple die stations in which the work piece is moved from station to station by a transfer mechanism designed as an integral part of the press and synchronized with the press action, whether imported as machines or parts suitable for use solely or principally with these machines. These presses may be imported assembled or unassembled. This review does not cover spare and replacement parts and accessories, which were determined to be outside the scope of the order. (*See* ''Final Scope Ruling on Spare and Replacement Parts,'' U.S. Department of Commerce, March 20, 1992.)

This review covers four manufacturers/exporters of MTPs, and the period February 1, 1994 through January 31, 1995.

Analysis of the Comments Received

We gave interested parties an opportunity to comment on the preliminary results of review. We received comments from petitioner, Verson Division of Allied Products Corp., the United Autoworkers of America, and the United Steelworkers of America (AFL-CIO/CLC), and from respondents, Aida Engineering, Ltd. (Aida), Kurimoto Co., Ltd. (Kurimoto), and Komatsu Ltd. (Komatsu). We received rebuttal comments from petitioner, Aida, and Kurimoto.

I. Kurimoto

Comment 1: Petitioner asserts that the Department should revise the profit for Kurimoto's U.S. sale. Petitioner cites to the Statement of Administrative Action (SAA) to the URAA at 169, which states:

> Constructed value is used as the basis for normal value where home market sales of the merchandise in question are either nonexistent, in inadequate numbers, or inappropriate to serve as a benchmark for a fair price, such as where sales are disregarded because they are sold at below-cost prices. Because constructed value serves as a proxy for a sales price, and because a fair sales price would recover SG&A expenses and would include an element of profit, constructed value must include an amount for SG&A expenses and for profit.

Petitioner notes that the URAA establishes the following alternative methods for calculating amounts for profit in those instances where the respondent's sales of the foreign like product cannot be used: 1) the actual profit realized by the same producer on

home market sales of the same general category of products; (2) the weighted average profit realized by the other investigated companies on home market sales of the foreign like product, made in the ordinary course of trade; and 3) any other reasonable method, provided that the amount for profit does not exceed the profit normally realized by other companies on home market sales of the same general category of products. Section 773(e)(2)(B) of the Act; SAA at 170.

Petitioner argues that the Department should use the profit rate calculated for Aida in this administrative review, in accordance with alternative two in the URAA cited above. For more information, see memorandum to the file, ''Mechanical Transfer Presses from Japan—Additional Discussion of Proprietary Issues Regarding Aida for the Final Results of Review,'' dated September 17, 1996.

Kurimoto contends that the statute requires that the profit level of the specific producer be utilized. Kurimoto notes that, as stated in the SAA, the statute does not establish a hierarchy among the alternative methods for calculating profit and SG&A, and that the Department may use any reasonable method, except that the amount allowed for profit may not exceed the amount normally realized by exporters or producers. Kurimoto argues that the profit level utilized by the Department was reasonable because it was consistent with both the statute and the SAA and was made with reference to the actual experience of the producer. Kurimoto argues that the complex and highly customized nature of each MTP, and the pricing for each MTP, may result in great differentiation between the profit levels experienced with regard to each press sold even by the same producer, and that to resort to the profit level experienced by another producer would bear no relationship to the conditions faced by the actual producer in manufacturing and selling a different piece of machinery under different conditions. Kurimoto further argues that utilizing Aida's profit level for Kurimoto's calculation would place the Department in a position of violating its obligations under the law. Kurimoto states that the Department is required to make full, prompt and accurate disclosure of Kurimoto's margin calculation. Kurimoto argues that Aida's profit level is business proprietary information to which Kurimoto is not entitled, and that, if the Department were to utilize Aida's profit level in the margin calculation for Kurimoto, it would be placed in the position of disclosing Aida's business proprietary information.

Department's Position: For the preliminary results we utilized Kurimoto's profit as directed by section 773(e)(2)(A), which states that the constructed value of the importer merchandise shall be equal to:

> The actual amounts incurred and realized by the specific exporter or producer being examined in the investigation or review for selling, general and administrative expenses, and for profits, in connection with the foreign like product, in the ordinary course of trade, for consumption in the foreign country.

We have evaluated the reasonableness of using Kurimoto's profit on sales of the foreign like product by comparing it to profit incurred by the producer on sales of merchandise of the same general type as the exports in question, and Aida's profit on sales of the foreign like product. We have concluded that it is appropriate to use Kurimoto's profit on sales of the foreign like product. Because we have continued to use Kurimoto's data, the question of whether we would be able to provide Kurimoto disclosure of its margin calculation while protecting Aida's proprietary information is moot. For further discussion, see the memorandum to the file, ''Mechanical Transfer Presses from Japan—Additional Discussion of Proprietary Issues Regarding Kurimoto for the Final Results of Review,'' dated September 17, 1996.

Comment 2: Petitioner argues that Kurimoto failed to include cost variances in its constructed value. Petitioner argues that the Department requested this information in its supplemental questionnaire and that Kurimoto failed to report this information, but that this information was verified by the Department and should be used for Kurimoto's constructed value.

Kurimoto contends that petitioner does not understand the facts with regard to these costs. Kurimoto argues that it utilizes a job order cost system as the basis for its cost accounting for MTPs. Kurimoto notes that its reported costs were tested during the course of verification, and no discrepancies were found. Kurimoto argues that, if the Department is to make an adjustment, it should only do so for labor. For more information see memorandum to the file, ''Mechanical Transfer Presses from Japan—Additional Discussion of Proprietary Issues Regarding Kurimoto for the Final Results of Review,'' dated September 17, 1996.

Department's Position: We agree with petitioner. We found at verification that these costs were associated with labor; however, Kurimoto did not provide the information which would allow us to apply this adjustment only to labor. We agree with Kurimoto that we found no discrepancies with the reported job order costs we tested, with the exception of foreign inland freight charges; however, in the course of verification, we did find cost variances. Therefore, we are making the adjustment for variances suggested by the petitioner. For further discussion, see memorandum to the file, ''Mechanical Transfer Presses from Japan—Additional Discussion of Proprietary Issues Regarding Kurimoto for the Final Results of Review,'' dated September 17, 1996.

Comment 3: Petitioner argues that the Department should correct for Kurimoto's failure to include certain expenses in its constructed value. Petitioner asserts that Kurimoto's failure to include these costs is confirmed by documents in its questionnaire response, and that the Department should correct for this omission.

Department's Position: We agree with petitioner and have included these costs in Kurimoto's constructed value. For further discussion, see memorandum to the file, ''Mechanical Transfer Presses from Japan—Additional Discussion of Proprietary Issues Regarding Kurimoto for the Final Results of Review,'' dated September 17, 1996.

Comment 4: Petitioner argues that the Department should treat Kurimoto's U.S. installation and testing costs as movement charges. Petitioner notes that, for the preliminary results, the Department treated these expenses as direct selling expenses and made a circumstance-of-sale adjustment by adding these expenses to constructed value.

Petitioner notes that, during the less-than-fair-value (LTFV) investigation, the Department examined the issue of the proper treatment of U.S. installation and testing expenses and determined that these expenses are movement charges associated with the U.S. sale. Petitioner cites to the *Final Determination of Sales at Less Than Fair Value: Mechanical Transfer Presses from Japan* (55 FR 335) January 4, 1990, which states:

> With respect to installation and installation supervision, however, we have determined that these expenses should be treated as movement charges. Due to their large size, it is necessary to disassemble MTPs for shipment and delivery to the customer's facilities. Upon delivery to the customer's premises, the presses must be reassembled (installed) in order to function. Because disassembly and reassembly are necessary to deliver the merchandise, we have determine

that installation and related supervision expenses are movement charges. Therefore, we have deducted the installation and installation supervision costs from the verified MTP prices when installation and/or supervision of installation were included in the contract price for the press.

Petitioner asserts that installation and testing services are required because the MTPs must be disassembled for shipment and must be reassembled (installed) in order to function at the customer's location, and that, for the final results, the Department should follow its stated policy and treat Kurimoto's installation and testing expenses as movement charges that should be subtracted from the price of the U.S. MTP.

Kurimoto argues that a reclassification of these costs is a meaningless exercise because the Department made a circumstance-of-sale adjustment by adding these expenses to constructed value, and therefore these expenses are already reflected in the Department's preliminary margin calculation.

Department's Position: We agree with petitioner. It is appropriate to consider such costs as movement expenses as we did in the LTFV investigation and in subsequent reviews. Because of their size, MTPs must be broken down for shipment and installed at the customer's site. For the final results we have classified installation costs as movement expenses in accordance with our prior practice. Therefore, we have subtracted these expenses from the export price, rather than adding them to CV.

Comment 5: Petitioner argues that the Department should correct what it claims are understatements of the imputed credit expenses for Kurimoto's U.S. sale. Petitioner argues that the Department should recalculate the credit expenses, using the period from the date of shipment to the U.S. customer. Petitioner argues that, in the LTFV investigation, the Department determined that the credit period should begin with date of shipment to the U.S. customer.

Petitioner also argues that the Department should recalculate the imputed credit expenses for Kurimoto's U.S. MTP based on a revised principal balance that includes the tax portion of the sale. Petitioner notes that at verification the Department examined a postcard that showed a payment amount that included a three percent tax.

Finally, petitioner questions an assumption the Department made regarding Kurimoto's credit expense. For an additional discussion of this issue see the memorandum to the file, ''Mechanical Transfer Presses from Japan—Additional Discussion of Proprietary Issues Regarding Kurimoto for the Final Results of Review,'' dated September 17, 1996.

Kurimoto argues that these suggested adjustments to imputed credit expenses are not reasonable. Kurimoto cites to *Federal-Mogul Corp.* v. *United States,* and states that in that case the plaintiff demanded that the Department take into account effects of delayed payment of home market expenses in the calculation of circumstance-of-sale adjustments to foreign market value. (See *Federal-Mogul Corp.* v. *United States,* 839 F. Supp 881, 17 CIT 1249, 1252–1253 (1993) (*Federal-Mogul*).) Kurimoto notes that in *Federal-Mogul* the Court relied on the Court of Appeals for the Federal Circuit's reasoning in *Daewoo Elec. Co.* v. *United States* 6F.3d 1511 (CAFC 1993), and stated that requiring that econometric analysis of tax incidence would prevent the Department from completing antidumping determinations within the statutory time frames and that the additional burden would not be justified on the basis of more soundly based results. Kurimoto argues that the Court determined that reliance on the respondent's financial records for the purposes of the circumstance-of-sale adjustment was sufficient, and that the Department was ''not required to factor in the effects of delayed payment of home market selling expenses on these COS adjustments.'' Kurimoto argues that the reasoning of *Federal-Mogul* is equally applicable to credit in its case. Kurimoto argues that the Department has had access to all relevant information which has been available to respondent and the information which the respondent supplied has been verified, and that to go beyond this would demand a level of exactitude which is beyond that required by Congress and that of which the Department is capable in the context of an administrative review.

Kurimoto also argues that the adjustments suggested by petitioner, such as a change in period for the credit expense calculation, or a deduction of the three percent tax amount from the payment amounts utilized in the credit calculation, would have only a minuscule effect on the margin calculation.

Department's Position: We agree with petitioner, in part. It is appropriate to include in the calculation of credit expense an amount for tax, and credit should be calculated from the date of shipment. With respect to petitioner's point regarding an assumption made by the Department, Kurimoto supplied information at verification, and on September 9, 1996 in response to our request for additional information about credit. This information is sufficient for us to make certain assumptions regarding credit. We agree with Kurimoto that it would be unreasonable for us to delay the results of the review any longer given that the Department has sufficient record evidence on this issue. We therefore have accepted the information supplied by Kurimoto. For an additional discussion of this issue see memorandum to the file, ''Mechanical Transfer Presses from Japan—Additional Discussion of Proprietary Issues Regarding Kurimoto for the Final Results of Review,'' dated September 17, 1996.

Comment 6: Petitioner argues that the Department should include direct selling expenses in the constructed value for Kurimoto's U.S. merchandise. Petitioner notes that Kurimoto's reported selling, general and administrative (SG&A) expenses included an amount for indirect selling expenses, direct selling expenses, and general and administrative expenses, but that at verification Kurimoto submitted a revised SG&A calculation in which direct selling expenses were excluded from total SG&A expenses, and that the Department used the revised calculation in its preliminary results.

Petitioner argues that exclusion of direct selling expenses from the constructed value is improper because constructed value should include SG&A expenses as if the U.S. MTP had been sold in the home market. Petitioner asserts that, for the final results, the Department should revise its preliminary constructed value calculations to include the direct selling expenses reported by Kurimoto.

Kurimoto argues that the expenses removed from the SG&A calculation at the beginning of verification were for U.S. sales, not sales of the foreign like product, and that such expenses should not be included in NV. Kurimoto notes that the Department reviewed its calculations of SG&A at verification.

Department's Position: We agree with Kurimoto. Section 773(e)(2)(A) of the Act states that constructed value is to include:

> The actual amounts incurred and realized by the specific exporter or producer being examined in the investigation or review for selling, general and administrative expenses, and for profits, in connection with the production and sale of a foreign like product in the ordinary course of trade, for consumption in the foreign country.

At verification Kurimoto submitted revised SG&A expenses because the figure it had originally reported

included selling expenses incurred for the U.S. sale. We examined the selling expenses that Kurimoto had removed from the SG&A calculation and found that these expenses were incurred for the U.S. sale. We therefore have continued to use the revised SG&A expense figures submitted at the beginning of verification.

Comment 7: Kurimoto argues that the Department should deduct an amount from foreign inland freight for the shipment of spare parts. Kurimoto asserts that the Department should calculate a per kilo amount for foreign inland freight, then multiply this amount by the kilos of spare parts shipped, using entry documents, invoices and packing lists submitted to the Customs Service and included in its supplemental questionnaire response. Kurimoto argues that this figure should be subtracted from total foreign inland freight.

Petitioner contends that the Department should reject Kurimoto's claim for revised foreign inland freight expenses because the claim is untimely, unverified, and not consistent with other information that is on the record in this review. Petitioner argues that Kurimoto did not submit this claim with in its questionnaire responses or prior to verification. Petitioner argues that the Department should also reject Kurimoto's suggestion that the Department use U.S. Customs entry documents to adjust its Japanese inland freight costs because they are not relevant to Kurimoto's inland freight costs. Petitioner contends that Kurimoto's reported Japanese inland freight expense calculations and documents in Kurimoto's questionnaire response indicate that Kurimoto's reported Japanese inland freight costs did not include freight for spare parts. Petitioner also argues that Kurimoto's proposed method for adjusting its reported Japanese inland freight costs should be rejected because MTPs are shipped in large pieces that require special handling, and that spare and replacement parts do not need such handling; therefore, Kurimoto's methodology would allocate these costs to spare parts which did not incur these costs.

Department's Position: We agree with petitioner. As Kurimoto did not submit this claim with its questionnaire responses or at any time prior to verification, the claim is therefore untimely. During verification, we found additional foreign inland freight charges. Kurimoto did not claim, at that time, that any of these freight charges were for spare and replacement parts. We also disagree with Kurimoto that it would be appropriate to calculate a per kilo amount for foreign inland freight, then multiply this amount by the kilos of spare parts shipped based on U.S. Customs documents. As petitioner notes, some of the foreign inland freight charges are for special equipment which might not be necessary for spare and replacement parts. There is no information on the record as to which of these charges pertained to which type of shipment. Therefore, based on the foregoing, we have not made a deduction for foreign inland freight to account for spare and replacement parts.

II. Aida

Comment 1: Petitioner asserts that the Department should reject Aida's claimed adjustment to convert transfer prices to cost of production. Petitioner notes that Aida reported in its questionnaire response that it received major inputs for the U.S. MTPs from its affiliated company, Aida Welding Company Ltd. (Aida Welding). Petitioner further notes that Aida reported that Aida Welding produced the welded steel frames for the crown assembly, slide assembly, bed assembly and column assembly, and that Aida submitted a worksheet showing the transfer prices and Aida Welding's cost of production for the welded steel frames. Petitioner argues that the Department treated this transaction improperly by accepting Aida's adjustment to the transfer price. Citing Sections 773(f) (2) and (3) of the statute, petitioner argues that the statute (1) provides for an adjustment to the value of an input obtained from an affiliated party when the value reported by the respondent is less than the cost of production for the input, and (2) allows the Department the discretion to disregard a transaction if the value does not reflect the amount usually reflected in sales of the merchandise under consideration. Petitioner contends that it is the Department's policy to use affiliated party transfer prices for constructed value as long as the transfer prices reflect market value and are above the cost of production. Petitioner asserts that, for the final results, the Department should revise the constructed values for Aida's sales to exclude the adjustment claimed by Aida to convert the cost of direct materials purchased from Aida Welding from transfer price to Aida Welding's cost of production.

Aida disagrees with petitioner and asserts that the Department correctly applied the price-to-cost adjustment for assemblies produced by Aida Welding. Aida notes that welded frame assemblies for Aida are produced by Aida Welding, which is a wholly-owned subsidiary of Aida, that Aida Welding operates as part of the consolidated operations of Aida, and that Aida's purchases from Aida Welding are not at arm's length. Aida states that purchases from affiliated entities are recorded in Aida's accounting at the transfer price, and that Aida included a price-to-cost adjustment in its constructed value submission in the amount of the difference between transfer price and cost of production for the welded frame assemblies produced by Aida Welding for each U.S. press. Aida argues that the effect of this adjustment was to state the cost of welded frame assemblies on the basis of fully-absorbed cost rather than transfer price, and that the same methodology was applied by Aida in the original investigation and in the prior reviews in which Aida participated.

Aida contends that petitioner's arguments that Section 773(f)(2) of the Act allows affiliated party transactions to be disregarded only if the transfer price is below market value and that section 773(f)(3) allows affiliated party transactions to be based on cost only if transfer price is below cost, are incorrect. Aida argues that Section 773(f)(2) allows transfer price to be disregarded if there is no market reference price for the particular merchandise, in which case the Department may use cost as an appropriate measure of value.

Aida notes that in the original investigation there were no market prices for the welded frame assemblies produced by Aida Welding for Aida, and asserts that there has been no change in the present review. Aida argues that it properly reported the cost of the welded frame assemblies produced by Aida Welding on the basis of cost of production rather than transfer price and that the Department properly included the cost-to-price adjustment in its calculation of constructed value.

Department's Position: An adjustment to the transfer price for the Aida Welding steel frame assemblies is not appropriate in this review. In the *Final Determination of Sales at Less Than Fair Value: Mechanical Transfer Presses from Japan* (55 FR 335, January 4, 1990), we found that some of Aida's affiliated party parts purchases were made at transfer prices below the cost of production. Therefore, we valued the steel frame assemblies at their cost of production. This issue has not been addressed in the preliminary or final results of subsequent reviews of this order. Section 773(f)(2) of the Act states that the Department may disregard the transfer price if it ''does not fairly reflect the amount usually reflected in sales of

merchandise under consideration in the market under consideration.'' The transfer price is not below cost and there is no evidence that the transfer price does not reflect normal market value. Therefore, it would be inappropriate to ignore the transfer price. Accordingly, for these final results, we have disallowed the adjustment for the steel frame assemblies claimed by Aida.

Comment 2: Petitioner asserts that the Department should adjust the costs reported by Aida for parts obtained from an affiliated company, Access Co., Ltd. (Access). Petitioner notes that section 773(f)(3) of the statute states that, if the Department has reasonable grounds to believe or suspect that the values reported for purchases of major inputs from affiliated suppliers are less than the cost of production, the Department may determine the value of the inputs on the basis of information available regarding cost of production. Petitioner asserts that the Department requested that Aida demonstrate that purchases from its affiliated suppliers were at arm's length, and that Aida failed to submit information for Access that it submitted from another affiliated party. Petitioner argues that the Department should not accept Aida's failure to respond to the Department's request that Aida demonstrate that parts purchased from Access were at arm's-length prices. Petitioner argues that the Department should adjust the cost of production of Access parts by certain percentages. (For an additional discussion of petitioner's position on this issue see memorandum to the file, ''Mechanical Transfer Presses from Japan—Additional Discussion of Proprietary Issues Regarding Aida for the Final Results of Review,'' dated September 17, 1996.)

Aida disagrees with petitioner and argues that the Department correctly valued materials purchased from Access at transfer price. Aida notes that in its questionnaire response it stated that it purchased certain electric components, namely control boxes and operation stands, from Access, which is a subsidiary of Aida that engages in research, development, and manufacture of electric-controlled parts for presses. Aida further notes that, unlike Aida Welding, Access is not a consolidated subsidiary of Aida, and that the prices for the components purchased from Access were determined in arm's-length negotiation between Access and Aida. Aida argues that, because of the foregoing, it used the transfer price as the cost of components purchased from Access. Aida maintains that petitioner's argument that the Department has reasonable grounds to believe or suspect Access' sales were below the cost of production is not supported by the record. Aida argues that the considerations that apply to Aida Welding do not similarly apply to Access because the prices to Aida Welding are not made at arm's-length. Aida claims that it did respond to the Department's questions in its supplemental questionnaire response.

Aida further contends that petitioner's contention that the Department should determine a presumed cost of production for the Access components using information in the record with respect to the difference between transfer price and cost for components supplied by Aida Welding is contradictory. Aida argues that, as petitioner acknowledges, the Aida Welding transfer prices were above the cost of production; therefore, they provide no support for petitioner's contention that the Access transfer prices were below cost. Aida argues that petitioner compounds the confusion by proposing that the percentage difference between transfer price and cost for Aida Welding components be applied to the Access transfer prices, but with the sign reversed, using the percentage by which Aida Welding's cost was below transfer price as the measure for increasing the Access transfer price. Aida argues that petitioner's request that the Department adjust the Access prices should be rejected.

Department's Position: Aida was responsive to the questions asked in our supplemental questionnaire regarding this issue. In its response, Aida stated that these parts were purchased at arm's length based on quotations issued by Access and in negotiations between Aida and Access, and that it did not purchase identical or similar parts from unaffiliated parties. Based on this information, and the relationship between the parties, we have accepted Aida's claim that the purchases were made at arms-length. Therefore, we have continued to accept the transfer price for the Access purchases.

Comment 3: Aida asserts that the Department made clerical errors in its calculation of profit, and argues that the Department should correct these errors for the final results. Aida notes that the Department calculated the home market profit rate by eliminating below-cost sales from the calculation. Aida asserts that, in doing so, the Department made several errors in copying certain data from Aida's exhibits.

Department's Position: We agree that clerical errors were made and have made the necessary corrections to the CV profit calculation. In reviewing our methodology, we find that we should not have excluded any home market sales from our calculation of CV profit. We did not receive an allegation that home market sales were made at prices below the cost of production (COP) and have not determined that any home market sales are outside the ordinary course of trade (*i.e.,* sales made at prices below COP in substantial quantities over an extended period of time). Therefore, for our final results we have included all home market sales in our calculation of profit.

Comment 4: Aida argues that the Department erred in its calculation of the net profit amount for the constructed export price profit calculation by erroneously dividing net profit only by home market cost of sales, not by total cost of sales as the Department indicated it did in its analysis memorandum for the preliminary results.

Department's Position: We agree and have recalculated constructed export price (CEP) profit using the cost of sales.

Comment 5: Aida asserts that the Department failed to add to the U.S. price an imputed benefit for payment made prior to shipment. Aida notes that Department's questionnaire states that such a benefit will be allowed if payment is made prior to shipment. Aida asserts that for the final results the Department should add to the export price and CEP the imputed interest benefit of payments received prior to shipment by including the negative credit expense in its calculations.

Department's Position: We agree with Aida. Because payment was made prior to shipment, Aida should receive an imputed benefit for credit. We have therefore included the imputed benefit for credit for the final results.

Comment 6: Aida argues that the Department failed to make a CEP offset adjustment in its preliminary results calculation of NV for U.S. transaction #2, which was a CEP sale. Aida contends that, since CEP was calculated at a less advanced stage of distribution than NV, an offset should have been applied pursuant to Section 773(a)(7)(B) of the Act. Aida argues that the Department established the methodology for making level of trade comparisons involving CEP transactions in the supplemental questionnaire in the sixth administrative review of Antifriction Bearings, which states:

> When the U.S. sale is classified as an export price (EP) sale, the level of trade for that sale is based on the selling functions provided by the seller to the first unaffiliated party. When the U.S. sale is classified as a constructed export price (CEP) sale, the level of trade for that sale is based upon the selling

functions provided by the seller (i.e., the exporter and its affiliates to the first unaffiliated party, less those selling functions related to expenses which are deducted under section 772(d) of the Act. Thus, for CEP sale, the selling functions used to establish the level of trade cannot include selling functions related to expenses deducted under section 772(d). For comparison market sales, the level of trade is based upon the selling functions provided by the seller and its affiliates to the first unaffiliated customer.

Aida asserts that in determining whether CEP sales and comparison market sales involve the same or different selling activities, the level of trade for CEP sales is based on the selling activities included in CEP after deduction of Section 772(d) expenses.

Aida notes that, pursuant to section 772(d), the Department deducted all selling expenses in calculating CEP for U.S. transaction #2, thus reducing CEP to a level of trade that included no selling functions, and argues that NV calculated by the Department for U.S. transaction #2 included the selling functions related to indirect selling expenses, namely indirect warranty, indirect advertising and indirect sales office expense. Aida argues that, since NV includes selling functions not included in CEP, NV was established at a different level of trade from CEP and at a more advanced stage of distribution than CEP. Aida asserts that the effect of the level of trade difference between NV and CEP sales cannot be demonstrated by price differences in the home market because the CEP level of trade (i.e., sales with no selling functions) does not exist in the home market. Accordingly, the conditions for granting the CEP offset are met, and the offset should be applied in calculating NV for U.S. transaction #2.

Aida argues that the application of the CEP offset is required not only by Section 773(a)(7)(B), but also by the ''fair comparison'' standard in Section 773(a), which states that in determining whether subject merchandise is being sold at less than fair value a fair comparison shall be made between the export price or the CEP and NV. Aida contends that the Department double counted indirect warranty expense, indirect advertising expense, and indirect sales office expense since these costs were applied both to increase NV and to reduce CEP, and that NV and CEP must be stated on the same basis, which is accomplished through a CEP offset.

Petitioner asserts that the Department correctly determined that a CEP offset is not warranted for Aida's CEP sale. Petitioner argues that the SAA to the URAA makes clear that the CEP offset is no longer automatic, but is only to be applied where different levels of trade have been shown to exist, and that the respondent bears the burden of establishing the appropriateness of adjustments that decrease NV. Petitioner contends that Aida has not provided any evidence that demonstrates differences in selling functions at different levels of trade. Petitioner argues that Aida's questionnaire responses indicate that there are no differences in selling functions for its MTP sales. Petitioner further argues that Aida's assumption that an adjusted CEP includes no selling functions is not correct because the adjusted CEP still includes any indirect selling expenses or functions incurred in the home market on behalf of U.S. sales. Finally, petitioner argues, Aida failed to demonstrate that differences in levels of trade result in price differences for the MTPs.

Department's Position: Aida has not demonstrated that a CEP offset is warranted. As petitioner notes, the CEP offset is no longer automatic and the respondent bears the burden of demonstrating that such an offset is warranted. In the *Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan* (61 FR 38139, July 23, 1996) (*Newspaper Presses*), we noted that respondents must provide the necessary data for the Department to consider a level of trade adjustment; without such data, a level of trade adjustment under section 773(a)(7)(A) cannot be made and, further, a CEP offset under section 773(a)(7)(B) is not authorized. As in *Newspapers Presses,* the respondent in this case, Aida, did not submit in its questionnaire responses any information indicating that there were different selling functions between CEP and home market sales. Further there is no support in the record for Aida's claim that there are no selling functions in CEP. Because Aida did not provide the necessary level of trade information, a CEP adjustment for Aida's CEP sale is not warranted.

Comment 7: Aida maintains that U.S. press #2 in its questionnaire response is not an MTP from Japan, because the press body was produced for Aida in Taiwan. Aida argues that only the transfer unit was imported from Japan. Aida argues that it erred on the side of completeness in reporting the sale in its questionnaire response, but noted there that press and transfer unit were outside the scope of review. Aida notes that the Department treated the transfer unit from Japan as within the scope of the review, and cites to the preliminary results, which state:

The scope includes ''parts suitable for use solely or principally'' with MTPs. Therefore, because the transfer unit was imported as an original equipment part of an MTP, we have preliminarily determined to include the transfer unit in this review.

61 FR 15035, April 4, 1996.

Aida argues that the definition of MTPs, as clearly demonstrated by the record of the MTP antidumping proceeding, consists only of MTPs, whether imported assembled or disassembled and whether classified as machines or parts, and does not include MTP parts *per se.*

Aida argues that the petition in the MTP case requested an investigation of imports of MTPs only, not MTPs and parts thereof. Aida cites to the general description of merchandise and the tariff classification in the petition, the Department of Commerce Notice of Initiation, the Department of Commerce Hearing and the International Trade Commission Final Determination, and argues that it was clear throughout all phases of the investigation that the class or kind of subject merchandise consisted of MTPs from Japan, and that parts were mentioned only as one form in which a complete machine might be imported, and that MTP parts or components *per se* were not included in the investigation. Aida contends that this was confirmed by the Department in its March 16, 1992 scope proceeding on MTP spare parts. Aida states that, while the petitioner had argued in the scope proceeding that the petition was intended to cover parts, the Department concluded that the petition did not encompass subassemblies and parts thereof. Aida notes that the March 16, 1992 scope ruling, while not specifically addressing the situation presented by Aida press #2, stated that the order is limited to fully assembled MTPs and disassembled/unassembled parts of a unique MTP.

Aida argues that the language from the scope definition on which the Department relies in its preliminary results is language from the petition, which covers disassembled/unassembled MTPs in multiple shipments, not MTP parts *per se.*

Petitioner disagrees with Aida, and states that the Department's determination that the MTP transfer unit exported from Japan is subject to review is correct. Petitioner argues that the transfer unit is an original equipment part and that the plain language of the antidumping duty order covers original equipment parts. Petitioner argues that in the LTFV

investigation the petition included MTPs, as well as parts and the individual component items that comprise unassembled MTPs. Petitioner argues that the language in the order contains no qualifications or limitations that the importation of original equipment parts must in all cases comprise a complete unassembled MTP, but does contain coverage for original equipment parts that are used solely or principally in MTPs. Petitioner argues that in the scope ruling on spare parts the Department found that the scope language of the order was ambiguous with respect to the issue of parts. Petitioner argues that in the context of that ruling the Department acknowledged that individual parts of a complete, disassembled press that are imported from Japan are covered merchandise, and that some parts not comprising a complete disassembled press are covered so long as they satisfy the order criteria are ''suitable for use solely or principally'' with an MTP.

Department's Position: We disagree with Aida. The scope of the order covers MTPs that are imported either assembled or unassembled. The transfer unit, which was imported from Japan, is an essential component of the complete MTP. Aida states in its July 7, 1995, questionnaire response that a mechanical transfer press is distinguished from other types of mechanical presses by a tie rod frame construction and *an internal transfer feed mechanism designed as an intregral part of the press* (emphasis added). The sale in question was made by Aida in Japan to a U.S. customer for a complete MTP. Therefore, the transfer unit falls within the scope of the order. We disagree with Aida that the spare parts ruling can be applied in this case. Spare and replacement parts, when imported with an MTP, constitute additions to or replacements for an already complete MTP. In contrast, the transfer unit is an essential component of an original, complete, unassembled MTP. Based on the foregoing, we have included the transfer unit in our final results.

III. Komatsu

Comment 1: Komatsu argues that the Department's determination in the preliminary results that Komatsu had withheld requested information, and its resultant decision to base Komatsu's margin on the facts otherwise available, were based on the incorrect assertion that it did not have sufficient information regarding the nature of the parts Komatsu exported to the United States. Komatsu asserts that it submitted a scope ruling request on the same date that it submitted a letter to the Department explaining that it had no U.S. sales of subject merchandise during the review period. Komatsu asserts that it later submitted thousands of additional pages of information regarding the nature of the parts it exported to the United States in response to the Department's requests for information relating to the scope analysis. Komatsu argues that, while it did not respond to sections B, C, and D of the questionnaire, it did not have sales to the United States of subject merchandise. Therefore, Komatsu argues, there is no basis for the Department's assertion that Komatsu withheld information, and the Department's preliminary determination should be revised.

Komatsu argues that there is no reason to delay the issuance of the results of the scope inquiry. Komatsu argues that its scope inquiry is not novel or complicated, and asserts that the Department should conclude that the small quantity of parts Komatsu exported during this period of review are not within the scope of the antidumping order on MTPs from Japan. Komatsu argues that the Department should establish a zero cash deposit rate for Komatsu because it had no shipments of subject merchandise during this review period and the most recent dumping margin for Komatsu was zero.

Petitioner disagrees with Komatsu and argues that the Department's use of facts available for its preliminary analysis of Komatsu's sales is appropriate. Petitioner asserts that Komatsu failed to submit a response to the Department's questionnaire and that the Department properly considered the MTP parts exported to the United States by Komatsu subject to this administrative review because the Department has not issued a scope ruling concerning these parts.

Department's Position: Pursuant to our scope determination issued on October 1, 1996, the parts at issue have been excluded from the order. Therefore, the issue of whether we should use facts available for Komatsu's failure to respond to sections C and D of the questionnaire is moot. For the final results, we are treating Komatsu as a non-shipper, and Komatsu will retain its rate from the last administrative review in which it had shipments. Komatsu's rate, therefore, is zero percent.

Final Results of the Review

We determine that the following dumping margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Aida Engineering, Ltd	2/1/94–1/31/95	0.00
Kurimoto, Ltd	2/1/94–1/31/95	0.00
Komatsu Ltd	2/1/94–1/31/95	0.00
Ishikawajima-Harima Heavy Industries, Ltd	2/1/94–1/31/95	0.00

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit rates will be effective upon publication of these final results for all shipments of MTPs from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(c) of the Act: (1) The cash deposit rate for reviewed companies will be the rate established in these final results; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be the rate established in the investigation of sales at LTFV, which is 14.51 percent. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written

notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: October 1, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–25957 Filed 10–8–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–570–501]

Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration.

ACTION: Notice of Final Results of the Antidumping Duty Administrative Review of Natural Bristle Paint Brushes and Brush Heads from the People's Republic of China.

SUMMARY: On April 4, 1996, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping order on natural bristle paint brushes and brush heads (paint brushes) from the People's Republic of China (PRC). The review covers six manufacturers/exporters and the period February 1, 1994 through January 31, 1995.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received and information requested from respondent, we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: October 9, 1996.

FOR FURTHER INFORMATION CONTACT: Elisabeth Urfer or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–4733.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Background

On April 4, 1996, the Department published in the Federal Register (61 FR 15037) the preliminary results of the antidumping duty order on paint brushes from the PRC. The Department has now completed this administrative review in accordance with section 751 of the Act.

Scope of Review

Imports covered by this review are shipments of natural bristle paint brushes and brush heads from the PRC. The merchandise under review is currently classifiable under item 9603.40.40.40 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise is dispositive.

This review covers the period February 1, 1994 through January 31, 1995, and six producers/exporters of Chinese paint brushes.

Separate Rates

We have changed our separate rates determination with respect to the Hebei Animal By-Products I/E Corp. (HACO) from the preliminary results of review.

To establish whether a company operating in a state-controlled economy is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (*Silicon Carbide).* Under this policy, exporters in non-market economies (NMEs) are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to exports. Evidence supporting, though not requiring, a finding of de jure absence of government control includes: 1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; 2) any legislative enactments decentralizing control of companies; and 3) any other formal measures by the government decentralizing control of companies. De facto absence of government control with respect to exports is based on four factors: (1) whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and 4) whether each exporter has autonomy from the government regarding the selection of management.

The evidence on the record demonstrates that HACO meets the *de jure* and *de facto* criteria. In the preliminary results we denied HACO a separate rate because, based on the information on the record at that time, we found that HACO might not have autonomy in making decisions regarding the selection of its management. From the record, it appeared that the provincial government appointed HACO's general manager. However, because the implication of the provincial government's role in selection of HACO's management was not clear from the record, given that HACO met three of the four *de facto* criteria, we gave HACO an opportunity to clarify its response. We requested additional information from HACO, and considered such information in determining whether to assign HACO a separate rate in these final results of review.

On April 26, 1996, HACO submitted additional information in order to clarify its response. HACO stated that its general manager is selected through a poll of company employees, and that the ''appointment' is a type of pro forma registration with the provincial government that occurs after the company employees have voted. Based on this explanation, we find that HACO has autonomy from the government regarding the selection of management. Therefore, we have determined that HACO meets all four of the *de facto* criteria. For further discussion of the Department's final determination that HACO is entitled to a separate rate, *see Decision Memorandum to the Director,* dated September 20, 1996: ''Separate rate analysis for Hebei Animal By-Products I/E Corp in the administrative review of natural bristle paint brushes and brush heads from the People's Republic of China,'' which is on file in the Central Records Unit (room B099 of the Main Commerce Building).

Because we have determined that HACO merits a separate rate, we have analyzed HACO's sales for the final results of this review. *See* the Export Price and Normal Value sections below.

Facts Available

In the preliminary results we determined that the use of adverse facts available was appropriate for Yixing Sanai Brush Making Co., Ltd.; Eastar B.F. (Thailand) Company Ltd.; China National Metals & Minerals I/E Corp., Zhenjiang Trading Corp.; China National Native Produce and Animal By-Products Import-Export Corporation; and Inner Mongolia Autonomous Region Light Industrial Products I/E Corp., because these firms did not respond to the Department's antidumping questionnaire. We have not changed this determination for the final results. However, for the final results of review the rate assigned to these and all other companies that have not been found to be entitled to a separate rate has changed. As adverse facts available, we are assigning these companies the calculated rate for HACO, 351.92, which is the highest rate from any segment of the proceeding. Pursuant to section 776(c) of the Act, corroboration of this rate is not required because it is based on information obtained in the course of the review.

Analysis of the Comments Received

We gave interested parties an opportunity to comment on the preliminary results of review. We received comments only from the Paint Applicator Division of the American Brush Manufacturers Association (Paint Applicator Division), a domestic interested party.

Comment 1: The Paint Applicator Division asserts that HACO is not entitled to a separate rate test because not all producers/exporters of subject merchandise owned or controlled by the Hebei provincial government cooperated with the administrative review. The Paint Applicator Division notes that in the preliminary results the Department stated that a producer/exporter of subject merchandise located in Hebei province other than HACO failed to respond to the Department's request for information, and also notes that the Department sent this other producer/exporter of subject merchandise a questionnaire based on HACO's certified statements that it is owned or controlled by the Hebei provincial government.

The Paint Applicator Division cites to the *Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers From the People's Republic Of China,* 58 FR 48833 (September 20, 1993), *accord Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Sebacic Acid From the People's Republic of China,* 59 FR 565 (January 5, 1994), and asserts that it is the Department's practice to first consider whether there are any other producers or exporters of subject merchandise under common ownership; then, if more than one producer/exporter are owned or controlled by the same governmental entity, the Department will collapse the producers/exporters and conduct a separate rate test only if all producers/exporters of the subject merchandise under common ownership cooperate with the Department. Citing the *Final Determination of Sales at Less Than Fair Value: Coumarin From The People's Republic of China,* 59 FR 66895 (December 28, 1994) (*Coumarin*), and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Paper Clips From the People's Republic of China,* 59 FR 51168 (October 7, 1994) (*Paper Clips*), the Paint Applicator Division argues that, although the Department has previously calculated a separate rate for an NME respondent even if that respondent's general manager was appointed by the government, the Department has not done so if there was any other producer/exporter of subject merchandise controlled by the same governmental entity. The Paint Applicator Division argues that this prevents exports from a company subject to the country-wide rate from being shipped through an affiliated company with a lower, separate rate to avoid the imposition of antidumping duties.

The Paint Applicator Division asserts that, because HACO's sister company failed to respond to the Department's questionnaire, calculating a separate rate for HACO in this review would create a situation where the Hebei provincial government could manipulate pricing and production between the affiliates to circumvent the antidumping law. The Paint Applicator Division concludes that, for the final results, the Department should continue to use the highest rate from any prior segment of the proceeding—127.07 percent—as facts available for all producers/exporters, including HACO.

Department's Position: We disagree with the Paint Applicator Division. HACO is entitled to a separate rates test to determine whether the government exercises control over the company's export activities. Only if we determine that HACO is controlled by the provincial government do we reach the question of whether there are other firms that are under the common control of that government. Therefore, for these final results we have considered whether HACO is separate from the provincial government. (*See* comment 2 below.)

Comment 2: The Paint Applicator Division argues that, should the Department conduct a separate rate test for HACO for the final results, it should determine that HACO has failed to establish that it is not *de facto* controlled by the Hebei provincial government.

The Paint Applicator Division cites to *Tianjin Machinery Import & Export Corp.* v. *United States,* 806 F.Supp. 1008 (CIT 1992), and argues that, with respect to the determination of whether HACO is entitled to a separate rate in this review, HACO bears the burden of demonstrating that it is not *de facto* controlled by a governmental entity. The Paint Applicator Division asserts that any ambiguity in the administrative record on this issue must be interpreted in a manner adverse to HACO.

The Paint Applicator Division states that the Department's preliminary determination that HACO is *de facto* controlled by the Hebei provincial government due to the government's control over the selection of HACO's general manager was correct and fully supported by the evidence on the record. The Paint Applicator Division argues that the record at the time of the preliminary results shows that the Hebei provincial government exercises *de facto* control over HACO, through the appointment of HACO's general manager, and the role that the general manager plays in its business. The Paint Applicator Division cites to HACO's questionnaire responses, in which HACO stated that the general manager controlled the company, that the general manager controlled the company's bank account, and that the only person in its company with authority to enter into sales contracts is the general manager.

The Paint Applicator Division argues that, to the extent that clarification was even necessary, HACO's post-preliminary submission failed to establish that the preliminary results were incorrect, and, therefore, the Department should not change its preliminary results. First, the Paint Applicator Division argues, HACO's statements contradict its earlier responses, and are not credible. The Paint Applicator Division notes that, in response to the Department's two previous inquiries about the selection of its general manager, HACO never mentioned that its employees selected the general manager through a poll; only

after the preliminary results did HACO claim that its general manager is selected by the staff members of the company through a poll, and is approved by the Hebei Foreign Trade & Economic Cooperation Department. The Paint Applicator Division asserts that it appears that, knowing that those earlier certified responses had failed to persuade the Department that it was not *de facto* controlled by the provincial government, HACO simply changed its answer in an attempt to manipulate the Department's final results. The Paint Applicator Division argues that, because it is inconsistent with earlier, certified responses, HACO's post-preliminary results response is not reliable and should be rejected.

The Paint Applicator Division further argues that HACO has submitted no objective, documentary evidence to corroborate its assertion that its employees, not the provincial government, selects HACO's general manager. Citing the *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 19026 (April 30, 1996), *Coumarin*, and *Paper Clips*, the Paint Applicator Division argues that the Department routinely reviews company correspondence, board of directors meeting minutes, company newsletters, and other types of documentary evidence to corroborate assertions that the government is not involved in a company's personnel decisions.

The Paint Applicator Division argues that, even if the Department were to accept HACO's post-preliminary results response as reliable, that response confirms that HACO's general manager must be approved by the Hebei Foreign Trade & Economic Cooperation Department, and thus the record still establishes that the Hebei provincial government has veto power over the selection of HACO's management. Therefore, the Paint Applicator Division claims, HACO still has not satisfied its burden of demonstrating that it is not *de facto* controlled by the Hebei provincial government.

Department's Position: We disagree with the Paint Applicator Division. The information in HACO's April 26, 1996 submission does not contradict HACO's earlier submissions, but rather explains some of the confusion about the selection and function of the general manager. Where a company has the autonomy to select its management, even with the pro forma approval or acknowledgment of the provincial government, we consider the company to have met the relevant *de facto* control criterion. For example, in *Paper Clips*, we found that, for one company, registration with a local machinery bureau, and, for a second company, approval by a government agency, were consistent with the fact that the company selected management independent of the government.

Although we often review company correspondence, board of directors meeting minutes, company newsletters, and other types of documentary evidence to corroborate assertions that the government is not involved in a company's personnel decisions, such a review of documentation is performed during verification. However, we did not conduct verfication in this review.

Export Price

For sales made by HACO we used export price, in accordance with section 772(a) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States prior to importation into the United States.

We calculated export price based on the price to unrelated purchasers. We deducted amounts for foreign inland freight and brokerage and handling. We valued foreign inland freight using data on Indonesian freight rates. We based brokerage and handling on a quote from a shipping company. We selected Indonesia as the surrogate country for the reasons explained in the ''Normal Value'' section of this notice.

Normal Value

For companies located in NME countries, section 773(c)(1) of the Act provides that the Department shall determine normal value (NV) using a factors-of-production methodology if (1) the merchandise is exported from an NME country, and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(c)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding has contested such treatment in this review.

Accordingly, we treated the PRC as an NME country for purposes of this review and calculated NV by valuing the factors of production as set forth in 773(c)(3) of the Act in a comparable market economy country which is a significant producer of comparable merchandise. Pursuant to section 773(c)(4) of the Act and section 353.52(c) of the Department's regulations, we determined that Indonesia is comparable to the PRC in terms of per capita gross national product (GNP), the growth rate in per capita GNP, and the national distribution of labor, and that Indonesia is a significant producer of comparable merchandise. Therefore, for this review, we have used publicly available information relating to Indonesia to value the various factors of production. (*See Memorandum to Laurie Parkhill from David Mueller*, dated February 6, 1996, ''Natural Bristle Paint Brushes from the People's Republic of China: Non-market Economy Status and Surrogate Country Selection,'' and *Memorandum to the File from Elisabeth Urfer*, dated September 18, 1996, ''Indonesia: Significant Production of Comparable Merchandise,'' which are on file in the Central Records Unit (room B099 of the Main Commerce Building).)

None of the parties submitted publically available published information on surrogate values for the Department's consideration. For purposes of calculating NV, we valued PRC factors of production as follows, in accordance with section 773(c)(1) of the Act:

- For handles, bristles, epoxy, ferrules, and nails, we used a per kilogram value obtained from the *Foreign Trade Statistical Bulletin of Indonesia: Imports (Indonesian Import Statistics*). Using wholesale price indices (WPI) obtained from the *International Financial Statistics*, published by the International Monetary Fund (IMF), we adjusted these values to reflect inflation through the period of review (POR). We included freight costs incurred between the supplier and HACO, valued using the Indonesian freight rates. Where applicable, we made adjustments for recycled scrap.
- For direct labor, we used the unskilled labor rate published by the U.S. Department of Labor, Bureau of International Labor Affairs for 1992. This source shows number of hours worked per week. We adjusted the rate to reflect inflation through the POR using WPI published by the IMF.
- For factory overhead, we used information reported in a December 2, 1994 fax from the U.S. Foreign Commercial Service of the American Embassy in Jakarta, Indonesia. This data was received for the LTFV investigation of furfuryl alcohol from the People's Republic of China, and provides an estimated range of factory overhead in Indonesia. This information was used in the LTFV investigation of disposable pocket lighters from the People's Republic of China. From this

information, we were able to determine factory overhead as a percentage of materials and labor. The surrogate overhead rate included energy; therefore, we did not include HACO's reported energy factor in the calculation.

• For selling, general and administrative (SG&A) expenses, we used information obtained from a September, 1991 cable from the U.S. Embassy in Jakarta. This cable was received for the LTFV investigation of certain carbon steel butt-weld pipe fittings from the People's Republic of China, and provides an estimated range of SG&A expenses.

• For profit, we used information obtained from a September, 1991 cable from the U.S. Embassy in Jakarta. This cable was received for the LTFV investigation of certain carbon steel butt-weld pipe fittings from the People's Republic of China, and provides a range of profit margins.

• HACO did not provide per kilogram amounts for its packing materials; therefore, we relied on the facts otherwise available. For packing materials, we used a per piece packing rate calculated from the public version of the analysis memorandum from the first administrative review of this case. The company was a Hong Kong exporter of PRC paint brushes. Therfore, we adjusted the value to reflect inflation using the Hong Kong Consumer Price Index based on information published by the IMF.

• To value truck freight, we used the rates reported in a September, 1991 cable from the U.S. Embassy in Jakarta Indonesia. This cable was received for the LTFV investigation of certain carbon steel butt-weld pipe fittings from the People's Republic of China. We adjusted the rates to reflect inflation using WPI published by the IMF.

Currency Conversion

We made currency conversions pursuant to section 353.60 of the Department's regulations at the rates certified by the Federal Reserve Bank.

Final Results of the Review

We determine that the following dumping margins exist:

Manufacturer/ exporter	Time period	Margin (per-cent)
Hebei Animal By-Products I/E Corp	2/1/94–1/31/95	351.92
PRC–Wide Rate	2/1/94–1/31/95	351.92

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between export price and NV may vary from the percentage stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit rates will be effective upon publication of this notice of final results of review for all shipments of paint brushes from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(c) of the Act: (1) for HACO, which was found to merit a separate rate for the final results of this review, the rate will be the company-specific rate, which is 351.92 percent; (2) for the companies named above which were not found to have separate rates, as well as for all other PRC exporters, the cash deposit rate will be the PRC-wide rate, which is 351.92; (3) for previously reviewed non-PRC exporters, the cash deposit rate will be the rate established in the most recent segment of the proceeding; and (4) for all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter.

These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: October 1, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–25954 Filed 10–8–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–475–603]

Tapered Roller Bearings From Italy, Revocation of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Revocation of Antidumping Duty Order.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its revocation of the antidumping duty order on tapered roller bearings from Italy because it is no longer of any interest to domestic interested parties.

EFFECTIVE DATE: October 9, 1996.

FOR FURTHER INFORMATION CONTACT: Valerie Turoscy or Michael Panfeld, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–0145.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke an antidumping duty order if the Secretary concludes that the duty order is no longer of any interest to domestic interested parties. We conclude that there is no interest in an antidumping duty order when no interested party has requested an administrative review for five consecutive review periods and when no domestic interested party objects to revocation (19 CFR 353.25(d)(4)(iii)).

On July 30, 1996, the Department published in the Federal Register (61 FR 39629) its notice of intent to revoke the antidumping duty order on tapered roller bearings from Italy (August 14, 1987). Additionally, as required by 19 CFR 353.25(d)(4)(ii), the Department served written notice of its intent to revoke this antidumping duty order on each domestic interested party on the service list. Domestic interested parties who might object to the revocation were provided the opportunity to submit their comments not later than the last day of the anniversary month.

In this case, we received no requests for review for five consecutive review periods. Furthermore, no domestic interested party, as defined under § 353.2 (k)(3), (k)(4), (k)(5), or (k)(6) of

the Department's regulations, has expressed opposition to revocation. Based on these facts, we have concluded that the antidumping duty order on tapered roller bearings from Italy is no longer of any interest to interested parties. Accordingly, we are revoking this antidumping duty order in accordance with 19 CFR 353.25(d)(4)(iii).

Scope of the Order

Imports covered by the revocation are shipments of tapered roller bearings from Italy. This merchandise is currently classifiable under Harmonized Tariff Schedules (HTS) item numbers 8483.90.30, 8483.90.80, 8482.20.00, 8482.99.30, 8483.20.40, 8483.20.80, and 8483.90.20. The HTS numbers are provided for convenience and customs purposes. The written description remains dispositive.

This revocation applies to all unliquidated entries of tapered roller bearings from Italy entered, or withdrawn from warehouse, for consumption on or after August 1, 1996. Entries made during the period August 1, 1995, through July 31, 1996, will be subject to automatic assessment in accordance with 19 CFR 353.22(e). The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after August 1, 1996, without regard to antidumping duties, and to refund any estimated antidumping duties collected with respect to those entries. This notice is in accordance with 19 CFR 353.25(d).

Dated: October 2, 1996.

Barbara R. Stafford,

Deputy Assistant Secretary for AD/CVD Enforcement.

[FR Doc. 96–25872 Filed 10–8–96; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 100296B]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) will hold its 64th meeting.

DATES: The meeting will be held October 29–31, 1996, from 8:30 a.m. to 5:00 p.m., each day.

ADDRESSES: The meeting will be held at the Executive Center, 1088 Bishop St., Room 4003, Honolulu, HI; telephone: (808) 539–3000.

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1405, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The SSC will discuss and may make recommendations to the Council on the following agenda items:

1. Pelagic fishery issues, including:

a. Pelagic Fisheries Research,

b. Pacific-wide control date for all U.S. fishermen,

c. Annual Report format revisions,

d. Bycatch issues (turtles, sharks, albatross), draft data amendment, and

e. Program planning.

2. Hawaii bottomfish issues, including:

a. Status of the State Main Hawaiian Islands onaga and ehu draft management plan,

b. Reconsideration of the Northwestern Hawaiian Islands management system,

c. Annual Report format revisions, and

d. Program planning;

3. Lobster management, including:

a. Report on 1996 lobster fishery,

b. Implementation of Amendment 9 provisions,

c. Report on NMFS lobster research cruise,

d. Consider mandatory Vessel Monitoring System, and

e. Program planning;

4. Status of region-wide assessment of coral reef resources; and

5. Other business as required.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: October 3, 1996.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96–25935 Filed 10–8–96; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Petition of the Philadelphia Stock Exchange, Inc. for Exemptive Relief To Permit United States Customers To Establish or Offset Positions in Certain Foreign Currency Options on the Hong Kong Futures Exchange Ltd. Through Registered Broker-Dealers

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed order and request for comment.

SUMMARY: The Philadelphia Stock Exchange, Inc. (''PHLX'') has petitioned the Commodity Futures Trading Commission (''Commission'' or ''CFTC'') for exemptive relief pursuant to Sections 4(c), 4c(b) and 4c(f) of the Commodity Exchange Act (''CEA'' or ''Act''),[1] to permit United States customers to establish or offset positions in PHLX foreign currency options on the Hong Kong Futures Exchange Ltd. (''HKFE'') through registered broker-dealers pursuant to regulation by the Securities and Exchange Commission (''SEC'') under the federal securities laws, and in accordance with Section 4c(f) of the Act. The Commission seeks comment on the PHLX petition, as discussed more fully below, and on any related issues. Copies of the PHLX petition are available for inspection at the Office of the Secretariat or may be obtained through the Office of the Secretariat by mail at the address listed below or by telephoning (202) 418–5100.

DATES: Comments must be received on or before November 8, 1996.

ADDRESSES: Comments should be submitted to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the Petition of the Philadelphia Stock Exchange, Inc.

FOR FURTHER INFORMATION CONTACT: Susan C. Ervin, Deputy Director/Chief Counsel or Tina Paraskevas Shea, Attorney/Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone number: (202) 418–5450. Facsimile number: (202) 418–5536. Electronic mail: tm@cftc.gov

[1] 7 U.S.C. 1 *et seq.* (1994).

SUPPLEMENTARY INFORMATION

I. Background

PHLX is a national securities exchange which has been registered with the SEC since 1934.[2] Equity securities, equity and index options, and foreign currency options are listed for trading on the PHLX. PHLX initially commenced trading foreign currency options on December 10, 1982. Foreign currency options currently listed on the PHLX include dollar-denominated options on the British pound, Canadian dollar, Japanese yen, German mark, Swiss franc, French franc, ECU and Australian dollar.[3] In 1991, PHLX received SEC approval to trade three cross-rate currency options where such options have no U.S. dollar component and premiums and exercise prices are denominated in currencies other than the U.S. dollar.[4] In 1994, PHLX received approval to list Cash/Spot foreign currency options that allow holders to receive U.S. dollars representing the difference between the current foreign exchange spot price and the exercise price of the particular contract.[5] PHLX also has received approval to introduce customized currency options[6] which allow users to customize most aspects of a currency option trade, including: exercise price, currency pairs,[7] premium quotation (either units of currency or percent of underlying value), currency of premium payment, and expiration dates.[8] In general, auction trading of PHLX's currency options occurs between 2:30 a.m. Eastern Time (''ET'') and 2:30 p.m. ET each business day.[9]

PHLX is seeking exemptive relief in order to permit U.S. customers to establish positions in PHLX foreign currency options on HKFE and offset such positions on PHLX, or to establish positions in PHLX foreign currency options on PHLX and offset them on HKFE through U.S. registered broker-dealers. PHLX seeks exemptive relief to assure that: (1) HKFE cross-listed foreign currency options can be made fungible and linked with PHLX foreign currency options pursuant to SEC oversight and the federal securities laws, and (2) the PHLX and HKFE linked foreign currency options will not be subject to inconsistent or duplicative regulation, taking cognizance of the policies inherent in Section 4c(f) of the Act.[10] PHLX contends that the requested relief is consistent with Section 4c(f) of the CEA, which provides that nothing in the CEA ''shall be deemed to govern or in any way be applicable to any transaction in an option on foreign currency traded on a national securities exchange.''[11] PHLX requests that the Commission issue an exemptive order pursuant to Section 4(c) and Section 4c(b) of the CEA to permit the offer and sale in the United States of PHLX foreign currency options that are cleared and settled for all purposes in the U.S. to be cross-listed for trading on HKFE in accordance with applicable federal securities laws and regulations.[12]

Sections 4(c) and 4c(b) of the CEA vest the Commission with the authority to exempt certain transactions from regulation under the CEA.[13] Section 4(c) of the CEA provides, in relevant part, that the Commission may, ''by rule, regulation, or order, after notice and opportunity for hearing * * * exempt any agreement, contract, or transaction * * * that is otherwise subject to'' the CEA and the Commission's regulations from all provisions of the CEA except Section 2(a)(1)(B).[14] Such exemption may be granted upon a determination by the Commission that: (1) The exemption is in the public interest;[15] (2) the requirements from which exemption is sought should not be applied to the agreement, contract, or transaction at issue and the exemption would be consistent with the purposes of the

[2] Facts relevant to this petition are drawn from PHLX's petition dated August 15, 1996 (''the Petition''), filed with the Commission on August 16, 1996. As noted above, copies of the PHLX petition may be obtained through the Commission's Office of the Secretariat.

[3] *See* Securities Exchange Act Release Nos. 19133 (October 14, 1982), 47 FR 46946 (SEC approval of SR–PHLX–81–4); 10822 (April 4, 1984), 49 FR 14611 (French franc); 22853 (February 3, 1986), 51 FR 5129 (ECU); and 23945 (December 30, 1986), 52 FR 633 (Australian dollar).

In evaluating proposals of self-regulatory organizations (''SROs'') to list and trade products on a national securities exchange, the SEC makes a determination that the proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 (the ''1934 Act'') and the SEC rules applicable thereunder. Under Section 6(b)(5) of the 1934 Act, the SEC predicates approval of exchange trading for new products upon a determination that the trading of such product is in the public interest. The SEC also considers such factors as fraud and market manipulation potential, economic benefit, just and equitable principles of trade, customer protections, market surveillance, adequacy of margin requirements, market impact and the maintenance of a fair and orderly market. *See, e.g.,* Securities Exchange Act Release No. 36505 (November 22, 1995), 60 FR 61277 (SEC Order to approve the listing and trading of Cash Spot options on the Japanese yen).

[4] *See* Securities Exchange Act Release No. 29919 (November 7, 1991), 56 FR 58109.

[5] *See* Securities Exchange Act Release Nos. 33732 (March 8, 1994), 59 FR 12023 (Cash/Spot options on German mark); 36505 (November 22, 1995), 60 FR 61277 (Cash/Spot options on Japanese yen).

[6] *See* Securities Exchange Act Release No. 34925 (November 1, 1994), 59 FR 55720.

[7] *See* Securities Exchange Act Release No. 36255 (September 20, 1995), 60 FR 50229 (Italian lira and Spanish peseta became eligible for customized pairs).

[8] *See* Securities Exchange Act Release No. 36468 (November 8, 1995), 60 FR 57613 (customized expiration dates authorized).

[9] *See* Securities Exchange Act Release No. 34898 (October 26, 1994), 59 FR 54651 (establishing these trading hours for most currency options except the Canadian dollar, which commences trading at 7:00 a.m. ET each business day). Historically, PHLX has had even more extensive trading hours. *Cf.* Securities Exchange Act Release No. 24652 (June 29, 1987), 52 FR 25680 (trading hours from 7:00 p.m. ET to 2:30 p.m. ET the following day). The latter extended segment was added to accommodate market interest in the Far East, but subsequently was suspended as a result of relatively low transaction volume. *See* Securities Exchange Act Release No. 33246 (November 24, 1993), 58 FR 63421.

[10] 7 U.S.C. 6c(f) (1994). The Petition does not assert that the HKFE is a national securities exchange. Rather, it makes the argument that the request is not inconsistent with Congressional policy to permit foreign currency options to trade on either a national securities exchange or on a futures exchange. Similarly, the Commission is not implying that the HKFE is a national securities exchange.

[11] *Id.*

[12] 7 U.S.C. 6(c) and 6c(b) (1994), respectively. If such exemptive relief were issued, the Commission would limit the scope of the relief to PHLX foreign currency options that are cross-listed for trading on HKFE pursuant to agreement between PHLX and HKFE, in accordance with SEC regulation, as represented to the Commission pursuant to PHLX's Petition. All other foreign futures and options contracts that HKFE would seek to offer or sell in the United States would remain subject to the CEA and the Commission's regulations, including the Commission's Part 30 rules (17 C.F.R. 30 (1996)), which regulate the offer and sale in the United States of foreign futures and options contracts.

[13] 7 U.S.C. 6(c) and 6c(b) (1994).

[14] 7 U.S.C. 6(c)(1) (1994). Section 4(c)(1) provides: In order to promote responsible economic or financial innovation and fair competition, the Commission by rule, regulation, or order, after notice and opportunity for hearing, may (on its own initiative or on application of any person, including any board of trade designated as a contract market for transactions for future delivery in any commodity under section 5 of this Act) exempt any agreement, contract or transaction (or class thereof) that is otherwise subject to subsection (a) [the exchange-trading requirement] (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction), either unconditionally or on stated terms or conditions or for stated periods and either retroactively or prospectively, or both, from any of the requirements of subsection (a), or from any other provision of this Act (except section 2(a)(1)(B)), if the Commission determines that the exemption would be consistent with the public interest.

[15] The Conference Committee Report on the legislation enacting Section 4(c) (the ''Conference Report'') states that the ''public interest'' includes ''the national public interests noted in the [CEA], the prevention of fraud and the preservation of the financial integrity of markets, as well as the promotion of responsible economic or financial innovation and fair competition.'' H.R. Rep. No. 978, 102d Cong., 2d Sess. 78 (1992). In making a determination with respect to the public interest, the Conferees provided that the Commission should ''assess the impact of a proposed exemption on the maintenance of the integrity and soundness of markets and market participants'' and that an exemption should not be denied ''solely on grounds that it may compete with or draw market share away from the existing market.'' *Id.* at 78–79.

CEA; (3) the agreement, contract or transaction will be entered into solely between ''appropriate persons;'' [16] and (4) the agreement, contract or transaction will not have a material adverse effect upon the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the CEA.[17]

Section 4c(b) of the CEA grants the Commission plenary authority to regulate commodity options in the United States. It prohibits persons from entering into any transaction involving any commodity regulated under the CEA which is of the character of or is commonly known ''as an option * * * contrary to any rule, regulation or order of the Commission * * *.'' [18] Section 4c(b) vests the Commission with the authority to implement orders, rules or regulations to regulate, among other instruments, option transactions, upon notice and opportunity for hearing.

The PHLX petition is summarized below.

[16] Section 4(c)(3)(A)–(J) defines ''appropriate persons'' to include generally a bank or trust company, a savings association, an insurance company, a registered investment company, a commodity pool operated by a Commission registrant, certain business entities and employee benefit plans, governmental entities, registered broker-dealers, and registered futures commission merchants, floor brokers and floor traders. 7 U.S.C. 6(c)(3)(A)–(J).

Section 4(c)(3)(K), which was added by the Congressional Committee Conferees to the final statutory provision, provides the Commission with flexibility in granting exemptions for persons or entities not expressly enumerated. Specifically, that section provides that ''appropriate persons'' include ''persons that the Commission determines to be appropriate in light of their financial or other qualifications, or the applicability of appropriate regulatory protections.'' 7 U.S.C. 6(c)(3)(k)(1994). The language of this provision indicates that persons permitted to engage in transactions that are otherwise regulated by a governmental agency may qualify as ''appropriate persons'' in specific circumstances where the Commission's regulatory concerns are satisfied. In the context of determining persons qualifying for the so-called Part 34 ''hybrid exemption,'' which provides for an exemption from CFTC regulations for certain hybrid instruments, the Commission stated that ''appropriate persons'' eligible for the hybrid exemption would include ''person[s] permitted by applicable securities or banking requirements to purchase or enter into the security [component] of the hybrid instrument * * *.'' 58 FR 5580 (January 22, 1993)(release adopting final rules regarding the regulation of hybrid instruments).

[17] 7 U.S.C. 6(c)(2) (1994).

[18] 7 U.S.C. 6c(b)(1994). Section 4c(b) provides, in relevant part: No person shall offer to enter into, enter into or confirm the execution of, any transaction involving any commodity regulated under this Act which is of the character of, or is commonly known to the trade as, an ''option'' [or] ''privilege'', * * * contrary to any rule, regulation, or order of the Commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe. Any such order, rule, or regulation may be made only after notice and opportunity for hearing, and the Commission may set different terms and conditions for different markets.

II. Description of PHLX Proposal

A. Licensing Agreement With HKFE

PHLX and HKFE have entered into a licensing agreement (the ''Linkage'') authorizing HKFE to trade foreign currency options during Asian business hours in the same manner as PHLX foreign currency options are traded on PHLX. The Linkage provides for cross-listing of PHLX foreign currency options, permitting U.S. customers and non-U.S. customers to establish positions in PHLX foreign currency options on HKFE and offset them on PHLX or to establish positions in PHLX foreign currency options on PHLX and offset them on HKFE. The Linkage, by permitting PHLX foreign currency options to be traded on HKFE during Asian business hours, effectively extends the trading hours of the currency option contracts traded on PHLX, a national securities exchange. The proposed Linkage would be applicable to all foreign currency option contracts for which PHLX has received SEC approval.

Incorporated in 1976, HKFE is licensed as an exchange company by the Governor in Council of Hong Kong and is governed by a board of directors consisting of both HKFE members and non-members from the Hong Kong financial and business community. In addition, the operations of the HKFE and the HKFE Clearing Corporation Limited (''HCC''), HKFE's subsidiary, are under the jurisdiction of and are regulated by Hong Kong's independent financial regulatory body, the Securities and Futures Commission (''SFC'').

Linkages between exchanges in different time zones have been used as a means of lengthening trading hours, broadening distribution of products, and enhancing volume and open interest. PHLX believes that the proposed Linkage would stimulate trading interest in PHLX's foreign currency options in the Far East. It does not view its agreement with HKFE as precluding similar agreements between HKFE and U.S. futures exchanges with respect to foreign currency options such that a similar arrangement potentially could permit futures commission merchants (''FCMs'') to offset currency options undertaken on a futures exchange pursuant to a similar linkage agreement with HKFE if futures exchanges so desired, maintaining the symmetry now contained in Section 4c(f) which permits such options to be traded on both domestic futures and securities options markets.

B. The Options Clearing Corporation/ Clearance and Settlement

The Options Clearing Corporation (''OCC''), owned equally by the five national securities exchanges that list options, functions as the issuer and clearing organization for all options traded on national securities exchanges, including the foreign currency options traded on PHLX. OCC is regulated as a clearing agency by the SEC under the 1934 Act. OCC will issue, clear and settle PHLX foreign currency options that are cross-listed on HKFE. PHLX, HKFE, and OCC expect to enter into an International Market Agreement (the ''IMA''), which will govern the trading and clearance of transactions in such options. The IMA would be applicable only to PHLX foreign currency options cross-listed on HKFE and would address issues relevant to the trading and clearance of the PHLX contracts, including ''issuance, disclosure, expiration months, exercise prices, units of trading, margin, comparison, clearing and settlement of PHLX foreign currency options traded on HKFE, and the respective rights and obligations of the parties with respect to such options.'' [19]

OCC also anticipates the execution of an ''Associate Clearinghouse Agreement'' with HCC or an affiliate of HKFE organized for the purpose of acting as a clearing organization for the PHLX foreign currency option contracts traded on HKFE, under which HCC or such affiliate will act as an ''associate clearinghouse'' of OCC. The Associate Clearinghouse Agreement will provide that HCC or the HCC affiliate will be treated as an OCC clearing member, for purposes of clearing trades in PHLX foreign currency options for HKFE members that are not clearing members of OCC, whether such trades are effected on HKFE or (through PHLX members) on PHLX.

C. Regulatory and SRO Oversight of Cross-Listed PHLX Foreign Currency Options.

1. SEC regulation. Consistent with the CEA and the federal securities laws, options on foreign currencies may be traded on a designated contract market subject to the Commission's jurisdiction or on a national securities exchange subject to SEC jurisdiction.[20] Foreign currency options have been traded on PHLX subject to the securities laws and the SEC regulatory protections since 1982. PHLX states that, because the currency options it proposes to be traded on HKFE would be cross-listed

[19] Petition at p.5.

[20] Section 4c(f) of the CEA, 7 U.S.C. 6c(f) (1994).

PHLX foreign currency options, transactions in these options that are effected on HKFE pursuant to the Linkage should in effect be subject to the same regulatory structure in the United States as PHLX foreign currency options.[21] PHLX represents that the cross-listed options will be registered under the Securities Act of 1933 for offer and sale in the United States, and that ''such transactions will be subject to the full panoply of regulation under the 1934 Act, including broker-dealer registration and related requirements.'' [22]

2. SRO oversight.

a. PHLX rules. The petition summarizes PHLX requirements relating to account opening procedures, suitability, qualification of sales persons, supervision of accounts, disclosure, advertisements, time-stamping and reporting of orders, and dual trading. These rules govern transactions in foreign currency options on PHLX. PHLX represents that HKFE has agreed to adopt certain of the rules similar to PHLX's rules and requirements to apply to cross-listed PHLX foreign currency options and has further agreed to adopt no exchange rules that conflict with PHLX's options rules.

As stated in the PHLX petition, PHLX rules require that a customer's account be specifically approved for options trading before any option transactions may be effected for that customer. Such approval must be in writing, can be made only by a ''Registered Options Principal,'' [23] and may occur only after the member firm ''exercise[s] due diligence to learn the essential facts as to the customer and his investment objectives and financial situation.'' [24] PHLX rules also require that a customer's account be specifically approved for transactions in foreign currency, in writing, by a ''Foreign Currency Options Principal,'' before transactions in such options are effected. PHLX also has a customer suitability rule, which prohibits a member firm from recommending any option transaction to a customer unless the firm ''has reasonable grounds to believe that the entire recommended transaction is not unsuitable'' for the customer. Both the National Association of Securities Dealers, Inc. and PHLX require that persons selling foreign currency options pass a certification examination. SEC and PHLX rules prohibit brokers from accepting a customer option order or approving a customer account for trading of option contracts unless the customer has been provided with an SEC-reviewed disclosure document specific to the particular type of option order the customer seeks to enter.[25] PHLX rules also establish detailed standards regarding the content of advertisements, sales literature, and other options-related communications and the manner in which such communications may be presented to the public.

PHLX rules require member firms to establish written procedures to provide for the ''diligent supervision'' of all customer option accounts and all option orders in such accounts and maintain a special supervisory structure for foreign currency options. PHLX requires that all order tickets be time-stamped immediately upon execution, and floor brokers and traders are required to report relevant information regarding each option transaction. With the exception of specialists, PHLX floor traders are prohibited from dual trading, that is, trading a particular options class for their own account on the day of execution of a customer order in the same options class.

b. Intermarket surveillance. PHLX and HKFE have executed an Intermarket Surveillance Group Surveillance Sharing Agreement (the ''Surveillance Agreement'') providing for the exchange of surveillance information as needed in order for each exchange to discharge its respective surveillance responsibilities. This agreement tracks the Intermarket Surveillance Group Surveillance Sharing Agreement to which all U.S. securities, options and stock index futures exchanges currently are parties. The Surveillance Agreement requires each exchange to report all foreign currency options trading activity to the other and grants each exchange access to information needed to discharge its self-regulatory responsibilities. It provides that each exchange must cooperate and use its best efforts to obtain requested information when information is needed in the investigation of any question or complaint regarding the propriety of any transaction or series of transactions in foreign currency options or regarding any other aspect of trading and/or transactions therein that might be significant for rule enforcement purposes. The parties have agreed to resolve in good faith any disagreements between them regarding any requests for information or responses. The petition sets forth the contingency plans in the event that HKFE denies a request for assistance under the Surveillance Agreement and the denial is material to PHLX's self-regulatory program. Minimum reporting requirements are set forth in an addendum to the Surveillance Agreement.

D. Practical Concerns Prompting the Requested Relief

PHLX argues that ''the requested relief is necessary for U.S. customers to derive the same benefits from the Linkage as foreign customers.'' [26] PHLX notes that subjecting ''identical and fungible'' foreign currency option contracts to two different regulatory schemes would result in U.S. customers being required to maintain accounts with two brokerage firms, a broker-dealer and an FCM, to trade the same contract. Moreover, even if a customer transacted through a dually registered entity, PHLX foreign currency options that are established or offset on PHLX would be required to be held in a separate account from PHLX foreign currency options that are established or offset on HKFE. As a result, positions could not be netted for margin or settlement purposes, a limitation that ''would severely diminish the economic viability of the Linkage'' as, effectively, the contracts would not be fungible, defeating one purpose of the link.[27] PHLX also notes that U.S. futures exchanges could seek to enter into similar arrangements with HKFE or other overseas exchanges to cross-list foreign currency options that have approval for trading by the CFTC. PHLX argues that FCMs would not incur a competitive disadvantage should the relief be granted; as they currently may not offer and sell PHLX foreign currency options, the requested relief would not alter the status quo.

E. Determinations Under Section 4(c) of the CEA

PHLX contends that an exemption under Section 4(c) of the CEA to permit the offer and sale in the U.S. of PHLX foreign currency options cross-listed for trading on HKFE would satisfy the

[21] Petition at p.7.

[22] Petition at p.7. PHLX expects that PHLX foreign currency options would be cross-listed for trading on the HKFE upon the Commission's issuance of exemptive relief and following approval by the SEC of conforming amendments to the rules of PHLX and the OCC in order to provide for the Linkage.

[23] A ''registered options principal'' must pass a proficiency examination demonstrating knowledge of the SRO requirements applicable to options transactions, including the rules of PHLX and OCC, and also must demonstrate an understanding of options trading.

[24] Petition at p.7.

[25] SEC Rule 9b–1 provides that an options disclosure document must include information delineating the mechanics of options trading, options trading risks, the uses of options, transaction costs, margin requirements, and relevant tax issues. 17 C.F.R. 240.9b–1 (1996).

[26] Petition at p.13.

[27] Petition at p.13.

requirement of consistency with the public interest and the purposes of the CEA because, according to PHLX, it would ''stimulate trading interest in PHLX's foreign currency options,'' creating recognized economic benefits.[28] PHLX notes that it has provided a foreign currency options market for more than a decade ''in accordance with the securities laws and the SEC regulatory scheme without any difficulties.''[29] PHLX argues that the recognized economic benefits of foreign currency options trading on PHLX, the contemplated expansion of those benefits through the Linkage, and the applicability of the SEC regulatory scheme, which provides protections comparable to those of the CEA and Commission regulations that address the financial integrity, fairness, and central marketplace issues cited by the Commission in adopting its Part 36 rules, assure that the requested relief is consistent with the public interest and the purposes of the CEA.

In addition, Section 4(c) requires that the Commission determine that the requested exemption will not have a material adverse effect upon the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties. PHLX notes that the Conference Report indicates that the Commission should consider regulatory concerns such as ''market surveillance, financial integrity of participants, protection of customers and trade practice enforcement'' in making this determination.[30] PHLX reasons that the applicability of the SEC's comparable regulatory scheme to transactions in PHLX foreign currency options in the U.S., including those cross-listed for trading on HKFE, together with the regulatory requirements imposed by the SFC and applicable Hong Kong laws and the inter-market surveillance arrangement, will provide adequate customer protections and market surveillance capabilities and therefore will not have a material adverse impact on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the CEA.

Section 4(c) also requires that the agreement, contract or transaction will be entered into solely between ''appropriate persons.'' Appropriate persons include any persons the Commission determines to be appropriate ''in light of their financial or other qualifications, or the applicability of appropriate regulatory protections.''[31] PHLX reasons that the requested exemption for PHLX foreign currency options cross-listed for trading on HKFE should be available to all persons eligible to engage in such option transactions under the SEC's regulatory framework, which limits such trading to options qualified by the SEC in accordance with SEC approval procedures[32] or options customers determined to be suitable in accordance with SEC and PHLX suitability requirements.[33]

III. Request for Comments

The Commission requests comments on any aspect of the Petition that commenters believe may raise issues under the CEA or Commission regulations. In particular, the Commission invites comments regarding: (1) the appropriateness of addressing transactions as described herein under the Commission's exemptive authority under Section 4(c) and/or under the Commission's plenary authority under Section 4c(b); (2) whether the proposed exemption is consistent with the standards set forth in Section 4(c) of the CEA; (3) whether there is sufficient authority under existing law for the SEC to exercise its regulatory and supervisory authority over transactions effected pursuant to the Linkage; (4) any material adverse effects that granting the PHLX petition would have upon other securities exchanges, futures exchanges, or Commission registrants, such as FCMs, from a competitive or other perspective; (5) the type of risk assessment information that should be available to the Commission regarding such transactions by FCM affiliates; (6) whether the Commission should attach any conditions to any exemptive relief that may be granted; and (7) any other issues relevant to this petition.

Issued in Washington, DC, on October 2, 1996, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–25917 Filed 10–8–96; 8:45 am]

BILLING CODE 6351–01–P

[28] Petition at p.15.

[29] Id.

[30] H.R. Rep. No. 102–978, 102d Cong., 2d Sess. 78 (1992).

[31] 7 U.S.C. 6(c)(3)(k)(1994).

[32] *See supra* note 3.

[33] *See id.* and Section II.C.2.a *supra.*

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License to Shipley Company, L.L.C.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Shipley Company, L.L.C., a revocable, nonassignable, partially exclusive license in certain foreign countries to practice the Government owned inventions described in U.S. Patent Application Serial No. 08/375,997 entitled ''Liquid Crystal Composition and Alignment Layer,'' filed January 20, 1995, and U.S. Patent Application Serial No. 08/559,318 also entitled ''Liquid Crystal Composition and Alignment Layer,'' filed November 15, 1995, both in the field of liquid crystal display manufacturing.

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of Naval Research, ONR 00CC, Ballston Tower One, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: September 25, 1996.

D.E. Koenig,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 96–25835 Filed 10–8–96; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket Nos. 96–53–NG, 96–59–NG]

EMC Gas Transmission Company, Chevron U.S.A. Inc.; Orders Granting Authorization To Import and/or Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Orders.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued Orders authorizing various imports and/or exports of natural gas. These Orders are summarized in the attached Appendix.

These Orders are available for inspection and copying in the Office of Fuels Programs Docket Room, 3–F056, Forrestal Building, 1000 Independence

Avenue, SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on September 30, 1996.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

APPENDIX—IMPORT/EXPORT AUTHORIZATIONS GRANTED

DOE/FE authority order No.	Date issued	Importer/exporter FE docket No.	Import volume	Export volume	Comments
1193	08/08/96	EMC Gas Transmission Company (96–53–NG).		15 Bcf/term	Blanket for 2 years to Canada.
1194	08/30/96	Chevron U.S.A. Inc. (96–59–NG).	74,000 Mcf/per day		Long-term for 9 years to Canada 9/01/96 thru 10/31/2005.

[FR Doc. 96–25882 Filed 10–8–96; 8:45 am]

BILLING CODE 6450–01–P

Energy Information Administration

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3507(d)(1)(A) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) Collection number and title; (2) summary of the collection of information (includes sponsor (the DOE component)), current OMB document number (if applicable), type of request (new, revision, extension, or reinstatement); response obligation (mandatory, voluntary, or required to obtain or retain benefits); (3) a description of the need and proposed use of the information; (4) description of the likely respondents; and (5) estimate of total annual reporting burden (average hours per response × proposed frequency of response per year × estimated number of likely respondents.)

DATES: Comments must be filed on or before November 8, 1996. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place N.W., Washington, D.C. 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585. Mr. Casselberry may be telephoned at (202) 426–1116, FAX (202) 426–1081, or e-mail at jcasselb@eia.doe.gov.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. EIA–176, 191, 191S, 857, 857S, and 895 ''Natural Gas Program Package'';
2. Energy Information Administration, OMB No. 1905–0175, Extension with changes (i.e., discontinue Form EIA–627 and modify Form EIA–895 to collect annual reporting of monthly natural gas wellhead prices), Mandatory for all forms except EIA–895 which is voluntary;
3. The Natural Gas Program Package forms collect basic and detailed natural gas production, processing, transmission, storage, consumption and price data. The data are published by the Energy Information Administration and are used by both public and private energy industry analysts.

Significant change from EIA's request for public comments on May 20, 1996 (61 FR 25212) are: (1) Form EIA–191 data will continue to be treated as confidential and (2) the proposed new Form EIA–901, ''Monthly Report of Natural Gas Marketers,'' has been postponed. Based on industry meetings, a pretest of the Form EIA–901, and public comments on the earlier notice, EIA has decided the Form EIA–901 needs further development/testing and will not be submitted to OMB at this time. EIA remains committed to development of a survey designed to address the need to improve its natural gas price data and plans to submit such a survey to OMB for approval in 1997;

4. Businesses and others for-profit involved in the natural gas production through sales cycle as well as State governments;
5. 44,046 hours (5.370 hours average per response × 4.256 average responses per year × 1927 respondents).

Statutory Authority: 44 U.S.C. 3506(a)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

Issued in Washington, DC, October 2, 1996.

Yvonne M. Bishop,

Director, Office of Statistical Standards, Energy Information Administration.

[FR Doc. 96–25880 Filed 10–8–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[FERC–716A]

Agency Information Collection Under Review by the Office of Management and Budget

October 4, 1996.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of request submitted for review to the Office of Management and Budget.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act of 1995

(Pub. L. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission, as explained below. The Commission is also responding in this submission to comments it received to an earlier Federal Register notice of July 10, 1996 (61 FR 36359–36360).

DATES: Comments must be filed on or before November 8, 1996.

ADDRESSES: Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Commission Desk Officer, 726 Jackson Place N.W., Washington, D.C. 20503. A copy of the comments should also be sent to Federal Energy Regulatory Commission, Division of Information Services, Attention: Mr. Michael Miller, 888 First Street, N.E. Washington, D.C. 20426. Mr. Miller may be reached by telephone at (202) 208–1415 and by e-mail at mmiller@ferc.fed.us.

SUPPLEMENTARY INFORMATION:

Description

The energy information collection submitted to OMB for review contains:

1. Collection of Information: FERC–716A, ''Application for Transmission Services under Section 211 of the Federal Power Act''.

2. Sponsor: Federal Energy Regulatory Commission.

3. Control No.: 1902–0168. The Commission is now requesting that OMB approve a three year extension of these mandatory collection requirements.

4. Necessity of Collection of Information: Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the provisions of the Federal Power Act (FPA) as amended and added by the Energy Policy Act of 1992. The Commission uses the information collected to ensure that the requirements set forth in section 211(a) of the FPA have been met *i.e.* that a request for transmission service has been made by the applicant to the transmitting utility at least 60 days prior to filing the application with the Commission and that all affected parties have been notified. Specifically, section 211(a) as provided for by the Energy Policy Act of 1992, authorizes the Commission to issue an order directing transmission services only after a person applying for the order has requested the transmission service from the transmitting utility at least 60 days prior to applying to the Commission.

5. Respondent Description: The respondent universe currently comprises approximately 20 electric utilities, Federal power marketing agencies or any other person generating electric energy for sale or resale to apply for an order requiring a transmitting utility to provide transmission services to the applicant

6. Estimated Burden: 100 total burden hours, 20 respondents, 1 response annually, 5 hours per response (average).

Statutory Authority: Section 211(a), 212, 213(a), of the Federal Power Act, 16 U.S.C. 824j–l, and Sections 721–723 of the Energy Policy Act of 1992. (P.L. 102–486).

Lois D. Cashell,

Secretary.

[FR Doc. 96–25906 Filed 10–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–2495–000]

AEP Power Marketing, Inc.; Notice of Issuance of Order

October 4, 1996.

AEP Power Marketing, Inc. (AEP Marketing) filed an application for authorization to sell power at market-based rates, and for certain waivers and authorizations. In particular, AEP Marketing requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by AEP Marketing. On September 20, 1996, the Commission issued an Order Conditionally Accepting For Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's September 20, 1996 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (G):

(D) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by AEP Marketing 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 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, AEP Marketing is hereby authorized, pursuant to Section 204 of the FPA, to issue securities and assume obligations or liabilities as guarantor, endorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of AEP Marketing, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of AEP Marketing's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 21, 1996. Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–25908 Filed 10–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–5–000]

Algonquin Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

October 3, 1996.

Take notice that on October 1, 1996, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the tariff sheets list on Appendix A to the filing, to become effective April 1, 1997.

Algonquin states that this filing is made in compliance with Order No. 587, issued in Docket No. RM96–1–000 on July 17, 1996, and the ''Notice Clarifying Procedures for Filing Pro Forma Tariff Sheets'', issued September 12, 1996. These pro forma tariff sheets reflect the requirements of Order No. 587 that interstate pipeline follow standardized procedures for critical business practices-nominations, flowing gas (allocations, balancing, and measurement) invoicing, and capacity release.

Algonquin requests that the Commission grant any waiver that may be necessary to place these tariff sheets into effect on the date requested.

Algonquin states that copies of this filing were mailed to all customers of Algonquin and interested state commissions.

Any person desiring to be heard or to protest this 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 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or 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. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–25836 Filed 10–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–403–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

October 3, 1996.

Take notice that on September 30, 1996, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2 the following revised tariff sheets, to be effective November 1, 1996:

Second Revised Volume No. 1

Fifth Revised Sheet No. 17A
Second Revised Sheet No. 187.1
First Revised Sheet No. 187.2

Original Volume No. 2

Third Revised Sheet No. 15

ANR states that the purpose of this filing is to reflect the removal of the Rate Adjustment for Viking Transportation Costs provision contained in Section 29 of the General Terms and Conditions of its tariff.

Any person desiring to be heard or to protest this 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 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with 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. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–25837 Filed 10–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–2652–000]

CL Power Sales Six, L.L.C., et al.; Notice of Issuance of Order

October 4, 1996.

CL Power Sales Six, L.L.C., *et al.* (CL Power Sales) submitted for filing a rate schedule under which CL Power Sales will engage in wholesale electric power and energy transactions as a marketer. CL Power Sales also requested waiver of various Commission regulations. In particular, CL Power Sales requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by CL Power Sales.

On September 23, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by CL Power Sales 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 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, CL Power Sales is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of CL Power Sales' issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 23, 1996.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–25907 Filed 10–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–401–000]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 3, 1996.

Take notice that on September 30, 1996, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with a proposed effective date of November 1, 1996:

Revised Sheet No. 32
Revised Sheet No. 33

CNG states that the purpose of this filing is to submit CNG's quarterly revision of the Section 18.2.B. Surcharge, effective for the three-month period commencing November 1, 1996. The charge for the quarter ending October 31 has been $0.0131 per Dt, as authorized by Commission order dated July 26, 1996, in Docket No. RP96–289. CNG's proposed Section 18.2.B. surcharge for the next quarterly period is $0.0000 per Dt. For the period April through June, 1996, CNG states that it has not incurred additional Stranded Account No. 858 Costs.

CNG states that copies of this letter of transmittal and enclosures are being mailed to CNG's customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC, 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or 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. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–25838 Filed 10–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–2–22–000]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 3, 1996.

Take notice that on September 30, 1996, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with a proposed effective date of November 1, 1996:

Revised Sheet No. 31
Revised Sheet No. 32
Revised Sheet No. 33
Revised Sheet No. 34
Revised Sheet No. 35
Revised Sheet No. 36

CNG states that the purpose of this filing is to update CNG's effective Transportation Cost Rate Adjustment (TCRA), through the annual adjustment mechanism provided in Section 15 of the General Terms and Conditions of CNG's Tariff. The effect of the proposed TCRA on each element of CNG's rates is summarized in workpapers that are attached to the filing.

CNG states that copies of its letter of transmittal and enclosures are being mailed to its customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory commission, 888 First Street, N.E., Washington, DC, 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or 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. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–25859 Filed 10–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–190–000]

Colorado Interstate Gas Company; Notice of Informal Settlement Conference

October 3, 1996.

Take notice that an informal settlement conference will be convened in this proceeding on Thursday, October 10, 1996, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined in 18 CFR 385.102(c) (1991), or any participant, as defined in 18 CFR 385.102(b) (1991), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations, 18 CFR 385.214 (1991).

For additional information, contact Lorna J. Hadlock at (202) 208–0737 or Donald Williams at (202) 208–0743.

Lois D. Cashell,

Secretary.

[FR Doc. 96–25839 Filed 10–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–2624–000]

Cumberland Power, Inc.; Notice of Issuance of Order

October 4, 1996.

Cumberland Power, Inc. (Cumberland) submitted for filing a rate schedule under which Cumberland will engage in wholesale electric power and energy transactions as a marketer. Cumberland also requested waiver of various Commission regulations. In particular, Cumberland requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Cumberland.

On September 25, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Cumberland 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 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Cumberland is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Cumberland's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 25,1996. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–25909 Filed 10–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–2–2–000]

East Tennessee Natural Gas Company; Notice of Filing

October 3, 1996.

Take notice that on October 1, 1996 East Tennessee Natural Gas Company (East Tennessee) submitted Eighth Revised Sheet No. 4 of its FERC Gas Tariff, Second Revised Volume No. 1. East Tennessee requests an effective date of November 1, 1995.

East Tennessee states Eighth Revised Sheet No. 4 reflects changes to its transportation cost rate adjustment pursuant to Section 25 of its General Terms and Conditions. East Tennessee further states Eighth Revised Sheet No. 4 also incorporates the FT–A base transportation reservation rate for year four under East Tennessee's restructured services pursuant to Section 40 of its General Terms and Conditions.

East Tennessee states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should 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 the protestants parties to this proceeding. Any person wishing to become a party must file a motion to

intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–25858 Filed 10–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–8–000]

Granite State Gas Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

October 3, 1996.

Take notice that on October 1, 1996, Granite State Gas Transmission, Inc. (Granite State) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, revised tariff sheets containing changes to its Base Tariff Rates for transportation services, proposed to become effective on November 1, 1996 as follows:

Eighth Revised Sheet No. 21
Ninth Revised Sheet No. 22
Eighth Revised Sheet No. 23

Granite State indicates that the primary purpose of the rate changes in the instant filing is to recover the additional costs Granite State will incur that are attributable to an agreement with Portland Pipe Line Corporation to extend a lease pursuant to which Granite State operates a pipeline owned by Portland Pipe Line. The leased line is an 18-inch pipeline, formerly a crude oil pipeline owned by Portland Pipe Line, which Granite State leased and converted to natural gas service and began operating as an integral component of its system in November 1987. The leased line connects Granite State's system to Canadian gas supplies that are delivered at the border to Granite affiliated distribution customers, Bay State Gas Company and Northern Utilities, Inc.

Granite State states that the lease was scheduled to expire on March 31, 1997, and on March 5, 1996, Portland Pipe Line and Granite State executed an agreement to extend the lease to April 30, 1998. The leased pipeline is operated by Granite State pursuant to an limited-term certificate issued by the Commission. On September 11, 1996, the Commission extended the limited term certificate to operate the leased pipeline until April 30, 1998, consistent with the duration of the lease extension agreement. (Docket No. CP87–39–004)

Granite State's filing indicates that the cost of service submitted is based on a test year comprised of the 12 months of actual operating experience ended July 31, 1996, adjusted for known and measurable changes occurring within 9 months thereafter. The proposed annual increase in revenues is $3.7 million. In addition to reflecting the recovery of costs attributable to the lease extension, the cost of service includes increased costs for operating and maintenance, ad valorem taxes, costs for complying with the requirements of the Gas Industry Standards Board, and for minor plant additions. The filing proposes an overall return of 10.69% on rate base, which includes an implicit return of 13.50% on equity. The revised Base Tariff Rates are derived by applying the Straight Fixed Variable method of cost allocation and rate design to the proposed cost of service.

Granite State further states that the Portland Pipe Line operates a 24-inch crude oil pipeline which parallels the 18-inch line leased to Granite State. During the term of the lease, Portland Pipe Line expects to increase the throughput of oil in the 24-inch line. Electric power costs for operating the pumps on the 24-inch line will increase with the increase in throughput. Granite State has agreed to reimburse Portland Pipe Line for the increased power costs. These costs are extremely variable and depend upon monthly throughput in the 24-inch pipeline. In this filing, Granite State is proposing to add a cost adjustment procedure in the General Terms and Conditions of its tariff to provide a cost recovery mechanism for the electric power costs paid to Portland Pipe Line. Pro Forma tariff sheets with this proposal are included in this filing.

According to Granite State, the revised rates in this filing are applicable principally to the firm transportation services which Granite State renders to Bay State Gas Company and Northern Utilities, Inc. Granite State also serves interruptible transportation customers.

Granite State indicates that it has service a complete copy of this filing by first class mail, postage prepaid, on all of Granite State's customers and on the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission 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. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–25840 Filed 10–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–000]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

October 3, 1996.

Take notice that on October 1, 1996, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to become effective November 1, 1996:

Fourteenth Revised Sheet No. 20
Thirteenth Revised Sheet No. 21
Fourteenth Revised Sheet No. 22
Fourteenth Revised Sheet No. 24

Koch states that the above referenced tariff sheets are being submitted pursuant to Section 32.3(d)(ii) of its tariff to reflect the annual recalculation of its Account No. 858 surcharge. The revised rate has been adjusted downward to reflect actual revenue received from October 1, 1995 to August 31, 1996.

Koch Gateway also states that the revised tariff sheets are being served upon all its customers, State Commissions and other interested parties.

Any person desiring to be heard or to protest this 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 Sections 385.214 and 385.211 of the Commission's rules and regulations. All such motions or protests must be filed as provided by 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. Any person wishing to become a part must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–25856 Filed 10–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–10–000]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

October 3, 1996.

Take notice that on October 1, 1996, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective November 1, 1996:

Second Revised Sheet No. 1807
Third Revised Sheet No. 1808

Koch states this filing is submitted as an application pursuant to Section 4 of the Natural Gas Act, 15 U.S.C. Section 717c (1988), and Part 154 of the Rules and Regulations of the Commission.

Koch states that it is filing the above tariff sheets to revise the procedure for displacing nominated interruptible transportation which is paying less than the maximum rate.

Koch states that copies of the filing are being mailed to Koch's jurisdictional customers and interested state regulatory agencies.

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 Sections 385.214 and 385.211 of the Commission's regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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. 96–25857 Filed 10–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–402–000]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 3, 1996.

Take notice that on September 30, 1996, Mississippi River Transmission Corporation (MRT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with a proposed effective date of October 1, 1996:

Substitute Eighteenth Revised Sheet No. 5
Substitute Eighteenth Revised Sheet No. 6
Substitute Fifteenth Revised Sheet No. 7

MRT states that the purpose of this filing is to adjust its rates to reflect additional Gas Supply Realignment Costs (GSRC) of $18,277, plus applicable interest, pursuant to Section 16.3 of the General Terms and Conditions of MRT's Tariff. MRT states that its filing includes the Price Differential cost of continuing to perform under certain gas supply contracts during the months of October, 1995 through June, 1996. MRT states that its filing also reflects a credit due to the overrecovery of GSRC which the Commission recognized that MRT would provide as a result of MRT's filing in Docket No. RP96–343–000.

MRT states that a copy of its filing has been served on all of its customers and the State Commissions of Arkansas, Missouri and Illinois.

Any person desiring to be heard or protest this 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 Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or 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. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–25841 Filed 10–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–1–000]

National Fuel Gas Supply Corporation; Notice of Compliance Filing

October 3, 1996.

Take notice that on October 1, 1996, National Fuel Gas Supply Corporation (National Fuel) submitted the pro forma tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1, to be effective April 1, 1997.

National Fuel states that the filing is being made in compliance with Order No. 587, Standards for Business Practices of Interstate Natural Gas Pipelines, issued July 17, 1996, in Docket No. RM96–1.

National Fuel states that it is serving copies of the filing upon its firm customers and interested state commissions. National Fuel states that copies are also being served on all interruptible customers as of the date of the filing.

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 Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or 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. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room

Lois D. Cashell,

Secretary.

[FR Doc. 96–25842 Filed 10–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–2–000]

Pacific Gas Transmission Company; Notice of Change in Rates

October 3, 1996.

Take notice that on October 1, 1996, Pacific Gas Transmission Company (PGT) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A: Sixteenth Revised Sheet No. 4. PGT requested the above-referenced tariff sheet become effective November 1, 1996.

PGT asserts tht the purpose of this filing is to modify the rate for service on PGT's Medford, Oregon Extension under Rate Schedule FTS–1 (E–2) (WWP) in accordance wth the negotiated rate formula for that service as specified in PGT's FERC Gas Tariff.

PGT further states that a copy of this filing has been served on PGT's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or 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 18 CFR 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed as provided in § 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 the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–25843 Filed 10–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–399–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

October 3, 1996.

Take notice that on September 30, 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 the filing, to become effective November 1, 1996.

Panhandle states that pursuant to the May 22, 1995 Stipulation and Agreement in Docket No. RP94–325–000 (Settlement) this filing removes the currently effective GSR Settlement Reservation Surcharge of 0.17¢ for firm transportation service provided under Rate Schedules FT, EFT and LFT and the GSR Settlement Volumetric Surcharge of 1.06¢ for service under Rate Schedule SCT for Sponsoring Parties and Subject Parties to the Settlement. The Commission's July 28, 1995 order approving the Settlement specified that certain Rate Schedule SCT customers consisting of the Municipal Gas Commission of Missouri and its members are Non-Consenting Parties to the Settlement. The GSR surcharge applicable to Rate Schedule SCT of 1.06¢ will remain in effect for these specified Non-Consenting Parties.

Panhandle states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest this 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 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with 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. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–25844 Filed 10–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–4–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

October 3, 1996.

Take notice that on October 1, 1996, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, Pro Forma, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing to become effective April 1, 1997.

Panhandle states that this filing is made in compliance with Order No. 587, issued in Docket No. RM96–1–000 on July 17, 1996, and the ''Notice Clarifying Procedures for Filing Pro Forma Tariff Sheets'', issued September 12, 1996. These pro forma tariff sheets reflect the requirements of Order No. 587 that interstate pipelines follow standardized procedures for critical business practices nominations, flowing gas (allocations, balancing, and measurement), invoicing, and capacity release.

Panhandle states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest this 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 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with 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. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–25845 Filed 10–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–2525–000]

Plum Street Energy Marketing, Inc.; Notice of Issuance of Order

October 4, 1996.

Plum Street Energy Marketing, Inc. (Plum Street) filed an application for authorization to sell power at market-based rates, and for certain waivers and authorizations. In particular, Plum Street requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Plum Street. On September 25, 1996, the Commission issued an Order Conditionally Accepting For Filing Proposed Market-Based Rates, Establishing Hearing Procedures And Consolidating Proceedings (Order), in the above-docketed proceeding.

The Commission's September 25, 1996 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (I), (J), and (L):

(I) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Plum Street 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 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(J) Absent a request to be heard within the period set forth in Ordering Paragraph (I) above, Plum Street is hereby authorized, pursuant to Section 204 of the FPA, to issue securities and to assume obligations or liabilities as guarantor, endorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Plum Street, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(L) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Plum Street's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 25, 1996.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–25910 Filed 10–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–395–000]

Southern Natural Gas Company; Notice of GSR Revised Tariff Sheets

October 3, 1996.

Take notice that on September 30, 1996, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets with the proposed effective date of October 1, 1996:

Tariff Sheets Applicable to Contesting Parties:

First Substitute Fifteenth Revised Sheet No. 14
First Substitute Thirty Seventh Revised Sheet No. 15
First Substitute Fifteenth Revised Sheet No. 16
First Substitute Thirty Seventh Revised Sheet No. 17
First Substitute Twenty Fourth Revised Sheet No. 29

Southern submits the revised tariff sheets to its FERC Gas Tariff, Seventh Revised Volume No. 1, to reflect a change in its FT/FT–NN GSR Surcharge, due to an increase in GSR billing units effective October 1, 1996.

Southern states that copies of the filing were served upon all parties listed on the official service list compiled by the Secretary in those proceedings.

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 18 CFR 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining 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. 96–25846 Filed 10–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–404–000]

Southern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 3, 1996.

Take notice that on September 30, 1996, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets, with a proposed effective date of October 1, 1996:

Fourth Revised Sheet No. 136
Original Sheet No. 136a
Fourth Revised Sheet No. 138
Original Sheet no. 138a

In response to a shipper request, Southern states that this filing proposes to revise the pro rata delivery point allocation provisions (Section 13.2 of the General Terms and Conditions) of Southern's tariff in the following manner. Southern will add a step in the allocation process which will take the pro rata quantities allocated based on nominations to a shipper's FT–NN agreement and reallocate them to the shipper's FT agreement(s) up to any unutilized contract quantity. This would maximize the contract quantity remaining on the shipper's FT–NN agreement for allocation on a no-notice basis which would help the shipper minimize overall imbalances under its agreements.

Southern states that copies of this filing have been served on all shippers and interested state commissions.

Any person desiring to be heard or protest this 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 Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or 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. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–25847 Filed 10–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–7–000]

Tennessee Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

October 3, 1996.

Take notice that on October 1, 1996, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, with a proposed effective date of November 1, 1996:

Tenth Revised Sheet No. 20
Fourteenth Revised Sheet No. 21A
Nineteenth Revised Sheet No. 22
Fourteenth Revised Sheet No. 22A
Ninth Revised Sheet No. 23
Fourth Revised Sheet No. 23b
Sixteenth Revised Sheet No. 24
Eleventh Revised Sheet No. 25
Tenth Revised Sheet No. 26B

Tennessee states that the purpose of the filing is to recover gas supply realignment costs (GSR costs) paid at the time of the filing, consistent with the GSR cost recovery provisions reflected in Section XXVI of the General Terms and Conditions of Tennessee's Fifth Revised FERC Gas Tariff. Tennessee states that the charges include a GSR demand surcharge applicable to firm customers and a unit GSR component applicable to Tennessee's interruptible services.

Tennessee also tendered for filing tariffs sheets to become effective December 1, 1996. Because the 36 month amortization period applicable to one of Tennessee's early incremental GSR surcharges to recover settlement costs filed for in Docket No. RP94–39 is due to terminate on November 30, 1996—one month into the quarter covered by this filing, Tennessee proposed the following tariff sheets to become effective December 1, 1996:

Eleventh Revised Sheet No. 20
Tenth Revised Sheet No. 23
Fifth Revised Sheet No. 23B
Eleventh Revised Sheet No. 26B

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 Section 385.214 and 385.211 of the Commission's regulations. All such motions or protests must be filed as provided in Section

154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining 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. 96–25848 Filed 10–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–3–000]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 3, 1996.

Take notice that on October 1, 1996, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Pro Forma Sixth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing to become effective April 1, 1997.

Texas Eastern asserts that the purpose of the filing is to comply with the Commission's Order No. 587 issued July 17, 1996, in Docket No. RM96–1–000 and the ''Notice Clarifying Procedures for Filing of Pro Forma Tariff Sheets'', issued September 12, 1996.

Texas Eastern states that the purpose of the filing is to implement the requirements of Order No. 587 that interstate pipelines follow standardized procedures for critical business practices—nominations, allocations, balancing, measurement, invoicing, and capacity release.

Texas Eastern states that copies of the filing were served on firm customers of Texas Eastern, interested state commissions, and current interruptible customers.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or 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. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–25849 Filed 10–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–758–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application

October 3, 1996.

Take notice that on August 30, 1996, Transcontinental Gas Pipe Line Corporation (Transco) P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP96–758–000 an application, pursuant to Section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity for (1) authorization to construct and operate a total of 77.58 miles of 30-inch pipeline and related facilities to expand the capacity of Transco's Southeast Louisiana Gathering System (SELGS) in offshore Louisiana and (2) approval of incremental initial rates for the firm transportation service to be rendered through the additional firm transportation capacity to be created by the expansion, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that in order to create new firm transportation capacity on the Southeast Louisiana Gathering System, Transco proposes to construct and operate the following facilities:

Phase I

- A platform in Ship Shoal Block 14, including associated piping modifications in Ship Shoal Blocks 14 and 28, offshore Louisiana, to connect the platform facilities to the west leg of the SELGS in Ship Shoal Block 28.
- Approximately 50.71 miles of 30-inch pipeline extending from the new platform in Ship Shoal Block 14 to a tie-in with the east leg of the SELGS in Ship Shoal Block 214.

Phase II

- A junction platform in South Timbalier Block 301.
- Approximately 26.87 miles of 30-inch pipeline extending from an interconnection with the Phase I facilities and Transco's Ship Shoal Block 214 junction platform to the new South Timbalier Block 301 junction platform.

Transco states that the proposed in-service dates for the Phase I and Phase II facilities are November 1, 1997 and November 1, 1998, respectively. Transco estimates that the cost of the overall project will be $129,054,498. Transco states that the proposed facilities will be installed entirely offshore.

Transco states that the Phase I facilities will create firm transportation capacity of 380,113 Mcf per day from receipt points of Transco's system upstream of Ship Shoal Block 214 to Transco's Station 62 in Terrebonne Parish, Louisiana. Transco further states that once the Phase II facilities are placed into service, the aggregate firm transportation capacity created by the project between Ship Shoal Block 214 to Station 62 will be 659,732 Mcf per day. Transco states that the firm transportation service to be rendered through the new capacity will be performed under its Rate Schedule FT and Part 284(G) of the Commission's regulations. Transco notes that under Rate Schedule FT, shippers using the expansion will have secondary firm rights to delivery points located in Transco's Rate Zone 3 downstream of Station 62.

Transco states it does yet have commitments for the firm capacity generated by the project. However, Transco states it intends to make the expansion capacity available to all shippers by means of an open season and that it will notify the Commission of the commitments received from customers as soon as possible after the end of the open season period.

Transco proposes to charge incremental rates for service through the proposed expansion. For Phase I, Transco proposes to charge a monthly reservation rate of $3.6614 per Mcf, and for Phase II a monthly reservation rate of $3.3990 per Mcf. These rates are based on (1) the straight fixed-variable rate design methodology, (2) an incremental cost of service (with an incremental cost of service for Phase I and with costs of service of Phases I and II being combined into a single, incremental cost of service commencing with Phase II service), and (3) billing determinants assuming full subscription of the firm transportation capacity to be made available as a result of the project. Transco states that the proposed rates will not affect the rates for Transco's existing services.

Transco notes that, consistent with its ''spindown'' proposal in Docket No. CP96–206–000, it believes the proposed facilities qualify as non-jurisdictional gathering facilities exempt from the Commission's regulations under Section 1(b) of the Natural Gas Act.[1]

[1] On September 25, 1996, the Commission issued an order in Docket No. CP96–206–000, dismissing the application.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 24, 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 is 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 Transco to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–25850 Filed 10–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–397–000]

Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

October 3, 1996.

Take notice that on September 30, 1996 Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with a proposed effective date of November 1, 1996:

2nd Revised Sheet No. 5B.02

Transwestern states that the purpose of this filing is to recover certain take-or-pay settlement, buy-out, buy-down, and contract reformation costs (TCR II Costs) paid by Transwestern. These costs qualify for recovery by Transwestern under Commission Order Nos. 500 and 528 et seq, as well as the terms and conditions of the Stipulation and Agreement (''Stipulation'') filed by Transwestern in Docket No. RP95–271–000 and approved by Commission order dated July 27, 1995.

In this filing, Transwestern states that it is seeking recovery of $1,618,306.42 in TCR II Costs and is submitting 2nd Revised Sheet No. 5B.02 and requesting authority to begin recovery of such amounts under the tariff sheet effective November 1, 1996.

Transwestern states that copies of the filing were served on its gas utility customers, interested state commissions, and all parties to 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 and 214 of the Commission's Rules of Practice and Procedure. All such motions or 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. 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. 96–25851 Filed 10–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP–96–398–000]

Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

October 3, 1996.

Take notice that on September 30, 1996, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with a proposed effective date of November 1, 1996:

1st Revised Sheet No. 5B.02

On May 2, 1995, Transwestern filed a Stipulation and Agreement in Docket Nos. RP95–271, et al. which resolved, among other things, all issues relating to Transwestern's recovery of unfiled take-or-pay, buy-out, buy-down and contract reformation costs eligible for recovery under Order No. 528.

On August 31, 1995, Transwestern made an initial TCR II filing in Docket No. RP95–425. In that filing Transwestern sought recovery of $10,622,519.55 (''TCR II–No. 1''). These costs were allocated based on the allocation factor (''TCR II Allocation Factor'') under the TCR II mechanism stated in Transwestern's FERC Gas Tariff, Second Revised Volume No. 1.

Pursuant to the Stipulation and Transwestern's FERC Gas Tariff, Second Revised Volume No. 1, the TCR II Allocation Factor is to be recalculated for each Current Firm Shipper to be effective on each subsequent November 1 during the TCR II amortization period.

On September 29, 1995, Transwestern made an initial filing to calculate TCR II allocation factors for each Current Firm Shipper effective November 1, 1995.

Transwestern states that the purpose of this filing is to submit the tariff sheet containing the new TCR II reservation surcharges based on the updated TCR II Allocation Factors that resulted from the annual recalculation to be effective November 1, 1996.

Transwestern states that copies of the filing were served on its gas utility customers, interested state commissions, and all parties to 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 NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed 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 the 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. 96–25852 Filed 10–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–6–000]

Trunkline Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 3, 1996.

Take notice that on October 1, 1996, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, Pro Forma First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing; to become effective April 1, 1997.

Trunline states that this filing is made in compliance with Order No. 587, issued in Docket No. RM96–1–000 on July 17, 1996, and the ''Notice Clarifying Procedures for Filing Pro Forma Tariff Sheets'', issued September 12, 1996. These pro forma tariff sheets reflect the requirements of Order No. 587 that interstate pipelines follow standardized procedures for critical business practices nominations, flowing gas (allocations, balancing, and measurement), invoicing, and capacity release.

Trunkline states that copies of this filing are being service on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest this 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 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with 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. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell

Secretary.

[FR Doc. 96–25853 Filed 10–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP97–400–000 and RP89–183–064]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 3, 1996.

Take notice that on September 30, 1996, Williams Natural Gas Company (WNG), tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with the proposed effective date of November 1, 1996.

Seventeenth Revised Sheet No. 6A
Second Revised Sheet Nos. 8C and 8D

WNG states that this filing is being made pursuant to Article 14 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1. WNG hereby submits its fourth quarter report of take-or-pay buyout, buydown and contract reformation costs and gas supply related transition costs, and the application or distribution of those costs and refunds.

WNG states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the dockets referenced above and on all of WNG's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 or 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–25854 Filed 10–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–396–000]

Williston Basin Interstate Pipeline Company; Notice of Annual Report

October 3, 1996.

Take notice that on September 30, 1996, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing with the Commission Third Revised Sheet No. 358A to Second Revised Volume No. 1 of its FERC Gas Tariff pursuant to Section 39 of that Tariff. The proposed effective date of the above-referenced tariff sheet is September 30, 1996.

Williston Basin states that as of July 31, 1996 it had a zero balance in FERC Account No. 191. As a result, Williston Basin will neither refund nor bill its customers for any amounts under the conditions of Section No. 39.3.1 of its FERC Gas Tariff.

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, D.C. 20426, in accordance with Rules 211 and 215 of the Commission's Rules of Practice and Procedure (18 CFR Sections 385.211 and 385.214). All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–25855 Filed 10–8–96; 8:45 am]

BILLING CODE 6717–01–M

Federal Energy Regulatory Commission

[Docket No. ER96–3070–000, et al.]

Carolina Power & Light Company, et al.; Electric Rate and Corporate Regulation Filings

October 3, 1996.

Take notice that the following filings have been made with the Commission:

1. Carolina Power & Light Company

[Docket No. ER96–3070–000]

Take notice that on September 20, 1996, Carolina Power & Light Company (CP&L), tendered for filing separate Service Agreements for Non-Firm Point to Point Transmission Service executed between CP&L and the following Eligible Transmission Customers. Electric Clearinghouse, Inc., Duke Power Company, Florida Power & Light Company, MidCon Power Services Corporation, DuPont Power Marketing, Inc., and American Electric Power Service Corporation, and for Short-Term Firm Transmission Service with Florida Power & Light Company and American Electric Power Service Corporation. Service to each Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: October 17, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Louisville Gas and Electric Company

[Docket No. ER96–3071–000]

Take notice that on September 23, 1996, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Koch Power Services, Inc. under Rate GSS.

Comment date: October 17, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Boston Edison Company

[Docket No. ER96–3105–000]

Take notice that on September 27, 1996, Boston Edison Company (Boston Edison), tendered for filing a Service Agreement and Appendix A under Original Volume No. 6, Power Sales and Exchange Tariff (Tariff) for Belmont Municipal Light Department (Belmont). Boston Edison requests that the Service Agreement become effective as of September 1, 1996.

Edison states that it has served a copy of this filing on Belmont and the Massachusetts Department of Public Utilities.

Comment date: October 17, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Entergy Services, Inc.

[Docket No. ER96–3106–000]

Take notice that on September 27, 1996, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (Entergy Operating Companies), tendered for filing a Transmission Service Agreement (TSA) between Entergy Services, Inc. and City Water and Light Plant of the City of Jonesboro, Arkansas. Entergy Services states that the TSA sets out the transmission arrangements under which the Entergy Operating Companies provide firm transmission service under their Transmission Service Tariff.

Comment date: October 17, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power & Light Company

[Docket No. ER96–3108–000]

Take notice that on September 27, 1996, Florida Power & Light Company (FPL), tendered for filing a proposed notice of cancellation of an umbrella service agreement with Rainbow Energy Marketing Corporation for Firm Short-Term transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed cancellation be permitted to become effective on August 31, 1996.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: October 17, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Florida Power & Light Company

[Docket No. ER96–3109–000]

Take notice that on September 27, 1996, Florida Power & Light Company (FPL), tendered for filing a proposed notice of cancellation of an umbrella service agreement with MidCon Power Services Corporation for Firm Short Term transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed cancellation be permitted to become effective on August 31, 1996.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: October 17, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. San Diego Gas & Electric Company

[Docket No. ER96–3110–000]

Take notice that on September 27, 1996, San Diego Gas & Electric Company (SDG&E), tendered for filing and acceptance, pursuant to 18 CFR 35.12, an Interchange Agreement (Agreement) between SDG&E and Illinois Power Marketing, Inc. (Illinova).

SDG&E requests that the Commission allow the Agreement to become effective on the 25th of November 1996 or at the earliest possible date.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Illinova.

Comment date: October 17, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Potomac Electric Power Company

[Docket No. ER96–3111–000]

Take notice that on September 27, 1996, Potomac Electric Power Company (Pepco), tendered for filing service agreements pursuant to Pepco FERC Electric Tariff, Original Volume No. 1, entered into between Pepco and: Commonwealth Edison Company, MidCon Power Services, and AIG Trading Corporation. An effective date of September 20, 1996 for these service agreements, with waiver of notice, is requested.

Comment date: October 17, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Burlington Resources Trading, Inc.

[Docket No. ER96–3112–000]

Take notice that on September 27, 1996, Burlington Resources Trading, Inc. (Burlington Resources), tendered for filing pursuant to 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective no later than sixty (60) days from the date of its filing.

Burlington Resources intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where Burlington Resources sells electric energy, it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Neither Burlington Resources nor any of its affiliates is in the business of generating or transmitting electric power, or is engaged in any form of franchised electricity distribution.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices. Rate Schedule No. 1 also provides that no sales may be made to affiliates.

Comment date: October 17, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Commonwealth Edison Company

[Docket No. ER96–3113–000]

Take notice that on September 27, 1996, Commonwealth Edison Company (ComEd), tendered for filing a new Power Sales Schedule 9 and related changes to its PSRT–1 Tariff. ComEd will offer to sell Emergency Service under the new schedule.

ComEd requests an effective date of September 28, 1996 and has therefore requested that the Commission waive the Commission's notice requirement. Copies of this filing have been served on the Illinois Commerce Commission and all customers served under ComEd's PSRT–1 Tariff.

Comment date: October 17, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. MDU Resources Group, Inc.

[Docket No. ES96–52–000]

Take notice that on September 30, 1996, MDU Resources Group, Inc. (MDU Resources) filed an application, under § 204 of the Federal Power Act, seeking authorization to issue up to 2,285,715 additional shares of its common stock, par value $3.33 for corporate development purposes to be issued, from time to time, in one or more transactions, within a two-year period,

directly to a seller or sellers as consideration for the acquisition of business assets by MDU Resources or its subsidiaries. Under these circumstances, MDU Resources further requests an exemption from the Commission's competitive bidding and negotiated placement requirements. Alternatively, MDU Resources may issue or sell its common stock on the open market, from time to time, the cash proceeds therefrom to be used for the acquisition of business assets. If MDU Resources issues common stock on the open market, it will sell such shares by competitive bidding.

Comment date: October 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. El Paso Electric Company

[Docket No. ES96–53–000]

Take notice that on September 30, 1996, El Paso Electric Company (El Paso) filed an application, under § 204 of the Federal Power Act, seeking authorization to issue up to 3,500,000 shares of its common stock for its 1996 Long-Term Incentive Plan, under which officers, key employees and non-employee directors will be eligible to receive non-qualified options, incentive stock options, stock appreciation rights, restricted stock, bonus stock and performance shares of El Paso's common stock. El Paso further requests an exemption from the Commission's competitive bidding and negotiated placement requirements.

Comment date: October 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Hoffmann-La Roche Inc.

[Docket No. QF96–109–000]

On September 27, 1996, Hoffmann-La Roche Inc. of 340 Kingsland Street, Nutley, New Jersey 07110, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the cogeneration facility will be located in the city of Belvidere, New Jersey 07823. The facility will consist of one gas turbine generator and one heat recovery boiler. Steam recovered from the facility will be used by an affiliate, Hoffmann-La Roche Vitamins and Fine Chemicals, for the processing of vitamins and for HVAC equipment. The maximum net power production capacity of the facility will be 49.5 MW. The primary energy source will be natural gas. Construction of the facility is expected to be completed in late 1997.

Comment date: October 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–25911 Filed 10–8–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER96–3013–000, et al.]

Minnesota Power & Light Company, et al.; Electric Rate and Corporate Regulation Filings

October 2, 1996.

Take notice that the following filings have been made with the Commission:

1. Minnesota Power & Light Company

[Docket No. ER96–3013–000]

Take notice that on September 16, 1996, Minnesota Power & Light Company tendered for filing a Service Agreement between Minnesota and Illinois Power Company.

Comment date: October 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Black Hills Corporation v. Basin Electric Power Cooperative, Rushmore Electric Power Cooperative, Inc., Black Hills Electric Cooperative, Inc., and Butte Electric Cooperative, Inc.

[Docket No. EL96–76–000]

Take notice that on September 23, 1996, Black Hills Corporation (Black Hills) filed a Complaint for the Reform of an Agreement for Transmission Service and the Common Use of Transmission Service (the ''Agreement'') between Black Hills Corporation and Basin Electric Power Cooperative; Rushmore Electric Power Cooperative, Inc.; Tri-County Electric Association, Inc.; Black Hills Electric Cooperative, Inc.; and Butte Electric Cooperative, Inc. (collectively, the ''Respondents''). The Complaint alleges that the Agreement subsidizes the Respondents' use of Black Hills' transmission system by providing them with below-cost access to a substantial portion of the system, thereby allowing Respondents to take service from Black Hills at rates that do not reflect Black Hills' cost of service and are unjust, unreasonable, unduly discriminatory, and preferential.

Comment date: November 1, 1996, in accordance with Standard Paragraph E at the end of this notice. Answers to the complaint shall be due on or before November 1, 1996.

3. Energy2, Inc.

[Docket No. ER96–3086–000]

Take notice that on September 24, 1996, Energy2, Inc. tendered for filing a Petition for Waivers, Blanket Approvals, and Order Approving Rate Schedule.

Comment date: October 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. The Montana Power Company

[Docket No. ER96–3093–000]

Take notice that on September 26, 1996, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.12, as an initial rate schedule, an Agreement for Electric Service between Montana and Glacier Electric Cooperative, Inc. (Cooperative).

A copy of the filing was served upon the Cooperative.

Comment date: October 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. New England Power Pool Executive Committee

[Docket No. ER96–3094–000]

Take notice that on September 26, 1996, the New England Power Pool Executive Committee filed a signature page to the NEPOOL Agreement dated September 1, 1971, as amended, signed by QST Energy Trading, Inc. (QST). The New England Power Pool Agreement, as amended, has been designated NEPOOL FPC No. 2.

The Executive Committee states that acceptance of the signature page would permit QST to join the over 100 Participants that already participate in the Pool. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make QST a Participant in the Pool. NEPOOL requests an effective date on or before December 1, 1996, or as soon as possible thereafter for commencement of participation in the Pool by QST.

Comment date: October 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. New England Power Company

[Docket No. ER96–3095–000]

Take notice that on September 26, 1996, New England Power Company, tendered for filing a System Impact Study Agreement between Northeast Utilities Service Company and New England Power Company.

Comment date: October 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Idaho Power Company

[Docket No. ER96–3096–000]

Take notice that on September 25, 1996, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission, an Agreement for the Sale and Purchase of System Firm Capacity and Energy between IPC and the City of Richland, Washington.

Comment date: October 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Commonwealth Edison Company

[Docket No. ER96–3097–000]

Take notice that on September 26, 1996, Commonwealth Edison Company (ComEd), submitted eight Service Agreements, variously dated, establishing Aquila Power (Aquila), Coral Power, L.L.C. (Coral), Virginia Power (VP), Williams Energy Services Company (WESCO), IUC Power Services (IUC), Sonat Power Marketing L.P. (Sonat), South Carolina Electric & Gas Company (SCE&G), and AIG Trading Corporation (AIG), as non-firm customers under the terms of ComEd's Open Access Transmission Tariff (OATT). ComEd also submitted for filing an additional Service Agreement, establishing Wisconsin Electric Power Company (WEPCO), dated August 27, 1996 as a firm customer under the terms of ComEd's OATT.

ComEd requests an effective date of August 30, 1996 for Non-Firm and Firm Service Agreements, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon Aquila, Coral, WESCO, VP, IUC, Sonat, SCE&G, AIG, WEPCO and the Illinois Commerce Commission.

Comment date: October 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. New York State Electric & Gas Corporation

[Docket No. ER96–3098–000]

Take notice that on September 26, 1996, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to 35.12 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35.12, as an initial rate schedule, an agreement with USGen Power Services, L.P. (USGen). The agreement provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which NYSEG will sell to USGen and USGen will purchase from NYSEG either capacity and associated energy or energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on September 27, 1996, so that the parties may, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and USGen.

Comment date: October 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Midwest Energy, Inc.

[Docket No. ER96–3099–000]

Take notice that on September 26, 1996, Midwest Energy, Inc. (Midwest), tendered for filing with the Federal Energy Regulatory Commission the Service Agreement for Non-Firm Transmission Service, the Energy Purchase Agreement for Market-Based Sales Service and the Electric Energy Services Agreement entered into between Midwest and the City of Colby.

Midwest states that it is serving copies of the instant filing to its customers, State Commissions and other interested parties.

Comment date: October 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Southern Company Services, Inc.

[Docket No. ER96–3100–000]

Take notice that on September 27, 1996, Southern Company Services, Inc. (SCSI), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively referred to as Southern Companies) filed service agreements under Southern Companies' Market-Based Rate Power Sales Tariff (FERC Electric Tariff, Original Volume No. 4) with the following entities: (i) Carolina Power and Light; (ii) Seminole Electric Cooperative, Inc.; (iii) Commonwealth Edison Company; and (iv) Orlando Utilities Commission. SCSI states that the service agreements will enable Southern Companies to engage in short-term market-based rate transactions with these entities.

Comment date: October 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. MidAmerican Energy Company

[Docket No. ER96–3101–000]

Take notice that on September 27, 1996, MidAmerican Energy Company (MidAmerican), 106 East Second Street, Davenport, Iowa 52801 filed with the Commission a Service Agreement with Lambda Energy Marketing Company (Lambda) dated September 17, 1996, entered into pursuant to MidAmerican's Rate Schedule for Power Sales, FERC Electric Tariff, Original Volume No. 5.

MidAmerican requests an effective date of September 17, 1996 for the Agreement with Lambda, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on Lambda, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: October 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. MidAmerican Energy Company

[Docket No. ER96–3102–000]

Take notice that on September 27, 1996, MidAmerican Energy Company (MidAmerican), 106 East Second Street, Davenport, Iowa 52801, filed with the Commission a Firm Transmission Service Agreement with Coral Power, L.L.C. (Coral) dated September 18, 1996, and Non-Firm Transmission Service Agreements with Coral dated September 18, 1996, and MidCon Power Services Corp. (MidCon) dated September 20, 1996, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of September 18, 1996 for the Agreements with Coral, and September 20, 1996 for the Agreement with MidCon, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on Coral, MidCon, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: October 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Public Service Electric and Gas Company

[Docket No. ER96–3103–000]

Take notice that on September 27, 1996, Public Service Electric and Gas Company (PSE&G), tendered for filing an agreement to provide non-firm transmission service to Western Power Services, Inc., pursuant to PSE&G's Open Access Transmission Tariff presently on file with the Commission in Docket No. OA96–80–000.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of September 27, 1996.

Comment date: October 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. The Montana Power Company

[Docket No. ER96–3104–000]

Take notice that on September 27, 1996, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.12, as an initial rate schedule, a Firm Energy Sale Agreement between Montana and Public Utility District #1 of Benton County, Washington (Benton).

A copy of the filing was served upon Benton.

Comment date: October 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Western Resources, Inc.

[Docket No. ES96–50–000]

Take notice that on September 26, 1996, Western Resources, Inc. filed an application, under § 204 of the Federal Power Act, seeking authorization to issue promissory notes and short-term securities, from time to time, in an aggregate principal amount of not more than $1.5 billion outstanding at any one time, during the period January 1, 1997 through December 31, 1998, with a final maturity date no later than December 31, 1999.

Comment date: October 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Commonwealth Edison Company

[Docket No. ES96–51–000]

Take notice that on September 30, 1996, Commonwealth Edison Company filed an application, under § 204 of the Federal Power Act, seeking authorization to issue unsecured short-term securities, from time to time, in an aggregate principal amount of not more than $1.2 billion outstanding at any one time, during the period January 1, 1997 through December 31, 1998, with a final maturity date no later than December 31, 1999.

Comment date: October 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. George V. McGowan

[Docket No. ID–2981–000]

Take notice that on September 23, 1996, George V. McGowan filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Director—Baltimore Gas and Electric Company

Director—NationsBank, N.A., (subsidiary of NationsBank Corporation)

Comment date: October 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–25912 Filed 10–8–96; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 5634–2]

TSCA Submissions; Information Collection; Submission to OMB

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) entitled: Voluntary Cover Sheet for TSCA Submissions [EPA ICR #1780.01; OMB control number to be assigned] has been forwarded to the Office of Management and Budget (OMB) for review and approval pursuant to the OMB procedures in 5 CFR 1320.10. The ICR, which is abstracted below, describes the nature of the information collection its estimated cost and burden, and a copy of the actual data collection instrument.

The Agency is requesting that OMB approve this new ICR for 3 years. A Federal Register notice announcing the Agency's intent to seek OMB approval for this ICR and a 60-day public comment opportunity, requesting comments on the request and the contents of the ICR, was issued on June 26, 1996 (61 FR 33113). EPA did not receive any comments on this ICR during the comment period.

DATES: Additional comments may be submitted on or before November 8, 1996.

FOR FURTHER INFORMATION OR A COPY CONTACT: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1780.01.

ADDRESSES: Send comments, referencing EPA ICR No. 1780.01 and OMB Control No. 2070-[to be assigned], to the following addresses:

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Regulatory Information Division (Mail Code: 2137), 401 M Street, S.W., Washington, DC 20460

And to:

Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, N.W., Washington, DC 20503

SUPPLEMENTARY INFORMATION:

Review Requested: This is a request to approve a new information collection pursuant to 5 CFR 1320.10.

ICR Numbers: EPA ICR No. 1780.01; OMB Control No. 2070–[to be assigned]

Title: Voluntary Cover Sheet for TSCA Submissions

Abstract: The Toxic Substances Control Act (TSCA) requires companies to submit information and studies for existing chemical substances under sections 4, 6, and 8. Under normal reporting conditions, EPA receives approximately 1,700 submissions each year; each submission represents on average three studies. In addition, specific data call-ins can be imposed on industry.

As a follow-up to industry experience with a 1994 TSCA data call-in, the Chemical Manufacturers Association (CMA), the Specialty Organics Chemical Manufacturers Association (SOCMA), and the Chemical Industry Data Exchange (CIDX), in cooperation with

EPA, have taken an interest in pursuing electronic transfer of TSCA summary data and of full submissions to EPA. In particular, CMA has developed a standardized cover sheet for voluntary use by industry as a first step to an electronic future and to begin familiarizing companies with standard requirements and concepts of electronic transfer. This form is designed for voluntary use as a cover sheet for submissions of information under TSCA sections 4, 8(d) and 8(e). The cover sheet will facilitate submission of information by displaying certain basic data elements, permitting EPA more easily to identify, log, track, distribute, review and index submissions, and to make information publicly available more rapidly and at reduced cost, to the mutual benefit of both the respondents and EPA. The information collection request referenced in this notice applies to the use of this form/cover sheet.

Responses to the collection of information are voluntary. Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden Statement: The annual public reporting burden for this collection of information is estimated to average approximately 0.5 hours per response. This estimate 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; 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. No person is 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 displayed in 40 CFR Part 9.

Respondents/Affected Entities: Entities potentially affected by this action are companies that manufacture, process, use or import chemical substances and that are subject to reporting requirements under sections 4, 8(d) or 8(e) of TSCA.

Estimated No. of Respondents: 2,240.

Estimated Total Annual Burden on Respondents: 1,348 hours.

Frequency of Collection: On occasion.

According to the procedures prescribed in 5 CFR 1320.10, EPA has submitted this ICR to OMB for review and approval. Any additional comments related to this ICR should be submitted within 30 days as described above.

Dated: October 3, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–25960 Filed 10–8–96; 8:45 am]

BILLING CODE 6560–50–P–M

[FRL–5633–5]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed partial consent decree, which was lodged with the United States District Court for the District of Columbia by the United States Environmental Protection Agency (''EPA'') on September 27, 1996, to address two lawsuits filed by the Sierra Club. These lawsuits, which were filed pursuant to section 304(a) of the Act, 42 U.S.C. 7604(a), concern, among other things, EPA's alleged failure to meet mandatory deadlines under sections 112(c)(3), (c)(6), (k)(3), and 202(l)(2) of the Act, 42 U.S.C. 7412(c)(3), (c)(6), (k)(3), and 7521(l)(2), which concern the emission of hazardous air pollutants from stationary and mobile sources. The proposed partial consent decree provides that EPA shall take certain actions under those provision in accordance with specified schedules.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed partial consent decree from person who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withhold or withdraw consent to the proposed partial consent decree if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, following the comment period, that consent is inappropriate, the final partial consent decree will establish deadlines for specific regulatory actions under sections 112 (c)(3), (c)(6), (k)(3), and 202(l)(2) of the Act.

A copy of the proposed partial consent decree was lodged with the Clerk of the United States District Court for the District of Columbia on September 27, 1996. Copies are also available from Phyllis Cochran, Air and Radiation Division (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 260–7606. Written comments should be sent to Patrick S. Chang at the address above and must be submitted on or before November 8, 1996.

Dated: October 3, 1996.

Scott C. Fulton,

Acting General Counsel.

[FR Doc. 96–25890 Filed 10–8–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5633–4]

Proposed Settlement Agreement; Title I SIPS for the State of Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with Section 113(g) of the Clean Air Act (''Act''), notice is hereby given of a proposed settlement agreement concerning litigation instituted against the Environmental Protection Agency (''EPA'') by Citizens for Balanced Transportation (''CBT''). The law suite concerns EPA's alleged failure to perform a nondiscretionary duty with respect to taking action on state implementation plans (''SIPs'') regulating carbon monoxide (''CO'') and particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers (''PM–10'') emissions, and/or promulgating a federal implementation plan (''FIP'') as to these control requirements for the Denver Metropolitan Area in the State of Colorado. The proposed settlement agreement generally provides for EPA to sign, within a specified timeframe, a Notice of Final Rulemaking (''NFRM'') regarding each of the above-mentioned SIPs.

For a period of thirty [30] days following the date of publication of this notice, the Agency will receive written comments relating to the settlement agreement. EPA or the Department of Justice may withhold or withdraw consent to the proposed settlement agreement if the comments disclose facts or circumstances that indicate that such consent is inappropriate,

improper, inadequate, or inconsistent with the requirements of the Act.

Copies of the settlement agreement are available from Phyllis Cochran, Air and Radiation Division (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, (202) 260–7606. Written comments should be sent to Michael A. Prosper at the above address and must be submitted on or before November 8, 1996.

Dated: October 3, 1996.

Scott C. Fulton,

Acting General Counsel.

[FR Doc. 96–25891 Filed 10–8–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL 5633–2]

Underground Injection Control Program; Hazardous Waste Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection—ASARCO, Inc. (ASARCO)

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on petition.

SUMMARY: Notice is hereby given that an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to ASARCO, for the Class I injection wells located at Amarillo, Texas. As required by 40 CFR Part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows ASARCO, to inject specific restricted hazardous wastes identified in the exemption, into the Class I hazardous waste injection wells at the Amarillo, Texas facility, for as long as the basis for granting an approval of this exemption remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice was issued August 8, 1996. The public comment period ended on September 23, 1996. No comments were received. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of October 1, 1996.

ADDRESSES: Copies of the petition and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Quality Protection Division, Source Water Protection Branch (6WQ–S), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Ken Williams, Acting Chief, Ground Water/UIC Section, EPA—Region 6, telephone (214) 665–7165.

Richard G. Hoppers,

Acting Director, Water Quality Protection Division (6WQ).

[FR Doc. 96–25892 Filed 10–8–96; 8:45 am]

BILLING CODE 6565–P–M

[OPP–30421; FRL–5395–6]

Certain Companies; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register a pesticide product containing a new active ingredient not included in any previously registered product and a product not currently registered pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by November 9, 1996.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30421] and the file symbol to: Public Response and Program Resources Branch, Field Operations Divisions (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

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 be accepted on disks in Wordperfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30421]. No ''Confidential Business Information'' (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submission can be found below in this document.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Joan Karrie, 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. CS51B6, Westfield Building North Tower, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8699; e-mail: karrie.joan@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA received an application to register a pesticide product containing an active ingredient not included in any previously registered product and a product not currently registered pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing an Active Ingredient Not Included In Any Previously Registered Product and a Product Not Currently Registered Respectively

1. File Symbol: 070062–R. Applicant: Babolna Bioenvironmental Centre Ltd., 1107 Budapest X., Szallas U.6, Hungary. Product name: Babolna Insect Attractant Trap. Insecticide. Active ingredient: Maple lactone [2-hydroxy-3-methyl-cyclo-pent-2-en-1-one] at 1.0 percent. Proposed classification/Use: None. For use as a monitoring device and as a control treatment on cockroaches.

2. File Symbol: 068964–R. Applicant: LDK Products Inc., 9305 Tieton Drive, Yakima, WA 98908. Product name: LDK Dandelion Getter. Herbicide. Active ingredient: Acetic acid at 2.5 percent. Proposed classification/Use: None. For use on dandelions only.

Notice of approval or denial of an application to register a pesticide product will be announced in the Federal Register. The procedure for requesting data will be given in the

Federal Register if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

A record has been established for this notice under docket number [OPP–30421] (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 Rm. 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 notice, 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.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division at the address provided from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. It is suggested that persons interested in reviewing the application file, telephone this office at (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: September 18, 1996.

Janet L. Andersen,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 96–25949 Filed 10–8–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30423; FRL–5397–2]

Certain Companies; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by November 8, 1996.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30423] and the file symbol to: Public Response and Program Resources Branch, Field Operations Divisions (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

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 be accepted on disks in Wordperfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30423]. No ''Confidential Business Information'' (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submission can be found below in this document.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Willie Nelson, 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. CS51B6, Westfield Building North Tower, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8682; e-mail: nelson.willie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA received applications to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing an Active Ingredient Not Included In Any Previously Registered Product

1. File Symbol: 524–UOR. Applicant: Monsanto Company 700 Chesterfield Parkway North, St. Louis, MO 63198. Product name: CryIIA Form of the B.T.K. Insect Control Protein. Insecticide. Active ingredient: *Bacillus thuringiensis* subsp. *kurstaki* delta endotoxin protein as produced by the CryIIA gene and its controlling sequences in cotton at 0.02 percent. Proposed classification/Use: General. Used only for seed production, seed increase, and breeding nurseries.

2. File Symbol: 53219–RU. Applicant: Mycogen Corporation, 5501 Oberlin Drive, San Diego, CA 92121. Product name: M/C Bioinsecticide. Bioinsecticide. Active ingredient: A CryIC derived delta endotoxin of *bacillus thuringiensis encapsulated in killed Pseudomonas fluorescens* at 15 percent. Proposed classification/Use: General. For control of caterpillar pests on vegetables, field crops, fruits, nuts, grapes, turf, stored products and ornamental and nursery crops.

Notice of approval or denial of an application to register a pesticide product will be announced in the Federal Register. The procedure for requesting data will be given in the Federal Register if an application is approved.

Comments received within the specified time period will be considered

before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

A record has been established for this notice under docket number [OPP–30423] (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 Rm. 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 notice, 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.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division at the address provided from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. It is suggested that persons interested in reviewing the application file, telephone this office at (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: September 18, 1996.

Janet L. Andersen,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 96–25797 Filed 10–8–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30422; FRL–5397–1]

Stine Microbial Products; Application to Register a Pesticide Product

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register a pesticide product containing a new active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by November 8, 1996.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30422] and the file symbol (63950–A) to: Public Response and Program Resources Branch, Field Operations Divisions (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

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 be accepted on disks in Wordperfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30422]. No ''Confidential Business Information'' (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submission can be found below in this document.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Denise Greenway, 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. CS51B6, Westfield Building North Tower, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8263; e-mail: greenway.denise@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA received an application from Stine Microbial Products, 2225 Laredo Trail, Adel, IA 50003, to register the pesticide product Blue Circle Liquid Biological Fungicide (EPA File Symbol 63950–A) containing the active ingredient *Burkholderia cepacia* type Wisconsin isolate J82 at 0.6 percent an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of FIFRA. This product is for food and non food use, application to plant and seedling roots. Notice of receipt of this application does not imply a decision by the Agency on the application.

Notice of approval or denial of an application to register a pesticide product will be announced in the Federal Register. The procedure for requesting data will be given in the Federal Register if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

A record has been established for this notice under docket number [OPP–30422] (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 Rm. 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 notice, 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.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division at the address provided from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. It is suggested that persons interested in reviewing the application file, telephone this office at (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: September 19, 1996.

Janet L. Andersen,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 96–25799 Filed 10–8–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–181026; FRL–5395–7]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to 17 States listed below. Six crisis exemptions were initiated by various States. These exemptions, issued during the months of June and July 1996, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific and crisis exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, CS 1B1, 2800 Jefferson Davis Highway, Arlington, VA (703–308–8417); e-mail: group.ermus@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Alabama Department of Agriculture and Industries for the use of carbofuran on cotton to control cotton aphids; July 5, 1996, to August 1, 1996. (Dave Deegan)

2. California Environmental Protection Agency, Department of Pesticide Regulation for the use of flowable carbofuran on cotton to control cotton aphids; July 20, 1996, to October 15, 1996. (Dave Deegan)

3. Georgia Department of Agriculture for the use of Pirate on cotton to control tobacco budworms and beet armyworms; July 1, 1996, to September 30, 1996. (Margarita Collantes)

4. Georgia Department of Agriculture for the use of tebufenozide on cotton to control beet armyworms; July 1, 1996, to September 30, 1996. (Margarita Collantes)

5. Idaho Department of Agriculture for the use of paraquat dichloride on dry peas to control weeds; July 25, 1996, to October 15, 1996. (Dave Deegan)

6. Illinois Department of Agriculture for the use of propamocarb hydrochloride on potatoes to control late blight; July 19, 1996, to July 18, 1997. (Libby Pemberton)

7. Louisiana Department of Agriculture and Forestry for the use of tebufenozide on sugarcane to control sugarcane borer; June 21, 1996, to September 15, 1996. (Margarita Collantes)

8. Louisiana Department of Agriculture and Forestry for the use of cyhalothrin on sugarcane to control sugarcane borer; June 21, 1996, to September 15, 1996. (Margarita Collantes)

9. Minnesota Department of Agriculture for the use of triclopyr on infested water bodies to control purple loose strife; July 31, 1996, to September 15, 1996. (Margarita Collantes)

10. Mississippi Department of Agriculture and Commerce for the use of tebufenozide on cotton to control beet armyworms; June 17, 1996, to September 30, 1996. (Margarita Collantes)

11. Montana Department of Agriculture for the use of pirimicarb on alfalfa grown for seed to control aphids and lygus bugs; July 18, 1996, to September 30, 1996. (Margarita Collantes)

12. Nevada Department of Agriculture for the use of pirimicarb on alfalfa grown for seed to control aphids; July 12, 1996, to August 15, 1996. (Margarita Collantes)

13. Oregon Department of Agriculture for the use of pronamide on grasses grown for seed to control weeds; July 29, 1996, to January 20, 1997. (Andrea Beard)

14. Oregon Department of Agriculture for the use of oxyfluorfen on grasses grown for seed to control weeds; July 29, 1996, to January 15, 1997. (Andrea Beard)

15. Oregon Department of Agriculture for the use of metolachlor on grasses grown for seed to control weeds; July 29, 1996, to November 15, 1996. (Andrea Beard)

16. Ohio Department of Agriculture for the use of dimethomorph on tobacco to control blue mold; July 11, 1996, to September 30, 1996. (Libby Pemberton)

17. Oklahoma Department of Agriculture for the use of flowable carbofuran on cotton to control cotton aphids; July 10, 1996, to October 15, 1996. (Dave Deegan)

18. South Dakota Department of Agriculture for the use of dimethomorph on potatoes to control late blight; July 2, 1996, to July 1, 1997. (Libby Pemberton)

19. South Dakota Department of Agriculture for the use of cymoxanil on potatoes to control late blight; July 2, 1996, to July 1, 1997. (Libby Pemberton)

20. South Dakota Department of Agriculture for the use of propamocarb hydrochloride on potatoes to control late blight; July 2, 1996, to July 1, 1997. (Libby Pemberton)

21. Tennessee Department of Agriculture for the use of carbofuran on cotton to control cotton aphids; July 5, 1996, to September 15, 1996. (Dave Deegan)

22. Washington Department of Agriculture for the use of paraquat dichloride on dry peas to control weeds; July 25, 1996, to November 10, 1996. (Dave Deegan)

23. Wyoming Department of Agriculture for the use of pirimicarb on alfalfa grown for seed to control aphids and lygus bugs; July 18, 1996, to August 31, 1996. (Margarita Collantes)

Crisis exemptions were initiated by the:

1. Indiana Department of Agriculture on July 3, 1996, for the use of dimethoate on peas to control aphids. This program has ended. (Libby Pemberton)

2. Louisiana Department of Agriculture and Forestry on July 12, 1996, for the use of cyhalothrin on rice

to control rice water weevils. This program has ended. (Dave Deegan)

3. Louisiana Department of Agriculture on July 1, 1996, for the use of carbofuran on rice to control rice water weevils. This program has ended. (Dave Deegan)

4. Mississippi Department of Agriculture and Commerce on July 3, 1996, for the use of carbofuran on rice to control rice water weevils. This program has ended. (Dave Deegan)

5. Ohio Department of Agriculture on July 5, 1996, for the use of cypermethrin on green onions to control thrip. This program is expected to last until September 30, 1996. (Libby Pemberton)

6. Washington Department of Agriculture on July 2, 1996, for the use of dimethoate on peas to control aphids. This program has ended. (Libby Pemberton)

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: September 12, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–25950 Filed 10–8–96; 8:45 am]

BILLING CODE 6560–50–F

[FRL 5633–7]

Gray PCB Site: Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under Section 122(g) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended 42 U.S.C. 9601 *et seq.*, the Environmental Protection Agency (EPA) has agreed to settle claims for response costs with General Waste Products, Inc., at the Gray PCB Site, in Hopkinsville, Christian County, Kentucky. EPA will consider public comments on the proposed settlements for thirty (30) days. EPA may withdraw from or modify the proposed settlements should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the settlement are available from: Ms. Paula V. Batchlor, U.S. Environmental Protection Agency, Region 4, Atlanta Federal Center, Waste Management Division, Program Services Branch, Cost Recovery Section, 100 Alabama Street, S.W., Atlanta, Georgia 30303–3104, 404–562–8887.

Written comments must by submitted to Mr. Ray Strickland at the above address within thirty (30) days from the date of publication.

Dated: September 30, 1996.

Richard D. Green,

Acting Director, Waste Management Division.

[FR Doc. 96–25889 Filed 10–8–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5633–3]

Extension of Public Comment Period for the Draft Canada—United States Strategy for the Virtual Elimination of Persistent Toxic Substances in the Great Lakes Basin

AGENCY: Environmental Protection Agency.

ACTION: Notice of the extension of the public comment period for the Draft Canada—United States Strategy for the Virtual Elimination of Persistent Toxic Substances in the Great Lakes Basin (the Strategy).

SUMMARY: The Draft Canada—United States Strategy for the Virtual Elimination of Persistent Toxic Substances in the Great Lakes Basin was made available for public comment beginning on August 19, 1996, when notice of its availability was published in the Federal Register, 61 FR 42902, Aug. 19, 1996. Commenters were given until September 18, 1996, to submit comments. However, several commenters requested that EPA extend the comment period. In order to address the concerns of these commenters, EPA is hereby extending the comment period an additional thirty days from today—s date of publication.

DATES: The comment period, which began on August 20, 1996, is now extended through November 8, 1996. Comments must be submitted no later than November 8, 1996.

ADDRESSES: Availability of Document and Submission of Comments: Copies of the document may be obtained by calling the Great Lakes National Program Office at (312) 353–2117 or (312) 353–9299. The document will also be available through the Great Lakes National Program Office home page at http://www.epa.gov/glnpo/. Comments may be submitted in writing to Elizabeth LaPlante of the Great Lakes National Program Office (address listed below) or electronically to the following Internet address: siebers.deborah@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Additional information on the Strategy may be obtained by contacting Elizabeth LaPlante at the following address and phone number: EPA Great Lakes National Program Office, 77 West Jackson Boulevard, G–9J, Chicago, Illinois, 60604; Telephone (312) 353–2694; FAX (312) 353–2018.

Dated: September 27, 1996.

Michelle D. Jordan,

Acting Regional Administrator, Region 5.

[FR Doc. 96–25888 Filed 10–8–96; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

DATE AND TIME: Tuesday, October 22, 1996 at 2:00 p.m. (Eastern Time).

PLACE: Conference Room on the Ninth Floor of the EEOC Office Building, 1801 ''L'' Street, N.W., Washington, D.C. 20507.

STATUS: Part of the Meeting will be open to the public and part of the Meeting will be closed.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Votes, and
2. Reports by the Office of Program Operations and the Office of General Counsel.

Closed Session

Litigation Authorization: General Counsel Recommendations

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.) Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTD) at any time for information on these meetings.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070.

Dated: October 7, 1996.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 96–26104 Filed 10–7–96; 2:33 pm]

BILLING CODE 6750–06–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 96-24789) published on page 50825 of

the issue for Friday, September 27, 1996.

Under the Federal Reserve Bank of Boston heading, the entry for Bank of Boston Corporation, Boston, Massachusetts, is revised to read as follows:

1. Bank of Boston Corporation, Boston, Massachusetts; to engage *de novo* through its subsidiary, BancBoston Securities, Inc., Boston, Massachusetts, in: (1) Underwriting and dealing to a limited extent in all types of debt and equity securities (See *J.P. Morgan & Co., Inc.*, 75 Fed. Res. Bull. 192, 209 n.49(1989), *Dresdner Order; HSBC Holdings plc et al.*, 82 Fed. Res. Bull 356(1996) and *ABN AMRO*, 81 Fed. Res. Bull 182(1995)); (2) Acting as agent in the private placement of all types of securities including providing related advisory services (See *Bankers Trust New York Corporation*, 75 Fed. Res. Bull. 829(1989)); (3) Buying and selling all types of securities on the order of investors as a ''riskless principal''(See *Order Revising the Limitations Applicable to Riskless Principal Activities*, 82 Fed. Res. Bull. 759(1996)); (4) Making and servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y; (5) Providing investment or financial advice, pursuant to § 225.25(b)(4) of the Board's Regulation Y; (6) Arranging commercial or industrial real estate financing pursuant to § 225.25(b)(14) of the Board's Regulation Y; (7) Providing securities execution and clearance (brokerage) services as agent for the account of customers, related securities credit activities, pursuant to the Board's Regulation T, and related activities such as offering custodial services, individual retirement accounts and cash management services pursuant to § 225.25(b)(15) of the Board's Regulation Y; (8) Underwriting and dealing in obligations of the United States and Canada, general obligations of U.S. states, Canadian provinces and their respective political subdivisions, and other obligations that state member banks of the Federal Reserve System may underwrite and deal, pursuant to § 225.25(b)(16) of the Board's Regulation Y; (9) Engaging in the following ''swaps-related'' activities: (a) acting as broker or agent with respect to interest rate and currency swap transactions and related caps, floors, collars and options on swaps, caps, floors and collars (''swap derivative products''; (b) acting as broker or agent with respect to swaps and swap derivative products, and over-the-counter option transactions, linked to products other than interest rates and currencies, such as certain commodities, stock, bond or commodity indices, or a hybrid of interest rates and such commodities or indicies, a specially tailored basket of securities selected by the parties, or single securities; (c) providing financial and transactional advice regarding the structuring and arranging of swaps and swap derivative products relating to non-financial commodity swap transactions; (d) providing investment advice, including counsel, publication, written analyses and reports, and other advisory services, including discretionary portfolio management services, with respect to futures and options on futures on non-financial commodities; (See §§ 225.25(b)(4)(vi)(A)(2), (B) and (C); *Caisse Nationale de Credit Agricole, S.A.*, 82 Fed. Res. Bull 754(1996); *First Union Corporation*, 81 Fed. Res. Bull. 726(1995); *SBC Section 20 Order; First of America Order; Republic Order; Morgan*, 80 Fed. Res. Bull. 151(1994); *The Long-Term Credit Bank of Japan, Limited*, 79 Fed. Res. Bull. 347(1993); *Security Pacific Corporation*, 74 Fed. Res. Bull. 820(1988)), and (10) in addition to the securities credit activities under the Board's Regulation T, acting as ''conduit'' or ''intermediary'' in securities borrowing and lending. (See *Republic New York Corp., et al.* 80. Fed. Res. Bull. 249, 250 (1994)). These activities would be conducted throughout the United States and throughout the world.

Comments on this application must be received by October 11, 1996.

Board of Governors of the Federal Reserve System, October 3, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–25868 Filed 10–8–96; 8:45 am]

BILLING CODE 6210–01–F

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 October 23, 1996.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. R.L. Simpson III, Eufaula, Oklahoma; to retain a total of 31.21 percent of the voting shares of S N B Bancshares, Inc., Eufaula, Oklahoma, and thereby indirectly retain State National Bank of Eufaula, Eufaula, Oklahoma.

Board of Governors of the Federal Reserve System, October 3, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–25869 Filed 10–8–96; 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 November 1, 1996.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. R. Banking Limited Partnership, and BancFirst Corporation, both of Oklahoma City, Oklahoma; to acquire 26.75 percent of the voting shares of Peoples State Bank, Tulsa, Oklahoma.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. GB Bancorporation, San Diego, California; to acquire 24.99 percent of the voting shares of Pacific Commerce Bank, Chula Vista, California, and Rancho Vista National Bank, Vista, California.

2. Pierce County Bancorp, Tacoma, Washington; to become a bank holding company by acquiring 100 percent of the voting shares of Pierce Commercial Bank, Tacoma, Washington (in organization).

Board of Governors of the Federal Reserve System, October 3, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–25870 Filed 10–8–96; 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 October 23, 1996.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Comerica Incorporated, Detroit, Michigan; to acquire 26 percent of Bankers Motor Acceptance Corporation, Newport Beach, California, and thereby engage in subprime indirect automobile lending, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

2. Bank of Montreal, Montreal, Canada, and Bankmont Financial Corp., New York, New York; to engage *de novo* through their subsidiary, Nesbitt Burns Securities, Inc., New York, New York, in full service brokerage activities through offices in Canada, pursuant to § 225.25(b)(15) of the Board's Regulation Y.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First National of Nebraska, Inc., and First National of Colorado, Inc., both of Omaha, Nebraska; to engage *de novo* through their subsidiary, Professional Career Services, Inc., Omaha, Nebraska, in the provision of career counseling services to affiliated and unaffiliated financial organizations; individuals seeking employment at banks and other financial organizations; and individuals seeking financial positions at any company. See *Comerica, Inc.* 80 Fed. Res. Bull. 51 (1994).

2. R. Banking Limited Partnership and BancFirst Corporation, both of Oklahoma City, Oklahoma; to engage *de novo* through BancFirst Corporation, Oklahoma City, Oklahoma, in general lending activities, including the making and servicing of loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 3, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–25871 Filed 10–8–96; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Hanford Thyroid Morbidity Study Advisory Committee: 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 meeting.

Name: Hanford Thyroid Morbidity Study Advisory Committee.

Time and Date: 8 a.m.–5 p.m., October 25, 1996.

Place: Terrance Garden Buckhead, 3405 Lenox Road, NE, Atlanta, Georgia 30326.

Status: Open to the public, limited only by the space available. The meeting room will accommodate approximately 30 people.

Purpose: This committee is charged with providing advice and guidance to the Director, CDC, regarding the scientific merit and direction of the Hanford Thyroid Morbidity Study. The Committee will review development of the study protocol and recommend changes of scientific merit to CDC and advise on the conduct of a full-scale epidemiologic study using the approval protocol. During the conduct of the full-scale epidemiologic study, the Committee will advise the CDC on the design and conduct of the study and analysis of the results.

Matters to be Discussed: The Committee will discuss the progress and updates of the status of various components of the Hanford Thyroid Disease Study being conducted by the Fred Hutchison Cancer Research Center. Agenda items will include the National Center for Environmental Health (NCEH) activities on the progress of current studies, and public involvement activities.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Nadine Dickerson, Program Analyst, Radiation Studies Branch, Division of

Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, (F–35), Atlanta, Georgia 30341–3724, telephone 770/488–7040.

Dated: October 2, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 96–25874 Filed 10–8–96; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

[Docket No. 96M–0356]

American Medical Systems, Inc.; Premarket Approval of UroLume™ Endourethral Prosthesis

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by American Medical Systems, Inc., Minnetonka, MN, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the UroLume™ Endourethral Prosthesis. After reviewing the recommendation of the Gastroenterology and Urology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of May 6, 1996, of the approval of the application.

DATES: Petitions for administrative review by November 8, 1996.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James P. Seiler, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1195.

SUPPLEMENTARY INFORMATION: On June 14, 1993, American Medical Systems, Inc., Minnetonka, MN 55343, submitted to CDRH an application for premarket approval of the UroLume™ Endourethral Prosthesis. The device is intended for use in men to relieve urinary obstruction secondary to recurrent benign bulbar urethral strictures less than 3 centimeters in length located distal to the external sphincter and proximal to the bulbar scrotal junction. The UroLume™ Endourethral Prosthesis is not intended as an initial treatment for bulbar urethral strictures nor for the treatment of strictures outside the bulbar urethra. The UroLume™ Endourethral Prosthesis is an alternative treatment for the patient in whom previous treatment methods (e.g., dilation, urethrotomy, or urethroplasty) have been unsuccessful (i.e., treatment was not effective initially in relieving stricture disease, or there has been recurrence of stricture formation necessitating further treatment).

On January 20, 1995, the Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On May 6, 1996, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before November 8, 1996, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: September 20, 1996.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 96–25877 Filed 10–8–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96M–0358]

EDAP Technomed Group (U.S.A.), Inc.; Premarket Approval of Prostatron™

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by the EDAP Technomed Group (U.S.A), Inc., Cambridge, MA, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the Prostatron™. After reviewing the recommendation of the Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of May 3, 1996, of the approval of the application.

DATES: Petitions for administrative review by November 8, 1996.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John H. Baxley, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2194.

SUPPLEMENTARY INFORMATION: On April 17, 1995, the EDAP Technomed Group

(U.S.A.), Inc., Cambridge, MA 02139, submitted to CDRH an application for premarket approval of the Prostatron™. The device is a transurethral microwave thermal therapy system and is indicated as a nonsurgical treatment alternative to transurethral resection of the prostate (TURP) for the treatment of symptomatic benign prostatic hyperplasia (BPH). The Prostatron™ is indicated for patients with prostatic lengths of 35 to 50 millimeters. It is intended that the Prostatron™ deliver a complete thermal therapy treatment during a single treatment session.

On October 20, 1995, the Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On May 3, 1996, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before November 8, 1996, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: September 20, 1996.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 96–25878 Filed 10–8–96; 8:45 am]

BILLING CODE 4160–01–F

International Conference on the Virological Safety of Plasma Derivatives; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA), Center for Biologics Evaluation and Research (CBER), is announcing a public meeting that will address the risks posed by blood-borne viruses that persist in human plasma-derived products. CBER is sponsoring the meeting with the National Heart, Lung, and Blood Institute of the National Institutes of Health, the Centers for Disease Control and Prevention, The World Health Organization, and the International Association of Biological Standards. The goals of the meeting include assessing the virological safety of currently available plasma-derived products and gathering information useful in the evaluation of such products.

DATES: The meeting will be held on November 20, 21, and 22, 1996, from 8:30 a.m. to 5 p.m. Preregistration is requested by November 8, 1996. Registration at the site will be done on a space-available basis on each day of the public meeting beginning at 8 a.m.

ADDRESSES: The public meeting will be held at the National Institutes of Health, Natcher Conference Center, Main Auditorium, Bldg. 45, 9000 Rockville Pike, Bethesda, MD.

FOR FURTHER INFORMATION CONTACT:

For information concerning the meeting: Thomas J. Lynch, Center for Biologics Evaluation and Research (HFM–340), Food and Drug Administration, 8800 Rockville Pike, rm. 311, Bethesda, MD 20892–001, 301–496–6890.

For information concerning registration and agenda for the meeting: Viral Safety '96, KRA Corp., 1010 Wayne Ave., Silver Spring, MD 20910, 301–495–1591. Fax registration to 301–443–9410, including name, title, firm name, address, and telephone number. There is no registration fee for this meeting, but advance registration is recommended because seating is limited to about 700.

SUPPLEMENTARY INFORMATION: FDA has the responsibility for helping to ensure that plasma derivatives pose as little risk as possible to those who depend on them. The safety of plasma-derived therapeutic proteins is also an important global public health issue. Recently, considerable progress has been made in developing improved methods for screening plasma derivatives for the presence of viruses. Advances made in detecting viruses have been accompanied by improvements in viral inactivation and removal procedures. Nevertheless, current risks of transmitting blood-borne viruses through the use of products derived from human plasma have not been fully eliminated, and there are concerns about future, unknown risks. The goal of this meeting is to exchange views and information regarding the present and future safety of these products. To achieve this goal interested members of the medical, research, industry, regulatory, and patient communities are invited to attend the meeting to hear an international group of experts present their experiences and recommendations concerning the virological safety of plasma derivatives. Topics to be covered include: Virology and epidemiology, testing for viral markers, developments in viral detection, techniques and validation of viral inactivation and removal, manufacturing practices and safeguards, validation of viral safety, nonenveloped viruses, transmissible spongiform encephalopathies, and surveillance and response. Information presented at this meeting will assist the sponsoring and participating public health agencies to evaluate the current virological safety of plasma derivatives and to determine what future action may be appropriate.

Dated: October 3, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–26040 Filed 10–8–96; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[HCFA–R–72]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Reinstatement, without change, of previously approved collection for which approval has expired; *Title of Information Collection:* Information Collection Requirements in 42 CFR 473.18 (a) and (b), 473.34 (a) and (b), 473.36 (a) and (b), and 473.42 (a), Peer Review Organization (PRO) Reconsideration and Appeals ; *Form No.:* HCFA–R–72; *Use:* These regulations contain procedures for PRO's to use in reconsideration of initial determinations. The information requirements contained in these regulations are on PROs to provide information to parties requesting a reconsideration review. These parties will use the information as guidelines for appeal rights in instances where issues are still in dispute; *Frequency:* On occasion; *Affected Public:* Business or other for profit; *Number of Respondents:* 53; *Total Annual Responses:* 15,670; *Total Annual Hours:* 3,578.

2. *Type of Information Collection Request:* Reinstatement, without change, of previously approved collection for which approval has expired; *Title of Information Collection:* Request for Enrollment in Supplementary Medical Insurance; *Form No.:* HCFA–4040; *Use:* The HCFA–4040 is used to establish entitlement to Supplementary Medical Insurance by Beneficiaries not eligible under Part A of Title XVIII or Title II of the Social Security Act. The HCFA–4040SP is the Spanish edition of this form; *Frequency:* One time only; *Affected Public:* Individuals and households, Federal government, State, local, or tribal governments; *Number of Respondents:* 10,000; *Total Annual Responses:* 10,000; *Total Annual Hours:* 2,500.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Request for Certification as a Rural Health Clinic, Rural Health Clinic Survey Report Form; *Form No.:* HCFA–29, 30; *Use:* The form HCFA–29 ''Request for Certification as a Rural Health Clinic'' is used by facilities to apply to participate in the Medicare program. The form HCFA–30 ''Rural Health Clinic Survey Report Form, is used by State survey agencies to record data needed to determine compliance with the Federal requirements; *Frequency:* Annually; *Affected Public:* State , local or tribal governments; *Number of Respondents:* 390; *Total Annual Responses:* 390; *Total Annual Hours:* 682.

4. *Type of Information Collection Request:* Reinstatement, without change, of previously approved collection for which approval has expired; *Title of Information Collection:* Quarterly Showing; *Form No.:* HCFA–R–41; *Use:* This form is used by State Medicaid agencies to list participating health care facilities and the dates the State agencies reviewed the facilities. The lists are required to assure the existence of an effective utilization (of services) control program, as required by law and regulation, to avoid a penalty; *Frequency:* Quarterly; *Affected Public:* State, local or tribal governments; *Number of Respondents:* 47; *Total Annual Responses:* 188; *Total Annual Hours:* 9,212.

5. *Type of Information Collection Request:* Reinstatement, without change, of previously approved collection for which approval has expired; *Title of Information Collection:* Quarterly Showing Validation Survey; *Form No.:* HCFA–9050; *Use:* Reporting entities may be required to submit lists of Medicaid beneficiaries residing in a select number of institutions. State Medicaid agencies may also be required to submit procedures for conducting inspection of care reviews and other documentation necessary to validate the Quarterly Showing reports. The listings are required to determine those patients for which the State is currently responsible for their care. This part of the operation to determine that states have an effective utilization control program; *Frequency:* Annually; *Affected Public:* State, local or tribal governments; *Number of Respondents:* 47; *Total Annual Responses:* 8; *Total Annual Hours:* 376.

6. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Business Proposal Formats for Utilization and Quality Control Peer Review Organizations (PROs); *Form No.:* HCFA–718–721; *Use:* Submission of proposal information by current PROs and other bidders, according to the business proposal instructions, will satisfy HCFA's need for consistent, and verifiable data with which to validate contract proposals; *Frequency:* Other (Tri-annually); *Affected Public:* Business or other for profit, not for profit institutions; *Number of Respondents:* 20; *Total Annual Responses:* 23; *Total Annual Hours:* 450.

To obtain copies of the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: October 2, 1996.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 96–25833 Filed 10–8–96; 8:45 am]

BILLING CODE 4120–03–P

Health Resources and Services Administration

Agency Information Collection Activities; Proposed Collection; Comment Request

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on

proposed data collection projects, the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans, call the HRSA Reports Clearance Officer on (301) 443–1129.

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.

Proposed Project

The National Health Service Corps (NHSC) Application Process (OMB No. 0915–0146)—Revision and Extension—The National Health Service Corps (NHSC) Scholarship Program was established to help alleviate the geographical and specialty maldistribution of physicians and other health practitioners in the United States. Under this program, health professions students are offered scholarships in return for service in a federally-designated Health Professional Shortage Area (HPSA).

In an effort to improve the procedures for selecting NHSC scholars, a revised application and a semi-structured interview were pilot tested in the spring of 1996. The revised selection process is designed to broaden the scope of the information available on applicants in order to improve the Agency's ability to identify those applicants with the greatest potential to fulfill the objectives of the Scholarship Program. The application form is being expanded, and the unstructured interview is being replaced by a semistructured interview conducted by a team of two interviewers who use a structured scoring procedure.

Approval will be requested to implement the new process in two phases; the new interview will be used in 1997 along with the current application, with the intent to implement the full process for the 1998 awards.

ESTIMATES OF ANNUALIZED HOUR BURDEN

Form name	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Application	3000	1	1.0	3000
Interview	900	1	1.67	1500

Estimated Total Annual Burden: 4500 hours. The interview burden includes 1 hour for travel time to the interview site.

Send comments to Patricia Royston, HRSA Reports Clearance Officer, Room 14–36, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: October 3, 1996.

J. Henry Montes,

Associate Administrator for Policy Coordination.

[FR Doc. 96–25913 Filed 10–8–96; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: November 1, 1996.

Time: 2:30 p.m.

Place: Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Michael D. Hirsch, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1000.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: November 13, 1996.

Time: 2 p.m.

Place: Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Rehana A. Chowdhury, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: November 14, 1996.

Time: 1:30 p.m.

Place: Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Phyllis D. Artis, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: November 21–November 22, 1996.

Time: 8:30 a.m.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Angela L. Redlingshafer, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1367.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: October 2, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–25862 Filed 10–8–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings:

Purpose/Agenda: To review and evaluate grant applications.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Dates of Meeting: October 25, 1996.

Time: 8:30 a.m. to 10:00 a.m.

Place of Meeting: Holiday Inn of Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Elsie D. Taylor, 6000 Executive Blvd, Suite 409, Bethesda, MD 20892–7003, 301–443–9787.

Purpose/Agenda: To review and evaluate grant applications.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Dates of Meeting: November 7, 1996.

Time: 8:00 a.m. to adjournment.

Place of Meeting: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Ronald Suddendorf, Ph.D., 6000 Executive Blvd. Suite 409, Bethesda, MD 20892–7003, 301–443–6106.

Purpose/Agenda: To review and evaluate grant applications.

Name of Committee: National Institute of Alcohol Abuse and Alcoholism Special Emphasis Panel.

Dates of Meeting: November 13, 1996.

Time: 8:30 a.m. to adjournment.

Place of Meeting: St. James Hotel, 950 24th Street, NW., Washington, DC 20037.

Contact Person: Thomas D. Sevy, M.S.W., 6000 Executive Blvd, Suite 409, Bethesda, MD 20892–7003, 301–443–6106.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273 Alcohol Research Programs; 93.891, Alcohol Research Center Grants; National Institutes of Health)

Dated: October 2, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–25864 Filed 10–8–96; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review Small Business Innovation Research.

Name of SEP: Behavioral and Neurosciences.

Date: November 1, 1996.

Time: 8:00 a.m.

Place: Holiday Inn—Chevy Chase, Chevy Chase, MD.

Contact Person: Dr. Jane Hu, Scientific Review Administrator, 6701 Rockledge Drive, Room 5168, Bethesda, Maryland 20892, (301) 435–1245.

Name of SEP: Microbiological and Immunological Sciences.

Date: November 13, 1996.

Time: 8:00 a.m.

Place: Embassy Suites Hotel, Chevy Chase, MD.

Contact Person: Dr. Sami Mayyasi, Scientific Review Administrator, 6701 Rockledge Drive, Room 4194, Bethesda, Maryland 20892, (301) 435–1216.

Name of SEP: Clinical Sciences.

Date: November 14, 1996.

Time: 8:30 a.m.

Place: Holiday Inn—Chevy Chase, Chevy Chase, MD.

Contact Person: Dr. Nancy Shinowara, Scientific Review Administrator, 6701 Rockledge Drive, Room 5216, Bethesda, Maryland 20892, (301) 435–1173.

Name of SEP: Biological and Physiological Sciences.

Date: November 18–19, 1996.

Time: 8:00 a.m.

Place: State Plaza Hotel, Washington, DC.

Contact Person: Dr. Anthony Carter, Scientific Review Administrator, 6701 Rockledge Drive, Room 5108, Bethesda, Maryland 20892, (301) 435–1167.

Purpose/Agenda: To review individual grant applications.

Name of SEP: Clinical Sciences.

Date: November 19, 1996.

Time: 8:00 a.m.

Place: Holiday Inn—Chevy Chase, Chevy Chase, MD.

Contact Person: Dr. Shirley Hilden, Scientific Review Administrator, 6701 Rockledge Drive, Room 4218, Bethesda, Maryland 20892, (301) 435–1198.

Name of SEP: Biological and Physiological Sciences.

Date: November 25, 1996.

Time: 2:00 p.m.

Place: NIH, Rockledge 2, Room 4152, Telephone Conference.

Contact Person: Dr. Marcelina Powers, Scientific Review Administrator, 6701 Rockledge Drive, Room 4152, Bethesda, Maryland 20892, (301) 435–1720.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 2, 1996.

Paul N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–25863 Filed 10–8–96; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4086–N–58]

Office of the Assistant Secretary for Housing-Federal Housing Commissioner; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: December 9, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing and Urban Development, 451 7th Street, SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Ivy Jackson, Telephone number (202) 708–4560 (this is not a toll-free number) for copies of available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) 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; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Initial Escrow Account Statement, Annual Escrow Account Statement.

OMB Control Number: 2502–0501.

Description of the need for the information and the proposed use: The Real Estate Settlement Procedures Act (RESPA) at 12 U.S.C. Section 2609(c) requires mortgage lenders to provide the borrower a statement describing the initial collection of escrow account monies at settlement and to provide an annual account history and a projection of account deposits and disbursements for the ensuing 12 months.

Agency form numbers: N/A.

Members of affected public: Individuals and households; Business or other for-profit.

An estimation of the total numbers of hours needed to prepare the information collection is 5,308,417, number of respondents is 39,550,000 frequency response is annually and the collection of information is estimated to average 6 minutes per response.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.C.S. Chapter 35, as amended.

Dated: October 1, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 96–25828 Filed 10–8–96; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–820639

Applicant: Oakhill Center for Rare and Endangered Species, Inc., Luther, OK.

The applicant requests a permit to import one pair of captive-born Brazilian ocelot (*Leopardus pardalis mitis*) from Sao Paulo Zoo, Sao Paulo, Brazil for the purpose of enhancement of the species through captive propagation.

PRT–818955

Applicant: Brookfield Zoo, Brookfield, IL.

The applicant has requested a permit to export four female, captive-born Galapagos tortoise (*Geochelone elephantopus porteri*) for the purpose of enhancement of survival of the species through conservation education.

PRT–820605

Applicant: Jay Wagner, Columbus, OH.

The applicant requests a permit to purchase in interstate commerce two female captive-born Jamaican boa (*Epicrates subflavus*) from Brad Lock, Florida for the purpose of enhancement of the species through captive propagation.

PRT–819988

Applicant: University of Nevada, Reno, NV.

The applicant requests a permit to import samples taken from wild populations of Mantled Howler monkeys (*Alouatta palliata*) and Black Howler monkeys (*Alouatta pigra*) for the purpose of enhancement of the survival of the species through scientific research.

PRT–696911

Applicant: Kay Rosaire-Mowrey, Sarasota, FL.

The applicant requests a permit to reexport and reimport captive-born Bengal tigers (*Panthera tigris tigris*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities by the applicant over a three year period.

PRT–820504

Applicant: Howard Johnson, Bethel Park, PA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–819940

Applicant: Johnny's Selected Seeds, Albion, Maine.

The applicant requests a permit to export, and sell in interstate and foreign commerce artificially propagated seeds of Tennessee purple coneflower (*Echinacea tennesseensis*) for the purposes of enhancement of the propagation of the species. This notification covers activities conducted by the applicant for a five year period.

PRT–812795

Applicant: The Institute of Wildlife and Environmental Toxicology, Clemson University, Pendleton, SC.

The applicant requests an amendment to their permit to include the import of Morelet's crocodile (*Crocodylus moreletii*) blood samples, fat samples, scutes, and stomach contents, from living specimens, and whole carcasses, organs, and tissue samples of specimens found dead, and non-viable eggs collected in Belize for scientific research.

PRT–820610

Applicant: James Boulton, Mundelein, IL.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–820662

Applicant: Norristown Zoological Society, Norristown, PA.

The applicant requests a permit to purchase in interstate commerce a pair of captive born jaguars (*Panthera onca*), the female is from Marion Nature Center, Bellview, Florida and the male is from Catoctin Mountain Zoological Society, Thurmount, Maryland for the purpose of enhancement of the survival of the species through propagation.

PRT–819731

Applicant: Tropical Bird Park, Carmel, NY.

The applicant requests a permit to export a pair of captive-hatched bali mynah (*Leucospar rothschildi*) to their facility in Costa Rica for enhancement of the species through conservation education and propagation.

PRT–820758

Applicant: Siegfried and Roy Enterprises, Inc., Las Vegas, NV.

The applicant requests a permit to return two female, captive born tigers (*Panthera tigris*) to SenneGroBwild, Safariland, Stukenbrock, Germany, for the enhancement of the species through conservation education and propagation.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of

Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: October 4, 1996.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 96–25963 Filed 10–8–96; 8:45 am]

BILLING CODE 4310–55–P–M

Issuance of Permit for Marine Mammals

On August 9, 1996, a notice was published in the Federal Register, Vol. 61, No. 155, Page 41649, that an application had been filed with the Fish and Wildlife Service by the California Department of Fish and Game, Office of Oil Spill Prevention and Response for renewal of a permit (PRT–782423) to take, sample, tag, and release up to 30 sea otters for scientific research.

Notice is hereby given that on September 25, 1996, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203. Phone (703) 358–2104 or Fax (703) 358–2281.

Dated: October 4, 1996.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 96–25962 Filed 10–8–96; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Land Management

[AK–910–0777–51]

Alaska Resource Advisory Council Meeting

October 2, 1996.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Alaska Resource Advisory Council Meeting.

SUMMARY: The Alaska Resource Advisory Council will conduct an open meeting Wednesday, November 13, 1996, from 9 a.m. to 5 p.m. and Thursday, November 14, 1996, from 8:30 a.m. until 4:30 p.m. in Anchorage, Alaska. The purpose of the meeting is to discuss mining issues on the Fortymile Wild and Scenic River. The meeting will be held in the Denali Room on the 4th floor of the Anchorage Federal Building. Public comments regarding mining issues in the Fortymile will be taken from 3–4 p.m. Wednesday, November 13. Written comments may be submitted at the meeting.

ADDRESSES: Inquiries about the meeting should be sent to External Affairs, Bureau of Land Management, 222 W. 7th Ave., #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Teresa McPherson at (907) 271–5555.

Dated: October 4, 1996.

Tom Allen,

State Director.

[FR Doc. 96–25876 Filed 10–8–96; 8:45 am]

BILLING CODE 4310–JA–P–M

National Park Service

Notice of Correction of a Notice of Availability of a Plan of Operations and Environmental Assessment for Continuing Operation of Four Oil Wells and Associated Production Equipment by Kriti Exploration and Production Company; Big Thicket National Preserve, Jasper County, TX

Notice is hereby given that the National Park Service is correcting a Notice of Availability published in the Federal Register on July 23, 1996 (61 FR 38214), of a Plan of Operations and Environmental Assessment for Continuing Operation of Four Oil Wells and Associated Production Equipment by Kriti Exploration and Production Company located within Big Thicket National Preserve, Jasper County, Texas.

The National Park Service has not yet prepared an Environmental Assessment for the Plan of Operations. When the Environmental Assessment has been prepared, the National Park Service will republish a Notice of Availability of the Plan of Operations and Environmental Assessment, making both documents available for concurrent review for a period of 30 days from the publication date of the notice, in accordance with Section 9.52(b) of Title 36 of the Code of Federal Regulations, Part 9, Sub- part B.

Dated: October 3, 1996.

Richard R. Peterson,

Superintendent, Big Thicket National Preserve.

[FR Doc. 96–25895 Filed 10–8–96; 8:45 am]

BILLING CODE 4310–70–M

Santa Fe National Historic Trail Advisory Council; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, Public Law 92–463, that a meeting of the Santa Fe National Historical Trail Advisory Council will be held November 15, 1996, at 8:30 a.m., in the DoubleTree Hotel, 3347 Cerrillos Road, Santa Fe, New Mexico.

The Santa Fe National Historic Trail Advisory Council was established pursuant to Public Law 90–543 establishing the Santa Fe National Historic Trail to advise the National Park Service on such issues as preservation of trail routes and features, public use, standards for posting and maintaining trail markers, as well as administrative matters.

The matters to be discussed include:

—Review of interpretive planning matters.
—Cultural resources management.
—Fundraising proposals.
—Status of certification projects and agreements with cooperators.
—Historical research projects.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with David Gaines, Superintendent. Persons wishing further information concerning this meeting, or who wish to submit written statements may contact David Gaines, Superintendent, Long Distance Trails Group Office-Santa Fe, National Park Service, P.O. Box 728, Santa Fe, New Mexico 07504–0728, telephone 505/988–6888. Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of the Superintendent, located in Room 205, Pinon Building, 1220 South St. Francis Drive, Santa Fe, New Mexico.

Dated: October 3, 1996.

David M. Gaines,

Superintendent.

[FR Doc. 96–25896 Filed 10–8–96; 8:45 am]

BILLING CODE 4310–70–M

Bureau of Reclamation

Interim South Delta Program, Central Valley, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public workshops and public hearings on draft environmental

impact statement/draft environmental impact report.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 and the California Environmental Quality Act, the Bureau of Reclamation (Reclamation) and the California Department of Water Resources (DWR) have prepared a draft environmental impact report/draft environmental impact statement (DEIR/DEIS) for the Interim South Delta Program. The DEIR/DEIS was made available to the public on about August 19, 1996. Reclamation and DWR have scheduled two public workshops to present material on the alternatives and to answer questions. Two public hearings will also be held to receive comments from interested organizations and individuals on the environmental impacts of the project. In its role as a cooperating agency, a representative of the U.S. Army Corps of Engineers, Sacramento District, will be present at all public workshops and hearings.

DATES: The public workshops will be held at the following locations: November 7, 1996, 7:00 p.m., Tracy Inn, 30 West 11th Street, Tracy, CA; November 8, 1996, 1:30 p.m., Resources Building Auditorium, 1416 Ninth Street, Sacramento, CA.

The public hearings will be held at the following locations: November 13, 1996, 7:00 p.m., Tracy Inn, 30 West 11th Street, Tracy, CA; November 14, 1996, 1:30 p.m., Resources Building Auditorium, 1416 Ninth Street, Sacramento, CA.

ADDRESSES: Written comments should be addressed to Mr. Stephen Roberts, Department of Water Resources, 1416 Ninth Street, Room 215–20A, Sacramento, CA 95814; Telephone: (916) 653–2118.

FOR FURTHER INFORMATION CONTACT: Mr. Alan R. Candlish, Study Manager, CC–102, Bureau of Reclamation, 7794 Folsom Dam Road, Folsom CA 95630; telephone: (916) 989–7255; or Mr. Stephen Roberts.

SUPPLEMENTARY INFORMATION:

Requests To Testify

Those wishing to request in advance a time to make comments at the hearings prior to the hearing dates should write or call Mr. Alan R. Candlish. Requests should indicate at which session the speaker wishes to appear. Speakers will be called upon to present their comments in the order in which their requests were received by Reclamation. Requests to speak may also be made at each session and will be called after the advance requests. Oral comments will be limited to 5 minutes per individual. Written comments from those unable to attend or those wishing to supplement their oral presentation at the hearing will be included in the DEIR/DEIS public comment period which will close on December 6, 1996. All written comments should be addressed to Mr. Stephen Roberts.

Note: If special assistance is required, contact Ms. Marian Echeverria at (916) 979–2438. Please notify Ms. Echeverria as far in advance of the hearings as possible and not later than a week before each workshop or hearing, to enable securing the needed services. If a request cannot be honored, the requester will be notified. A telephone device for the hearing impaired (TDD) is available at (916) 979–2310.

Dated: September 30, 1996.

Roger K. Patterson,

Regional Director.

[FR Doc. 96–25875 Filed 10–8–96; 8:45 am]

BILLING CODE 4310–94–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–380]

Notice of Commission Determination Not To Review an Initial Determination Terminating the Investigation as to Respondent Yarbrough Equipment Rental and Sales Inc. on the Basis of a Consent Order; Issuance of Consent Order

In the Matter of Certain Agricultural Tractors Under 50 Power Take-off Horsepower

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission had determined not to review the initial determination (ID) of the presiding administrative law judge (ALJ) in the above-captioned investigation granting complainants' and respondent Yarbrough Equipment Rental and Sales Inc.'s (''Yarbrough'') joint motion to terminate the investigation as to Yarbrough on the basis of a consent order.

FOR FURTHER INFORMATION CONTACT: Shara L. Aranoff, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436, telephone 202–205–3090.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of unfair acts in violation of section 337 in the importation and sale of certain agricultural tractors under 50 PTO horsepower, on February 14, 1996. On August 2, 1996, complainants Kubota Tractor Corporation, Kubota Manufacturing of America Corporation, and Kubota Corporation, and respondent Yarbrough jointly moved for termination of the investigation as to Yarbrough based on a consent order stipulation and proposed consent order. The parties' agreement provides that (1) Yarbrough admits that complainants' four registered trademarks at issue in this investigation are valid, subsisting, and enforceable and agrees not to challenge the validity of the marks in any proceeding to enforce the consent order; (2) Yarbrough will cease and desist from exporting, importing, selling, distributing or otherwise transferring the tractors that are the subject of this investigation; (3) Yarbrough waives all right to seek judicial review or otherwise challenge the validity of the consent order; (4) the consent order shall not apply to the extent that any of complainants' marks has expired or been found invalid or unenforceable, provided such finding is final and nonreviewable; and (5) the consent order is subject to enforcement, modification and revocation in accordance with Commission rules. On August 26, 1996, the Commission investigative attorney (IA) filed a response supporting the motion to terminate on the grounds that it satisfied all Commission procedural and substantive requirements, that settlements are generally in the public interest, and that the IA has no basis to conclude that termination of the investigation with respect to Yarbrough would be contrary to the public interest. On September 11, 1996, ALJ issued an ID (Order No. 54) granting the joint motion. No petitions for review of the ID were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and section 210.42 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.42).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E. Street, S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810.

By order of the Commission.

Issued: September 30, 1996.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–25947 Filed 10–8–96; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–738 (Final)]

Foam Extruded PVC and Polystyrene Framing Stock From the United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Termination of investigation.

SUMMARY: On September 27,1996, the Commission received a letter from counsel for petitioner in the subject investigation (Marley Mouldings, Inc., Marion, VA) withdrawing its petition. Accordingly, pursuant to section 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR § 207.40(a)), the subject investigation concerning foam extruded PVC and polystyrene framing stock from the United Kingdom (Investigation No. 731–TA–738 (Final)) is terminated. In addition, the Commission unanimously has determined to cancel its public hearing in this investigation, previously scheduled for October 1, 1996, and determined that no earlier announcement of this cancellation was possible.

EFFECTIVE DATE: September 30, 1996.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov)

Authority: This investigation is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to sections 201.35 and 207.40 of the Commission's rules (19 CFR § 201.35 and § 207.40).

By order of the Commission.

Issued: October 1, 1996.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–25948 Filed 10–8–96; 8:45 am]

BILLING CODE 7020–02–P–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (NIJ) No. 1102]

RIN 1121–ZA51

National Institute of Justice; National Institute of Justice ''Solicitation for the Forensic DNA Laboratory Improvement Program''

AGENCY: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice.

ACTION: Notice of solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice's ''Solicitation for the Forensic DNA Laboratory Improvement Program.''

ADDRESSES: National Institute of Justice, 633 Indiana Avenue, NW., Washington, D.C. 20531.

DATES: The deadline for receipt of proposals is close of business on December 20, 1996.

FOR FURTHER INFORMATION CONTACT: Dr. Richard M. Rau, National Institute of Justice, at (202) 307–0648.

SUPPLEMENTARY INFORMATION: The following supplementary information is provided:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201–03, as amended, 42 U.S.C. 3721–23 (1988).

Background

The purpose of this solicitation is to provide funding to State and local governments to develop or improve the capability to analyze deoxyribonucleic acid (DNA) in State and local forensic laboratories. This program is authorized by the DNA Identification Act of 1994 (Public Law 103–322).

This solicitation is for the second year of the 5-year grant program authorized by the Act.

Interested persons should call the National Criminal Justice Reference Service (NCJRS) at 1–800– 851–3420 to obtain a copy of ''Solicitation for the Forensic DNA Laboratory Improvement Program'' (refer to document no. SL000166). The solicitation is available electronically via the NCJRS Bulletin Board, which can be assessed via Internet. Telnet to ncjrsbbs.ncjrs.org, or gopher to ncjrs.org:71. For World Wide Web access, connect to the NCJRS Justice Information Center at http://www.ncjrs.org, then click on the ''Justice Grants' button. Those without Internet access can dial the NCJRS Bulletin Board via modem: dial 301–738–8895. Set modem at 9600 baud, 8–N–1.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 96–25920 Filed 10–8–96; 8:45 am]

BILLING CODE 4410–18–P–M

[OJP (NIJ) No. 1101]

RIN 1121–ZA50

National Institute of Justice; National Institute of Justice ''Solicitation for Proposals to Evaluate 'Breaking the Cycle' ''

AGENCY: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice.

ACTION: Notice of solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice's ''Solicitation for Proposals to Evaluate 'Breaking the Cycle' ''.

ADDRESSES: National Institute of Justice, 633 Indiana Avenue NW., Washington, DC 20531.

DATES: The deadline for receipt of proposals is close of business on Thursday, November 7, 1996. Postmarked applications received after this date are not acceptable.

FOR FURTHER INFORMATION CONTACT: Jack Riley, National Institute of Justice, at (202) 616–9030.

SUPPLEMENTARY INFORMATION: The following supplementary information is provided:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201–03, as amended, 42 U.S.C. 3721–23 (1988).

Background

The Breaking the Cycle Demonstration Project has been developed to test whether a comprehensive assessment of all offenders entering the criminal justice system in a locality followed by a fully integrated program of intervention for all drug-involved offenders can reduce future drug use and its resulting consequences. The Breaking the Cycle demonstration was developed by a consortium of federal agencies led by the National Institute of Justice and the Office of National Drug Control Policy, with support from the Bureau of Justice Assistance, the National Institute of Drug Abuse, and the Center for Substance Abuse Treatment.

The purpose of this solicitation is to provide funding for an evaluation of the

initial Breaking the Cycle Demonstration Project. It is anticipated that up to $600,000 will be available for the evaluation, with up to $300,000 made available in fiscal year 1997 and up to $300,000 in fiscal year 1998.

Interested persons should call Jack Riley, National Institute of Justice, at (202) 616–9030 to obtain a copy of ''Solicitation for Proposals to Evaluate 'Breaking the Cycle' ''. The solicitation is available electronically via the NCJRS Bulletin Board, which can be accessed via Internet. Telnet to ncjrsbbs.ncjrs.org, or gopher to ncjrs.org:71. For World Wide Web access, connect to the NCJRS Justice Information Center at http://www.ncjrs.org. Those without Internet access can dial the NCJRS Bulletin Board via modem: dial 301–738–8895. Set modem at 9600 baud, 8–N–1.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 96–25919 Filed 10–8–96; 8:45 am]

BILLING CODE 4410–18–P–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Biomolecular Processes; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Biomolecular Processes (Panel B) 5138.

Date and Time: Wednesday, October 23 through Friday, October 25, 1996 at 8:30 a.m. to 5:00 p.m.

Place: Room 310, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Charles Liarakos, Program Director for Biochemistry of Gene Expression, Division of Molecular and Cellular Biosciences, Room 655, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 306–1441.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To reward and evaluate research proposals submitted to the Biochemistry of Gene Expression Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 3, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–25927 Filed 10–8–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Cross Disciplinary Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel for CISE Instrumentation Grants for Research in Computer and Information Sciences and Engineering (1193).

Date and time: October 29, 1996; 8:30 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1150, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person(s): Rita Rodriguez, Program Director CISE/CDA, Room 1160, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1980.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate CISE Instrumentation Grants for Research in Computer and Information Sciences and Engineering.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 3, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–25930 Filed 10–8–96; 8:45 am]

BILLING CODE 7555–01–M

President's Committee on the National Medal of Science; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Date and Time: Monday, October 28, 1996, 8:30 a.m.–3:00 p.m.

Place: Room 1235, National Science Foundation, 4201 Wilson Blvd, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Mrs. Susan E. Fannoney, Program Manager, Room 1220, National Science Foundation, 4201 Wilson Blvd, Arlington, VA 22230. Telephone: 703/306–1096.

Purpose of Meeting: To provide advice and recommendations to the President in the selection of the National Medal of Science recipients.

Agenda: To review and evaluate nominations as part of the selection process for awards.

Reason for Closing: The nominations being reviewed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are exempt under 5 U.S.C. 552b(c)(6) of the Government in the Sunshine Act.

Dated: October 3, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–25929 Filed 10–8–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Undergraduate Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Undergraduate Education (1214)

Date and Time: October 30 (7:30 p.m. to 9 p.m.) and October 31–November 2, 1996 (8:30 a.m. to 5:00 p.m.)

Place: Room 835, NSF, 4201 Wilson Boulevard, Arlington, VA

Type of Meeting: Closed

Contact Person: Dr. Terry Woodin, Program Director, Division of Undergraduate Education (DUE), Room 835, National Science Foundation, 4201 Wilson Blvd. Arlington, VA 22230, Tel: (703) 306–1666

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the NSF Collaborative for Excellence in Teacher Program.

Reason for Closing: The proposals being reviewed includes information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

Dated: October 3, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–25928 Filed 10–8–96; 8:45 am]

BILLING CODE 7555–01–M

Sunshine Act Meeting

AGENCY HOLDING MEETING: National Science Foundation; National Science Board.

DATE AND TIME: October 17, 1996, 3:30 p.m., Closed Session; October 17, 1996, 4:00 p.m., Open Session.

PLACE: National Science Foundation, 4201 Wilson Boulevard, Room 1235, Arlington, Virginia 22230.

MATTERS TO BE CONSIDERED:

Thursday, October 17, 1996

Closed Session (3:30 p.m.–4:00 p.m.)

—Personnel
—Minutes, August 1996 Meetings
—Awards & Agreements
—NSF Budget

Thursday, October 17, 1996

Open Session (4:00 p.m.–5:30 p.m.)

—Minutes, August 1996 Meetings
—Closed Session Agenda Items—November 1996 Meeting
—Chairman's Report
—Director's Report
—Reports from Committees
—Presentation: Distributed Intelligence and the Use of Computers in Schools
—Other Business
—Adjourn

Marta Cehelsky,

Executive Officer.

[FR Doc. 96–26037 Filed 10–7–96; 9:52 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–483]

Union Electric Company; Notice of Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by Union Electric Company, (the licensee) for an amendment to Facility Operating License No. NPF–30 issued to the licensee for operation of the Callaway Plant, Unit No. 1, located in Callaway County, Missouri. Notice of Consideration of Issuance of this amendment was published in the Federal Register on December 21, 1994 (59 FR 65824).

The purpose of the licensee's amendment request was to revise the following Technical Specifications: (1) Table 3.7–1 that would limit the maximum allowable power levels with inoperable main steam line safety valves, (2) Table 3.7–2 that would specify that the lift setting tolerance for the main steam safety valves is +3/−1% as-found and ±1% as-left, (3) Tables 2.2–1 and 3.3–2 that would reduce the sensor error and the response time for the pressurizer pressure high trip, and (4) Bases 3/4.7.1 that would reflect the plant uprates and the switch to V5 fuel.

The NRC staff has advised the licensee that the proposed amendment is denied since the licensee has failed to respond to the Commission's request for information to support the application.

The licensee was notified of the Commission's denial of the proposed changes by letter dated October 3, 1996.

By November 8, 1996, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C., 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C., 20555–0001, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N. Street, N.W., Washington, D.C., 20037, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated September 12, 1994, and (2) the Commission's letter to the licensee dated October 3, 1996.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C., 20555–0001, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 3rd day of October 1996.

For the Nuclear Regulatory Commission.

Kristine M. Thomas,

Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–25899 Filed 10–8–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–317 and 50–318]

Baltimore Gas and Electric Company: Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations for Facility Operating License Nos. DPR–53 and DPR–69, issued to Baltimore Gas and Electric Company (the licensee), for operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, located in Calvert County, Maryland.

Environmental Assessment

Identification of Proposed Action

The proposed action would exempt the licensee from the requirements of 10 CFR 70.24, which requires a monitoring system that will energize clearly audible alarms if accidental criticality occurs in each area in which special nuclear material is handled, used, or stored. The proposed action would also exempt the licensee from the requirements of 10 CFR 70.24(a)(3) to maintain emergency procedures for each area in which this licensed special nuclear material is handled, used, or stored to ensure that all personnel withdraw to an area of safety upon the sounding of the alarm and to conduct drills and designate responsible individuals for such emergency procedures.

The proposed action is in accordance with the licensee's application for exemption dated August 19, 1996.

The Need for the Proposed Action

Power reactor license applicants are evaluated for the safe handling, use, and storage of special nuclear materials. The proposed exemption from criticality accident requirements is based on the original design for radiation monitoring at Calvert Cliffs. Exemptions from the requirements of 10 CFR 70.24(a) ''Criticality Accident Requirements'' were granted in the Special Nuclear Material (SNM) licenses for each unit as part of the 10 CFR Part 70 license. However, with the issuance of the Part 50 license this exemption expired because it was inadvertently omitted in that license. Therefore, the exemption is needed to clearly define the design of the plant as evaluated and approved for licensing.

Environmental Impacts of the Proposed Action

The NRC staff has completed its evaluation of the proposed action and

concludes that there is no significant environmental impact if the exemption is granted. Inadvertent or accidental criticality will be precluded through compliance with the Calvert Cliffs Technical Specifications, the geometric spacing of fuel assemblies in the new fuel storage facility and spent fuel storage pool, and administrative controls imposed on fuel handling procedures.

Inadvertent or accidental criticality in the reactor vessel is prevented through compliance with the facility Technical Specifications, including reactivity requirements (e.g., shutdown margin limits and control rod movement limits), instrumentation requirements (e.g., power and radiation monitors), and control on refueling operations (e.g., refueling boron concentration and source range monitor requirements). In addition, the operators' attention is directed toward instruments monitoring behavior of the nuclear fuel in the reactor, assuring that the facility is operated in a manner that precludes inadvertent criticality.

Special nuclear material, as nuclear fuel, is stored in the spent fuel pool, the new fuel storage racks, and the Independent Spent Fuel Storage Installation. The spent fuel pool is used to store irradiated fuel under water after its discharge from the reactor, and new fuel prior to loading into the reactor. The Independent Spent Fuel Storage Installation utilizes dry canisters to store spent fuel. Dry fuel storage facilities are specifically excluded from criticality monitoring in accordance with 10 CFR 72.124(c).

The spent fuel pool is designed to store the fuel in a geometric array using a solid neutron absorber that precludes criticality. The effective neutron multiplication factor, K_{eff} is maintained less than or equal to 0.95 by the solid neutron absorber. Although soluble boron is maintained in the spent fuel pool, no credit is taken for it in determining K_{eff}.

The new fuel storage racks may be used to receive and store new fuel in a dry condition upon arrival on site and prior to loading in the reactor or spent fuel pool. The maximum enrichment of 5.0 wt% U-235 for the new fuel assemblies results in a maximum effective multiplication factor of 0.89 at a water density of 1.0 gm/cc (full flood), and a multiplication factor of less than 0.89 for aqueous foam.

Nuclear fuel is moved between the new fuel storage racks, the reactor vessel, the refueling pool, and the spent fuel pool to accommodate refueling operations. In addition, fuel is moved into the facility and within the reactor vessel, or within the spent fuel pool. In all cases, fuel movements are procedurally controlled and designed to preclude conditions involving criticality concerns. In addition, the Technical Specifications also preclude certain movements over the spent fuel pool to prevent an inadvertent criticality. Previous accident analyses have demonstrated that a fuel handling accident (i.e., a dropped fuel assembly) will not create conditions which could result in inadvertent criticality. Additionally, the Emergency Response Plan contains provisions for coping with unusual events such as a dropped fuel assembly.

In summary, exemptions from the requirements of 10 CFR Part 70, Section 70.24 approved by the NRC in connection with the SNM licenses for Calvert Cliffs Unit Nos. 1 and 2 were based upon NRC's finding that the inherent features associated with the storage and inspection of unirradiated fuel established good cause for granting the exemption and that granting such a exemption at this time will not endanger public life or property or the common defense and security and is otherwise in the public interest. The training provided to all personnel involved in fuel handling operations, the administrative controls, the Technical Specifications on new and spent fuel handling and storage, and the design of the new and spent fuel storage racks in place preclude inadvertent or accidental criticality. Since the facilities, storage, and inspection and procedures currently in place are consistent with those in place at the time the exemptions were granted in connection with the SNM licenses, an exemption from 10 CFR 70.24 is appropriate.

The proposed exemption will not affect radiological plant effuents nor cause any significant occupational exposures. Only a small amount, if any, of radioactive waste is generated during the receipt and handling of new fuel (e.g., smear papers or contaminated packaging material). The amount of waste would not be changed by the exemption.

With regard to potential nonradiological impacts, the proposed exemption involves systems located within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded that there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative would be to deny the requested exemption. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement related to the operation of Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, dated April 1973.

Agencies and Persons Consulted

In accordance with its stated policy, on September 18, 1996, the staff consulted with the Maryland State Official, Mr. Richard I. McLean of the Maryland Department of Natural Resources, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated August 19, 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 Calvert County Library, Prince Frederick, Maryland 20678.

Dated at Rockville, Maryland, this 3rd day of October 1996.

For the Nuclear Regulatory Commission.

Alexander W. Dromerick,

Senior Project Manager, Project Directorate I–1, Division of Reactor Projects–I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 96–25903 Filed 10–8–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–313 and 50–368]

Entergy Operations, Inc., Arkansas Nuclear One, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–51 and NPF–6, issued to Entergy Operations, Inc., (the licensee), for operation of the Arkansas Nuclear One, Units 1 and 2, located in Pope County, Arkansas.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise Facility Operating License Nos. DPR–51 and NPR–6 to reflect the name change from Arkansas Power & Light Company to Entergy Arkansas, Inc.

The proposed action is in accordance with the licensee's application for amendment dated May 9, 1996.

The Need for the Proposed Action

The proposed action is to correct the name in the license to reflect the change which occurred on April 22, 1996. The name change was made by the licensee to improve customer identification by establishing the name Entergy in the region that it serves.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and changes to the license. We agree with the licensee that the name change will not impact the existing ownership of Arkansas Nuclear One (ANO) or the existing entitlement to power and will not alter the existing antitrust license conditions applicable to Arkansas Power & Light Company (AP&L) or AP&L's ability to comply with these conditions or with any of its other obligations or responsibilities. As stated by the licensee, ''The corporate existence continues uninterrupted and all legal characteristics remain the same. Thus, there is no change in the state of incorporation, registered agent, registered office, directors, officers, rights or liabilities of the company, nor is there a change in the function of the Company or the way in which it does business. AP&L's financial responsibility for ANO and its sources of funds to support the facility will remain the same.'' Therefore, the change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Arkansas Nuclear One, Units 1 and 2.

Agencies and Persons Consulted

In accordance with its stated policy, on September 4, 1996, the staff consulted with Mr. Bernie Bevell, Acting Director, Division of Radiation Control and Emergency Management, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated May 9, 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 Tomlinson Library, Arkansas Tech University, Russellville, AR 72801.

Dated at Rockville, Maryland, this 3rd day of October, 1996.

For the Nuclear Regulatory Commission.

Thomas W. Alexion,

Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–25900 Filed 10–8–96; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards Joint Meeting of the ACRS Subcommittees on Materials and Metallurgy and on Severe Accidents; Notice of Meeting

The ACRS Subcommittees on Materials and Metallurgy and on Severe Accidents will hold a joint meeting on October 22, 1996, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Tuesday, October 22, 1996—8:30 a.m. until the conclusion of business.*

The Subcommittees will review the validity of the technical approach used in developing the proposed risk-informed, performance-based rule, regulatory guide, and industry guidance document associated with steam generator tube integrity. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittees, their consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff and the Nuclear Energy Institute, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting

has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Noel F. Dudley (telephone 301/415–6888) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: October 4, 1996.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 96–25905 Filed 10–8–96; 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 September 16, 1996, through September 27, 1996. The last biweekly notice was published on September 25, 1996 (61 FR 50338).

Notice Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the 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 November 8, 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.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: September 10, 1996

Description of amendments request: The proposed amendment would extend the Engineered Safety Features Actuation System (ESFAS) automatic actuation logic channel functional test surveillance interval from monthly to quarterly. The amendment request is based on analysis documented in Combustion Engineering Owners Group (CEOG) Topical Reports CEN-327 (Reference a), CEN 327, Supplement 1 (Reference b), and CEN-403, Revision 1-A, (Reference c). We have confirmed that the information presented in CEN-327 and CEN-403 is applicable to Calvert Cliffs, and agree with the methodology used to develop the topical reports. In a related matter, the licensee, also requests that the surveillance test interval for the containment sump isolation valves be extended from monthly to quarterly.

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. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Reactor Protective System and the Engineered Safety Features Actuation System (ESFAS) provide the actuation signals to safety equipment necessary to mitigate design basis accidents and transients. The proposed change would increase the surveillance test interval from monthly to quarterly for the ESFAS automatic actuation logic channel functional tests and associated actuation relays. The proposed change will also extend the containment sump isolation valve automatic opening verification surveillance interval from monthly to quarterly. The ESFAS instruments and containment sump isolation valves are not initiators in any previously evaluated accidents. Therefore, the proposed change does not involve an increase in the probability of an accident previously evaluated.

The ESFAS automatic actuation logic circuitry and actuation relays are essentially digital devices, which are not subject to time-related instrument drift. Therefore, a plant-specific instrument drift analysis for these components is not required. However, in support of Calvert Cliffs License Amendment Request, dated May 27, 1994, a plant-specific setpoint drift analysis for each sensor loop demonstrated that the observed changes in instrument uncertainties for the extended surveillance test interval did not exceed the 30-day setpoint assumptions. This provides confidence that the 90-day test interval will not impact the ability to detect and monitor system degradation. A review of previous containment sump isolation valve surveillance test procedures revealed no valve or valve operator failures. Additionally, single failure criteria continues to be satisfied by two redundant and independent valves on each unit. Therefore, the proposed changes will not change the ability of the ESFAS instrumentation or associated engineered safety features equipment to respond to and mitigate the consequences of any previously evaluated accident.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

The proposed extended surveillance test interval for the ESFAS instruments, actuation relays, and containment sump isolation valve automatic opening verification does not involve any changes in equipment or the function of these instruments. The proposed change does not represent a change in the configuration or operation of the plant. The ESFAS setpoints will not be affected since the ESFAS automatic actuation logic circuitry and actuation relays are not subject to time-related instrument drift. Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The proposed change will not affect the functions of the ESFAS instruments or associated equipment. Topical Reports CEN-327, ''RPS/ESFAS Extended Test Interval Evaluation,'' and CEN-327, Supplement 1, quantified the corresponding changes in core

melt frequency for the representative fault tree models that were developed for Calvert Cliffs. Additionally, the ESFAS actuation relay failure data presented in CEN-403, Revision 1-A, ''ESFAS Subgroup Relay Test Interval Extension,'' justifies extending the test interval for these relays. The proposed change has two principal effects with opposing impacts on core melt frequency. The first impact is a slight increase in core melt frequency that results from the increased possibility of an undetected instrumentation failure due to the extended surveillance interval. This assumed unavailability results from less frequent testing. The undetected ESFAS failure represents the potential for the failure of the appropriate engineered safety features to actuate when required. The opposing impact on core melt risk is the corresponding reduction in core melt frequency that would result due to the reduced exposure of the plant to test-induced transients. Topical Report CEN-327 determined that the two changes are nearly equal, and the net result is no distinguishable effect on plant safety. The NRC issued a Safety Evaluation Report which found that the above evaluations were acceptable for justifying the extensions in the surveillance test intervals for the ESFAS automatic actuation logic channel functional tests from 30 days to 90 days. In addition to the evaluation of risk given in Topical Report CEN-327, we have evaluated the plant specific risk associated with these proposed changes and concluded that changing the surveillance intervals from monthly to quarterly results in a net decrease in the annual core melt frequency.

The ESFAS setpoints will not be changed since ESFAS automatic actuation logic circuitry and actuation relays are not subject to time-related instrument drift. The conclusions of the accident analyses in the Calvert Cliffs Updated Final Safety Analysis Report remain valid and the safety limits continue to be met.

Extending the containment sump isolation valve automatic opening surveillance interval from monthly to quarterly will not significantly reduce the margin of safety. Both Units 1 and 2 are provided with two containment sump isolation valves, which satisfy single failure criteria. Historical review of surveillance test procedures and Nuclear Plant Reliability Data System data revealed no failures of these valves or associated valve operators. We have also evaluated the plant specific risk associated with this proposed change to the surveillance interval and conclude that the risk is acceptable.

Based on the generic and plant specific risk evaluations and the demonstrated low failure rate of the components, we conclude that these proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Alexander W. Dromerick, Acting Director

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of amendment request: August 29, 1996, as supplemented on September 20, 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,'' with certain exceptions detailed in the licensee's application.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment cannot affect the probability of an accident since it involves only changes in the containment leakage rate testing program. There is no credible accident which can be initiated by containment leakage rate testing.

The proposed amendment will not affect the consequences of a[n] accident since the allowable containment leakage rates, which determine the offsite consequences of a[n] accident, are unchanged. Only the frequency of measuring the leakage rates may be changed.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment will not create the possibility of a new or different kind of accident since there are no changes to any systems, structures, or components, and no changes in the method of operation of any system, structure, or component.

3. Involve a significant reduction in a margin of safety.

The proposed amendment will not involve a significant reduction in the margin of safety. As documented in the 10 CFR 50, Appendix J, Option B Proposed Rule and Final Rule published in the Federal Register, the additional industry wide risk resulting from the proposed change is marginal and within acceptable limits.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603

NRC Project Director: Robert A. Capra

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: August 23, 1996

Description of amendment request: The proposed amendment would change the technical specifications to allow fuel enrichments of up to 5.0 weight percent uranium-235.

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 Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The calculated k-effective including uncertainties, demonstrates substantial margin to criticality in the fuel assembly storage locations for both normal and accident conditions; therefore, the probability of a previously evaluated accident is not significantly increased. Since a criticality accident is demonstrated to not be feasible under the specified conditions, the consequences of a previously evaluated accident are not significantly increased. Administrative controls are utilized in order to assure that a fuel assembly is not placed in an unanalyzed configuration. Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The increase in fuel enrichment could be considered a change in plant equipment; however, it would only affect reactivity. The reactivity increase has been analyzed and shown that no new or different kinds of accidents from any previously evaluated exist. The proposed change does not involve the addition of any plant equipment, nor does it modify the method of operation of any plant equipment. Also, the proposed change would not alter the design or configuration of the plant beyond the standard functional capabilities of the equipment. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does Not Involve a Significant Reduction in the Margin of Safety.

The proposed change has been analyzed to maintain a k-effective of less than the criticality acceptance criteria of 0.95 including uncertainties at the 95/95 probability/confidence level for all storage configurations. Additionally, the optimum moderation condition for the new fuel storage racks has been analyzed and determined to meet the acceptance criteria of maintaining k-effective of 0.98. The use of physical restraints for blocking the storage locations where fuel is prohibited to be stored in the spent fuel pools prevents misloading of fuel into these locations. A dropped assembly and/or the misplacement of a fuel assembly for each storage configuration has been analyzed. By crediting 1000 ppm boron (ANO-2 Technical Specifications require 1600 ppm), the 95/95 k-effective is well below 0.95. Therefore, this change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, Entergy Operations proposes that the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: William D. Beckner

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: August 23, 1996

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Section 5.0, Design Features, and would for the most part, adopt NUREG-1432, Revision 1, improved ''Standard Technical Specifications for Combustion Engineering Plants'' (ISTS), for this section of 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:

1. Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed amendment revises the Section 5.0, Design Features, and would for the most part, adopt NUREG-1432 Revision 1, ''Standard Technical Specifications Combustion Engineering Plants,'' for this section of the technical specifications. This proposed change will also allow the relocation of portions of the design features section of the technical specifications to other licensee controlled documents that are controlled under 10 CFR 50.59. This approach is consistent with the NRC final policy statement and the staff's Technical Specification line item improvement program. The relocation of information to licensee controlled documents will improve the usability and readability of technical specifications without changing any of the design requirements for the facility.

This amendment request does not remove or modify any of the design requirements for the facility or affect any accident initiators, conditions or assumptions for any accident previously evaluated. Therefore, this change does not involve a significant increase in the probability of any accident previously evaluated.

This amendment request is administrative in nature and does not affect any system or component functional requirements. This change does not affect the operation of the plant or affect any component that is used to mitigate the consequences of any accident. Therefore, this change does not involve a significant increase in the consequences of any accident previously evaluated.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The relocation of existing requirements from the technical specifications to other licensee controlled documents and the reformatting of the design features section of the technical specifications to the NUREG-1432 format are changes that are administrative in nature. This change does not modify or remove any plant design requirement. The proposed change will not affect any plant system or structure, nor will it affect any system functional or operability requirements. Consequently, no new failure modes are introduced as a result of this change. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does Not Involve a Significant Reduction in the Margin of Safety.

The proposed amendment request represents a relocation of a portion of the information previously located in the technical specification design features section to other licensee controlled documents that are controlled under 10 CFR 50.59. The proposed change is administrative in nature because the design requirements for the facility remain the same. The proposed change does not represent a change in the configuration or operation of the plant. Therefore, this change does not involve a significant reduction in the margin of safety.

Therefore, based upon the reasoning presented above and the previous discussion of the amendment request, Entergy Operations has determined that the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: William D. Beckner

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of amendment request: July 16, 1996

Description of amendment request: The amendment would change the Technical Specifications to permit the use of 10 CFR Part 50, Appendix J, Option B, Performance-Based Containment Leakage Rate Testing in accordance with the implementation guidance in NRC's Regulatory Guide (RG) 1.163 dated September 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:

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

NMP1 [Nine Mile Point, Unit 1] is currently implementing Option A of Appendix J of 10 CFR 50 for Type, A, B, and C testing. The proposed change to the Technical Specifications and the Bases would implement Option B to Appendix J of 10 CFR 50 at NMP1 for Type A, B, and C testing. Option B would allow increased testing intervals after satisfying certain performance based criteria.

Appendix J describes the requirements for leakage of the primary containment and its components penetrating the primary containment. The leakage testing interval of the primary containment and its components is not a precursor or initiator to an accident. The primary containment and its penetrations minimizes the leakage of radioactivity into the environment during an accident which pressurizes the primary containment.

Therefore, the proposed change does not involve a significant increase in the probability of an accident previously evaluated.

The proposed change to the Technical Specifications and the Bases would replace the detailed and prescriptive technical requirements contained in Option A of Appendix J with performance based requirements in accordance with supporting regulatory/industry documents referenced in Option B of Appendix J. This proposed change includes a description of the 10 CFR 50 Appendix J Testing Program Plan in Section 6.16 of the Technical Specifications.

This program plan, with two exceptions, is consistent with RG 1.163. Therefore, this program plan establishes leakage-rate test methods, procedures, acceptance criteria and analyses which comply with Option B of Appendix J to 10 CFR 50.

The implementation of this program continues to provide adequate assurance that during a DBA-LOCA [design-basis accident/loss-of-coolant accident], the primary containment and its components will continue to limit leakage rates to less than the allowable leakage rates described in the Technical Specifications and thereby limit leakage consistent with the assumptions of the accident analyses. Therefore, the increased test intervals permitted by Option B for the primary containment and its penetrations will continue to implement the safety objectives underlying the requirements of Appendix J.

As discussed below relative to the margin of safety, the impact of the proposed change on the consequences of a release is negligible. The slight increase in the risk to the population is compensated by the corresponding risk reduction benefits associated with the reduction in component cycling, stress, and wear associated with increased test intervals.

Accordingly, operation with the proposed change to the Technical Specifications and the Bases will not significantly increase the consequences of an accident previously evaluated.

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change would implement Option B of Appendix J to 10 CFR 50 for Type A, B, and C testing. Option B would allow increased testing intervals after satisfying certain performance based criteria.

No new plant operating modes, system operating configurations nor failure modes are introduced by the proposed change. The primary containment and its penetrations will continue to perform their accident mitigating function.

Accordingly, operation with the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

A regulatory impact analysis of implementing performance-based requirements indicates that relaxing the frequency of Type A, B, and C testing leads to an increase in overall risk of approximately two percent. As indicated in the Staff's Regulatory Impact Analysis, this increase is considered to be marginal to safety.

As indicated above, increasing test intervals can slightly increase the risk to the population associated with the consequences of a release; however, this is compensated by the corresponding risk reduction benefits associated with the reduction in component cycling, stress, and wear associated with increased test intervals. Therefore, when considering the total integrated risk, the risk associated with increased test intervals is negligible.

The proposed change is consistent with current plant safety analyses. In addition, the proposed change does not require revisions to the design of NMP1. As such, the proposed TS changes will maintain the same level of reliability of the equipment associated with containment integrity, assumed to operate in the plant safety analysis, or provide continued assurance that specified parameters affecting leak rate integrity, will remain within their acceptance limits.

The as-left leakage after performing a required leakage test continues to be less than 0.60 La for combined Type B and C leakage and less than or equal to 0.75 La for Type A leakage. These as-left acceptance criteria and the testing frequency as established by the 10 CFR 50 Appendix J Testing Program Plan provide assurance that the measured leakage rate will not exceed the maximum allowable leakage of La during plant operation.

Visual examination of accessible interior and exterior surfaces of the primary containment continues to be performed prior to initiating a Type A test. The total number of visual examinations performed will continue to be three times during a 10-year period. Therefore, visual examinations of the primary containment will continue to allow for the timely uncovering of evidence of structural deterioration and satisfy the requirements of RG 1.163.

The leakage limits of LCO 3.3.3 will continue to be met prior to reactor coolant system temperature exceeding 215*F and anytime Primary Containment is required. Satisfying these leakage limits provides assurance that the measured leakage rate will not exceed the maximum allowable leakage rate of La during plant operation. Therefore, operation with 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 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502.

NRC Project Director: Guy S. Vissing, 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: May 31, 1996

Description of amendment requests: The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Nuclear Power Plant (DCPP), Unit Nos. 1 and 2 to revise 23 TS surveillance frequencies from at least once every 18 months to at least once per refueling interval (nominally 24 months) and to make administrative changes for 6 other TS to maintain consistency for TS that are not proposed for surveillance extension. The specific TS changes proposed include those for 2 response time tests, 3 containment spray system tests, and 24 ventilation system tests.

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 six administrative changes regarding laboratory carbon testing are administrative changes only and do not affect the probability or consequences of accidents.

The 23 proposed TS surveillance interval increases from 18 to 24 months do not alter the intent or method by which the inspections, tests, or verifications are conducted, do not alter the way any structure, system, or component functions, and do not change the manner in which the plant is operated. The surveillance, maintenance, and operating histories indicate that the equipment will continue to perform satisfactorily with longer surveillance intervals. No recurring surveillance or maintenance problems were identified for response time, containment spray system, or control room ventilation system testing.

Recurring maintenance issues on the fuel handling building and auxiliary building ventilation systems regarding the system control panels and certain dampers have been addressed. These ventilation systems are in service during all modes of operation and experience normal wear. None of the problems are related to refueling frequency testing. The monthly surveillance tests provide assurance of system operability for the control panels. The preventative maintenance program for the dampers is independent of refueling shutdowns and provides assurance that degradation mechanisms such as corrosion and wear are adequately addressed.

There are no known mechanisms that would significantly degrade the performance of the evaluated equipment during normal plant operation. All potential time-related degradation mechanisms have insignificant effects in the timeframe of interest (maximum of 30 months). Based on the past performance of the equipment, the probability or consequences of accidents would not be significantly affected by the proposed surveillance interval increases.

Therefore, the proposed changes do 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 six administrative changes regarding laboratory carbon testing are administrative changes only and do not affect the type of accidents possible.

The containment spray system and control room, auxiliary building, and fuel handling building ventilation systems are not associated with the initiation of any accident. The reactor trip and engineered safety feature actuation system response times are assumed in the accident analysis. However, the proposed surveillance interval increases would not affect the type of accidents possible.

For the 23 proposed TS changes involving surveillance interval increases from 18- to 24-months, the surveillance and maintenance histories indicate that the equipment will continue to effectively perform their respective design functions over the longer operating cycles. Additionally, the increased surveillance intervals do not result in any physical modifications, affect safety function performance or the manner in which the plant is operated, or alter the intent or method by which surveillance tests are performed. Only a few problems have been identified and generally have not recurred. All potential time-related degradations have insignificant effects in the timeframe of interest. 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 six administrative changes regarding laboratory carbon testing are administrative changes only and do not affect the margin of safety.

For the 23 proposed TS changes involving 18- to 24-month surveillance interval increases, evaluation of historical surveillance and maintenance data indicates there have been only a few problems experienced with the evaluated equipment. There are no indications that potential problems would be cycle-length dependent or that potential degradation would be significant for the timeframe of interest; therefore, increasing the surveillance interval will have little, if any, impact on any margin of safety. There is no safety analysis impact since these changes will have no effect on any safety limit, protection system setpoint, or limiting condition for operation, and there are no hardware changes that would impact existing safety analysis acceptance criteria. Safety margins would not be significantly affected by the proposed surveillance interval increases.

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 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

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: September 13, 1996

Description of amendment request: The proposed amendment changes the Administrative Controls Section 5.6.6 of the Ginna Station Technical Specifications which would allow referencing of Revision of the Ginna Station Pressure and Temperature Limits Report (PTLR) for the Reactor Coolant System (RCS) pressure and temperature (P/T) limits and low temperature overpressure protection (LTOP) 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:

1. Operation of Ginna Station in accordance with the proposed changes does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes only revise the reference to the PTLR in the Administrative Controls section of technical specifications and correct a typographical error. The changes complete implementation of Generic Letter 96-03 by referencing NRC approved methodology within the Administrative Controls. As such, these changes are administrative in nature and do not impact initiators or analyzed events or assumed mitigation of accident or transient events. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Operation of Ginna Station in accordance with the proposed changes does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or changes in the methods governing normal plant operation. The proposed changes will not impose any new or different requirements. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of Ginna Station in accordance with the proposed changes does not involve a significant reduction in a margin of safety. The proposed changes will not reduce a margin of plant safety because the changes have been shown to ensure that the P/T and LTOP limits in the revised PTLR continue to meet all necessary requirements for reactor vessel integrity. These changes are administrative in nature. As such, no question of safety is involved, and the 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 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: Rochester Public Library, 115 South Avenue, Rochester, New York 14610

Attorney for licensee: Nicholas S. Reynolds, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005

NRC Project Director: Alexander W. Dromerick, Acting Director

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: August 21, 1996 (TS 96-03)

Description of amendment request: The proposed change would result in an amendment to Licenses DPR-77 and DPR-79 to change the Technical Specifications (TS) for the Sequoyah Nuclear Plant, Units 1 and 2. The proposed change would revise TS 3.7.1.3, ''Condensate Storage Tank,'' to include a new mode of applicability that reads: ''Mode 4 when steam generator is relied upon for heat removal.'' In addition, other proposed changes to TS 3.7.1.3 and a Bases change to Bases Sections 3/4.3.1 and 3/4.3.2, ''Protective and Engineered Safety Features (ESF) Instrumentation,'' are included to provide improvements and establish requirements that are consistent with Westinghouse Standard Technical

Specifications (NUREG-1431, Revision 1).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS change revises SQN's condensate storage tank (CST) Specification 3.7.1.3 to incorporate requirements from the Westinghouse Standard Technical Specification (STS) contained in NUREG-1431, Revision 1. The proposed change is consistent with the STS for ensuring that SQN's CST remains operable in Modes 1, 2, 3, and Mode 4 when steam generator (SG) is relied upon for heat removal. In addition, the proposed change provides a general TS improvement by incorporating STS phraseology within the action requirements. Included with this change is an increase in the completion time for achieving hot shutdown. The current completion time of 6 hours is increased to 12 hours. This change allows sufficient time, while in Mode 4, to transition from SGs to residual heat removal entry conditions. The 12-hour completion time is reasonable based on operating experience to reach the required plant condition in an orderly manner without challenging plant systems.

[The Tennessee Valley Authority's] TVA's proposed change also includes deletion of Surveillance Requirement (SR) 4.7.1.3.2. This SR demonstrates operability of SQN's essential raw cooling water (ERCW) system every 12 hours whenever the ERCW system is used as a supply source for the auxiliary feedwater (AFW) system. Deletion of this SR is consistent with STS requirements and is justified based on: (1) current SQN TS 3.7.4 requirements ensure operability of SQN's ERCW in Modes 1, 2, 3, and 4, and (2) newly proposed Action (b) requirements ensure that SQN's ERCW system is verified operable every 12 hours whenever the CST is inoperable.

The proposed changes provide TS requirements for SQN's CST that are conservative with respect to assumptions used in SQN's accident analysis as contained in the Final Safety Analysis Report (FSAR). This change does not involve a physical modification to the plant or affect any instrumentation setpoints. Accordingly, the proposed changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed changes provide TS requirements for SQN's CST that are conservative with respect to assumptions used in SQN's accident analysis as contained in the FSAR. No new event initiator has been created, nor has any hardware been changed. This change does not involve a physical change to SQN's CST or any other system. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety.

TVA's proposed change replaces SQN's CST TS requirements with TS requirements from the Westinghouse STS (NUREG-1431, Revision 1). The proposed change to SQN's CST TS to add ''Mode 4 when steam generator is relied upon for heat removal,'' provides consistency with the mode requirements of SQN's AFW TS and resolves a disparity that currently exists between these TSs. The allowed outage time for an inoperable CST remains unchanged and is consistent with the allowed outage time in STS. The proposed change to delete a SR for verifying operability of the ERCW system is considered acceptable based on other existing TSs that verify operability of SQN's ERCW system. Overall, similarity exists between SQN's current CST specification and the STS version. Consequently, with the exception of format, the TS requirements remain essentially unchanged.

The proposed changes provide a line-item improvement for SQN's CST TS that are conservative with respect to the assumptions used in SQN's accident analysis as contained in the FSAR. This changes does not involve a setpoint change or physical modification to the plant. Accordingly, the margin of safety has not been reduced.

The NRC has reviewed the licensee's analysis and, based on thisreview, 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: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: August 21, 1996 (TS 96-06)

Description of amendment request: The proposed change would result in an amendment to Licenses DPR-77 and DPR-79 to change the Technical Specifications for the Sequoyah Nuclear Plant (SQN), Units 1 and 2. The proposed change would remove Surveillance Requirement 4.8.1.1.1.b that verifies the ability to transfer the unit power supply from the unit generator supported circuit to the preferred power circuit. The current SQN design and operating configurations do not require the use of this transfer feature making this surveillance unnecessary.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will delete a surveillance associated with a feature that does not provide a safety function based on the current SQN design and operating procedures. The transfer feature that is currently verified will either be achieved by the system alignment or covered by the applicable TS action requirements. This transfer feature provided automatic system alignment to preferred offsite power circuits for accident mitigation purposes. This feature, or the lack of, is not considered a source of any accident and the proposed change to delete the associated surveillance will not increase the possibility of an accident previously evaluated. Safety functions are maintained by the current offsite circuit alignment without the transfer feature or associated surveillance. Therefore, the consequences of an accident can not be increased and may be reduced by eliminating the use of active devices to satisfy safety functions.

2. Create the possibility of a new or different kind of accident from any previously analyzed. The offsite circuit transfer feature is not considered to be a source of an accident and the deletion of a surveillance to verify the operability of this transfer will not impact this potential. Therefore, the deletion of Surveillance 4.8.1.1.1.b will not create the possibility of a new or different kind of accident previously analyzed.

3. Involve a significant reduction in a margin of safety.

The current SQN alignment satisfies all required offsite circuit alignments necessary to support accident mitigation functions without the use of active devices. In addition, any time delays associated with the transfer actuation to realign the offsite circuits, that is tested by the surveillance proposed to be deleted, are eliminated by the current alignment. Therefore, the margin of safety associated with the affected safety function is not reduced and may be increased by the elimination of active devices and their associated time delays.

The NRC has reviewed the licensee's analysis and, based on thisreview, 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: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: August 22, 1996 (TS 96-08)

Description of amendment request: The proposed change would result in an amendment to Licenses DPR-77 and DPR-79 to change the Technical Specifications (TSs) for the Sequoyah Nuclear Plant, Units 1 and 2. The proposed changes would delete TS Table 4.8-1, ''Diesel Generator Reliability,'' and revise TS Section 3.8.1 to allow a once per 18 month, 7-day allowed outage time (AOT) for the emergency diesel generators (EDGs). The first change would remove the accelerated testing requirements for the EDGs in accordance with Generic Letter 96-01, ''Removal of Accelerated Testing and Special Reporting Requirements for Emergency Diesel Generators from Technical Specifications.'' The second change would revise the Units 1 and 2 TS to allow a once per 18 month 7-day AOT for planned maintenance activities, particularly an upcoming major 12-year overhaul of all four EDGs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

Deletion of Table 4.8-1, in accordance with Generic Letter (GL) 94-01, is an administrative change that will not impact the plant design or operation. None of the assumptions used in evaluating the radiological consequences of an accident are changed. A new or altered release path is not created. Therefore, this change does not involve an increase in the probability of any accident previously evaluated.

The emergency diesel generators (EDGs) supply backup power to the essential safety systems in the event of a loss-of-offsite (normal) power. The EDGs cannot initiate an accident. The requested change will not impact the plant design or operation. The increased out of service time does not invalidate assumptions used in evaluating the radiological consequences of an accident and does not provide a new or altered release path. Therefore, this change does not involve an increase in the probability of any accident previously evaluated.

An increase in the allowed outage time (AOT) would not change the conditions, operating configuration, or minimum amount of operable equipment assumed in the plant Final Safety Analysis Report for accident mitigation. The longer AOT would provide a longer time window for maintenance, but would lessen the total EDG unavailability per year. Based on the small increase in plant risk during maintenance, and the decrease in overall plant risk as a result of this change, this change will not result in a significant increase in the consequences of an accident.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

Deletion of Table 4.8-1, in accordance with GL 94-01, is an administrative change that will not impact plant the plant design or operation. Appropriate testing, in accordance with the Maintenance Rule, will continue. Therefore, this change does not create the possibility of a new or different kind of accident from any previously analyzed.

The proposed change to extend the AOT for the EDGs does not alter the physical design, or configuration of the plant. The EDG operation remains unchanged, therefore, this change does not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety.

Deletion of Table 4.8-1, in accordance with GL 94-01, ensures that the requirements and provisions of 10 CFR 50.65 and the guidance of Regulatory Guide 1.160 are met. The program put in place by these documents will ensure that any degradation of the EDGs is identified and appropriate action is taken. Therefore, this change does not involve a significant reduction in the margin of safety.

A change to the maintenance schedule was performed to conform with vendor recommendations. This change in schedule required an increase in the duration of the 18 month and longer maintenance activities. Due to the number of shared systems, three of the four EDGs are required to meet all of the safety functions for each unit. However, the TSs conservatively assume four EDGs are necessary for unit operation; therefore, loss of any one EDG causes entry into a LCO action statement on both units. Performing the required maintenance with a 72-hour AOT will result in more EDG unavailability per year than would be required if the AOT was 7 days. Therefore, the 7-day AOT would not result in a significant reduction in the margin of safety.

The NRC has reviewed the licensee's analysis and, based on thisreview, 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: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: August 28, 1996 (TS 96-07)

Description of amendment request: The proposed change would result in an amendment to Licenses DPR-77 and DPR-79 to change the Technical Specifications (TS) for the Sequoyah Nuclear Plant, Units 1 and 2. The proposed change would revise the setpoint tolerance for the pressurizer safety valves (PSVs) and main steam safety valves (MSSVs) from plus or minus one percent to plus or minus three percent. An analysis performed by Framatome Technologies Incorporated to support this change is provided in the licensee's submittal. These parameters are contained in TS 3.4.2, TS 3.4.3.1, and Table 3.7-2. Additionally, the sentence ''Following testing, lift settings shall be within plus or minus 1%.'' would be added to Surveillance Requirements (SR) 4.4.2, 4.4.3.1, and 4.7.1.1.

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:

Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The evaluation contained in Enclosure 5 [Framatome Report No. 77-1257369-01, ''Safety Evaluation of Safety Valve Setpoint Tolerance Relaxation,'' dated August 1, 1996] discusses the consequences of this change as it pertains to the accidents previously analyzed. The positive increase of the setpoint tolerance, from one percent to three percent, of the PSV[s] and the MSSV[s] does not challenge the design limits of the installed systems. This conclusion is demonstrated by means of the reanalysis of the bounding overpressure events. The negative tolerance for the MSSVs, from minus one percent to minus three percent, will result in an increase in mass discharged through these valves. The increase was evaluated and the analysis indicated that the dose release remained within the limits required by 10 CFR 100. Based on the results of this review, there is no increase in the probability of a previously evaluated accident or a significant increase in the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed TS change will increase the setpoint tolerance for the PSVs and the MSSVs. This change does not involve an

equipment addition or change in the method the plant is operated. Therefore, the possibility of a new or different kind of accident from any previously analyzed is not created.

3. Involve a significant reduction in a margin of safety.

The proposed change is a change in the lift setpoint tolerance of the existing valves. The analysis demonstrates that the design limits are not exceeded nor are the dose release limits exceeded due to this increase in setpoint tolerance. Additionally, the valves will be returned to the original tolerance of plus or minus one percent. This will ensure that the maximum margin is retained; therefore, the margin of safety has not been reduced by this change.

The NRC has reviewed the licensee's analysis and, based on thisreview, 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: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: August 7, 1996

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 1.0, ''Definitions,'' by defining a refueling interval to be [less than or equal to] 730 days; and would revise TS 3/4.0, ''Applicability,'' TS 3/4.6.2.1, ''Containment Systems - Depressurization and Cooling Systems - Containment Spray System,'' and TS 3/4.6.3.1, ''Containment Systems - Containment Isolation Valves,'' to reflect performing surveillance tests during a refueling interval rather than every 18 months.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

Toledo Edison has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station (DBNPS), Unit No. 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no such accidents are affected by the proposed revisions to increase the surveillance test intervals from 18 to 24 months for the containment spray system (Surveillance Requirements 4.6.2.1.b), or the containment isolation valves (Surveillance Requirements 4.6.3.1.2). The proposed change to TS 1.0, adding a definition for ''Refueling Interval,'' and the associated proposed change to TS Bases 3/4.0, are administrative changes associated with the 24 month cycle conversion. Initiating conditions and assumptions remain as previously analyzed for accidents in the DBNPS Updated Safety Analysis Report.

These revisions do not involve any physical changes to systems or components, nor do they alter the typical manner in which the systems or components are operated.

A review of historical 18 month surveillance data and maintenance records support an increase in the surveillance test intervals from 18 to 24 months (and up to 30 months on a non-routine basis) because no potential for a significant increase in a failure rate of an affected system or component was identified during these reviews.

These proposed revisions are consistent with the NRC guidance on evaluating and proposing such revisions as provided in Generic Letter 91-04, ''Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle,'' dated April 2, 1991.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because the source term, containment isolation or radiological releases are not being changed by these proposed revisions. Existing system and component redundancy is not being changed by these proposed changes. Existing system and component operation is not being changed by these proposed changes. The assumptions used in evaluating the radiological consequences in the DBNPS Updated Safety Analysis Report are not invalidated.

A review of historical 18 month surveillance data and maintenance records support an increase in the surveillance test intervals from 18 to 24 months (and up to 30 months on a non-routine basis) because no potential for a significant increase in a failure rate of an affected system or component was identified during these reviews.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because these revisions do not involve any physical changes to systems or components, nor do they alter the typical manner in which the systems or components are operated. A review of historical 18 month surveillance data and maintenance records support an increase in the surveillance test intervals from 18 to 24 months (and up to 30 months on a non-routine basis) because no potential for a significant increase in a failure rate of a system or component was identified during these reviews. No changes are being proposed to the type of testing currently being performed, only to the length of the surveillance test interval.

3. Not involve a significant reduction in a margin of safety because a review of the historical 18 month surveillance data and maintenance records identified no potential for a significant increase in a failure rate of a system or component due to increasing the surveillance test interval to 24 months. Existing system and component redundancy is not being changed by these proposed changes.

There are no new or significant changes to the initial conditions contributing to accident severity or consequences. Therefore, there are no significant reductions 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 Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, Ohio 43606

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Gail H. Marcus

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: September 4, 1996

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 6.2.3, ''Facility Staff Overtime,'' by removing specific overtime limits and working hours and by adding procedural controls to perform a monthly review of overtime 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:

Toledo Edison has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station (DBNPS), Unit Number 1, in accordance with these changes would:1a. Not involve a significant increase in the probability of an accident previously evaluated because no change is being made to any accident initiator. No previously analyzed accident scenario is changed, and initiating conditions and assumptions remain as previously analyzed.

The proposed change to TS 6.2.3, ''Facility Staff Overtime,'' to relocate specific overtime limits and working hours to the DBNPS Updated Safety Analysis Report (USAR) is consistent with the NRC Staff's determination previously provided on a

generic basis in the Safety Evaluation to License Amendment Number 127 and 116 to the Operating Licenses (Number NPF-10 and NPF-15), for the San Onofre Generating Nuclear Station, Units 2 and 3, dated February 9, 1996. The appropriate relocation of TS requirements, such as portions of TS 6.2.3, to licensee-controlled documents is also addressed generically in the NRC's ''Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors'', dated July 23, 1993.

The relocated overtime limits and working hours will be subject to review and evaluation under Section 50.59, ''Changes, Tests, and Experiments'', of Title 10 of the Code of Federal Regulations (10 CFR) prior to any changes being made. The other changes to TS 6.2.3 are editorial, with an exception being that a new requirement has been added for plant procedures to ensure that an individual's overtime is reviewed monthly by the Plant Manager or his designee(s) to ensure excessive hours have not been assigned.

Overtime will remain controlled by plant administrative procedures and USAR requirements generally following the guidance of the NRC's Policy Statement on working hours contained within Generic Letter 82-12, ''Nuclear Power Plant Staff Working Hours.''

1b. Not involve a significant increase in the consequences of an accident previously evaluated because the proposed changes do not affect accident conditions or assumptions used in evaluating the radiological consequences of an accident. The proposed changes do not alter the source term, containment isolation or allowable radiological releases.

The proposed changes to TS 6.2.3 only alter the administrative location of and the regulatory controls applicable to plant staff specific overtime limits and working hours. Therefore, there is no significant increase in the consequences of an accident previously evaluated.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes do not change the way the plant is operated, and no new or different failure modes have been defined for any plant system or component important to safety, nor has any limiting single failure been identified as a result of the proposed changes. No new or different types of failures or accident initiators are introduced by the proposed changes.

The proposed changes to TS 6.2.3 only alter the administrative location of and the regulatory controls applicable to plant staff specific overtime limits and working hours. Therefore, there is no possibility created for a new or different kind of accident.

3. Not involve a significant reduction in a margin of safety because facility staff overtime is not an input in the calculation of any safety margin with regard to TS Safety Limits, Limiting Safety System Settings, other TS Limiting Conditions for Operation or other previously defined margins for any structure, system, or component important to safety.

The proposed changes to TS 6.2.3 only alter the administrative location of and the regulatory controls applicable to plant specific overtime limits and working hours. Therefore, there is no 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 Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, Ohio 43606

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Gail H. Marcus

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: September 12, 1996

Description of amendment request: The proposed amendment would revise Technical Specifications (TS) 3/4.1.3.4, ''Reactivity Control Systems - Rod Drop Time,'' and TS 3/4.5.2, ''Emergency Core Cooling Systems - Tavg [greater than or equal to] 280°F,'' to change surveillance test intervals from every 18 months to each refueling interval (nominally 24 months). Additionally, the proposed amendment would remove a footnote for TS 4.5.2.b that is no longer applicable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

Toledo Edison has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station (DBNPS), Unit No. 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no such accidents are affected by the proposed revisions to increase the surveillance test intervalsfrom 18 months to 24 months for the reactivity control systems (Surveillance Requirement 4.1.3.4.c), or the emergency core cooling systems (Surveillance Requirement 4.5.2.b), or the proposed administrative change to Surveillance Requirement 4.5.2.b to remove a time-conditional footnote which has expired. Initiating conditions and assumptions remain as previously analyzed for all accidents in the DBNPS Updated Safety Analysis Report.

These revisions do not involve any physical changes to systems or components, nor do they alter the typical manner in which the systems or components are operated.

A review of historical 18 month surveillance data and maintenance records support an increase in the surveillance test intervals from 18 months to 24 months (and up to 30 months on a non-routine basis) because no potential for a significant increase in a failure rate of an affected system or component was identified during these reviews.

These proposed revisions are consistent with the NRC guidance on evaluating and proposing such revisions as provided in Generic Letter 91-04, ''Changes in Technical Specification Surveillance Intervals to Accommodate a 24-month Fuel Cycle,'' dated April 2, 1991.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because the source term, containment isolation or radiological releases are not being changed by these proposed revisions. Existing system and component redundancy is not being changed by these proposed changes. Existing system and component operation is not being changed by these proposed changes. The assumptions used in evaluating the radiological consequences in the DBNPS Updated Safety Analysis Report are not invalidated.

A review of historical 18 month surveillance data and maintenance records support an increase in the surveillance test intervals from 18 to 24 months (and up to 30 months on a non-routine basis) because no potential for a significant increase in a failure rate of an affected system or component was identified during these reviews.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because these revisions do not involve any physical changes to systems or components, nor do they alter the typical manner in which the systems or components are operated. A review of historical 18 month surveillance data and maintenance records support an increase in the surveillance test intervals from 18 months to 24 months (and up to 30 months on a non-routine basis) because no potential for a significant increase in a failure rate of a system or component was identified during these reviews. No changes are being proposed to the type of testing currently being performed, only to the length of the surveillance test interval.

3. Not involve a significant reduction in a margin of safety because a review of the historical 18 month surveillance data and maintenance records identified no potential for a significant increase in a failure rate of a system or component due to increasing the surveillance test interval to 24 months. Existing system and component redundancy and operation is not being changed by these proposed changes.

There are no new or significant changes to the initial conditions contributing to accident severity or consequences. Therefore, there are no significant reductions 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 Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, Ohio 43606

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Gail H. Marcus

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: September 17, 1996

Description of amendment request: The proposed amendment would revise the surveillance interval from 18 months to less than or equal to 730 days, nominally 24 months, for Technical Specification (TS) 3/4.5.2, ''Emergency Core Cooling Systems - ECCS Subsystems - Tavg greater than or equal to 280 degrees F;'' TS 3/4.6.5.1, ''Containment Systems - Shield Building - Emergency Ventilation System;'' TS 3/4.7.6.1, ''Plant Systems - Control Room Emergency Ventilation System;'' TS 3/4.7.7, ''Plant Systems - Snubbers;'' TS 3/4.9.12, ''Refueling Operations - Storage Pool Ventilation;'' and TS Bases 3/4.7.7 - ''Snubbers.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

Toledo Edison has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station (DBNPS), Unit No. 1 in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no such accidents are affected by the proposed revisions to increase the surveillance test intervals from 18 months to 24 months for the trisodium phosphate dodecahydrate (TSP) volume, (Surveillance Requirement 4.5.2.d.4), Shield Building and Storage Pool Emergency Ventilation Systems, (Surveillance Requirements 4.6.5.1.b, 4.6.5.1.d, 4.9.12.1, and 4.9.12.2), and the Control Room Emergency Ventilation System, (Surveillance Requirements 4.7.6.1.c and 4.7.6.1.e) and Snubbers (Surveillance Requirement 4.7.7.2.b and associated Bases 3/4.7.7). Initiating conditions and assumptions remain as previously analyzed for all accidents in the DBNPS Updated Safety Analysis Report.

These revisions do not involve any physical changes to systems or components, nor do they alter the typical manner in which the systems or components are operated.

A review of historical 18 month surveillance data and maintenance records support an increase in the surveillance test intervals from 18 to 24 months (and up to 30 months on a non-routine basis) because no potential for a significant increase in a failure rate of a system or component was identified during these reviews.

These proposed revisions are consistent with the NRC guidance on evaluating and proposing such revisions as provided in Generic Letter 91-04, ''Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle,'' dated April 2, 1991.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because the source term, containment isolation or radiological releases are not being changed by these proposed revisions. Existing system and component redundancy is not being changed by these proposed changes. Existing system and component operation is not being changed by these proposed changes. The assumptions used in evaluating the radiological consequences in the DBNPS Updated Safety Analysis Report are not invalidated.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because these revisions do not involve any physical changes to systems or components, nor do they alter the typical manner in which the systems or components are operated. A review of historical 18 month surveillance data and maintenance records support an increase in the surveillance test intervals from 18 to 24 months (and up to 30 months on a non-routine basis) because no potential for a significant increase in a failure rate of a system or component was identified during these reviews. No changes are being proposed to the type of testing currently being performed, only to the length of the surveillance test interval.

3. Not involve a significant reduction in a margin of safety because the review results of the historical 18 month surveillance data and maintenance records identified no potential for a significant increase in a failure rate of a system or component due to increasing the surveillance test interval to 24 months. Existing system and component redundancy and operation is not being changed by these proposed changes.

There are no new or significant changes to the initial conditions contributing to accident severity or consequences. Therefore, there are no significant reductions in a margin of safety.

The NRC staff has reviewed the licensees' 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 Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, Ohio 43606

Attorney for licensee: Jay E. Silberg, Esquire, 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: August 22, 1996

Description of amendment request: The proposed amendment would revise the license for each unit and the bases for Technical Specification (TS) Section 15.3.1, ''Reactor Coolant System.'' The licensed power level would be changed from 1518 to 1518.5 megawatts thermal to agree with other sections of 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:

1. Operation of this facility under the proposed Technical Specifications will not create a significant increase in the probability or consequences of an accident previously evaluated.

There is no physical change to the facilities as a result of the proposed license amendment and all Limiting Conditions for Operation, Limiting Safety System Settings and Safety Limits specified in the Technical Specifications remain unchanged. The proposed change is administrative only and restores consistency within the PBNP license and licensing basis. Therefore, this amendment will not cause a significant increase in the probability or consequences of an accident previously evaluated.

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.

The proposed amendment has no effect on the physical configuration of the facilities or the manner in which they operate. The design and design basis of the plants remains the same. The current plant safety analysis therefore remains complete and accurate in addressing the design basis events and in analyzing plant response and consequences for the facilities. The Limiting Conditions for Operation, Limiting Safety System Settings and Safety Limits specified in the Technical Specifications for the facilities are not affected by the proposed license amendment. The plant conditions for which the design basis accident analysis have been performed remain valid. Therefore, the proposed license amendment cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of this facility under the proposed Technical Specifications change will not create a significant reduction in a margin of safety.

Plant safety margins are established through the Limiting Conditions for

Operation, Limiting Safety System Settings and Safety Limits specified in the Technical Specifications. Since there is no change to the physical design or operation of the plant, there is no change to any of these margins. Thus, the proposed license amendment does not involve a reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: 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

Previously Published Notices Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the Federal Register on the day and page cited. This notice does not extend the notice period of the original notice.

Consumers Power Company, Palisades Plant, Van Buren County, Michigan

Date of amendment request: December 11, 1995, supplemented by letters dated January 18, 1996, and September 3, 1996Brief

Description of amendment request: The proposed amendment would revise the Palisades Technical Specifications (TS) Administrative Controls section (Section 6) and other TS associated with the administrative controls section to adopt the format of NUREG-1432, ''Standard Technical Specifications, Combustion Engineering Plants.'' The amendment would also revise certain other surveillance intervals and administrative requirements.Date of individual notice in the Federal Register: September 20, 1996 (61 FR 49493)

Expiration date of individual notice: October 21, 1996

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423

Consumers Power Company, Palisades Plant, Van Buren County, Michigan

Date of amendment request: August 14, 1996 (also refer to related application dated January 18, 1996)

Brief Description of amendment request: The proposed amendment would revise the Palisades Technical Specifications (TS) to extend the surveillance interval frequency for the primary coolant pump (PCP) flywheels by one operating cycle. By letter dated January 18, 1996, the licensee previously submitted a request to amend the TS to delete the requirement to perform PCP flywheel inspections. NRC review of the original request will not be completed in time for the upcoming refueling outage scheduled for November 1996; therefore, the licensee has submitted this separate request to extend the surveillance frequency by one operating cycle.Date of individual notice in the Federal Register: September 24, 1996 (61 FR 50054

Expiration date of individual notice: October 24, 1996

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423

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, as supplemented by letter dated August 27, 1996

Brief description of amendment request: The amendment would revise the Technical Specifications to allow the surveillance of the relief mode of operation of each of the 20 safety/relief valves without physically lifting the disk off the seat at power.Date of individual notice in the Federal Register: September 11, 1996 (61 FR 47971)

Expiration date of individual notice: October 11, 1996

Local Public Document Room location: Judge George W. Armstrong Library, 220 S. Commerce Street, Natchez, MS 39120

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: August 27, 1996

Description of amendment request: The proposed amendment would clarify the Technical Specifications limiting condition for operation and surveillance requirements for the charging pumps and high pressure safety injection pumps when the unit is shut down (Modes 5 and 6). Date of publication of individual notice in Federal Register: September 20, 1996 (61 FR 49498)

Expiration date of individual notice: October 21, 1996

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: August 27, 1996

Brief description of amendment request: This amendment proposes to delete License Condition 2.C.(24)(a) for Unit 2 which required establishment by June 3, 1981, of regularly scheduled 8-hour shifts without reliance on routine use of overtime. The proposed amendment also modifies Technical Specification 6.2.2 for both units to incorporate limits on overtime.

Date of publication of individual notice in Federal Register: September 12, 1996 (61 FR 48175)

Expiration date of individual notice: October 15, 1996

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079

Notice Of Issuance Of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was

published in the Federal Register as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of application for amendments: August 16, 1996

Brief description of amendments: The amendments would defer the implementation date as stated in Amendment No. 150 for Dresden, Unit 2, and Amendment No. 145 for Dresden, Unit 3, until January 15, 1997.

Date of issuance: September 26, 1996

Effective date: Immediately, to be implemented on or before January 15, 1997.

Amendment Nos.: 151 and 146

Facility Operating License Nos. DPR-19 and DPR-25: The amendments revised the implementation date.

Date of initial notice in Federal Register: August 22, 1996 (61 FR 43391) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 26, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450.

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: April 9, 1996

Brief description of amendments: The amendments revise the Technical Specifications to eliminate the main steamline radiation monitoring system high radiation trip function for initiating an (1) automatic reactor scram, (2) automatic closure of the main steamline isolation valves, and (3) automatic closure of the reactor recirculation water sample line isolation valves and main steam line drain isolation valves.

Date of issuance: September 20, 1996

Effective date: Immediately, to be implemented within 90 days.

Amendment Nos.: 115 and 100

Facility Operating License Nos. NPF-11 and NPF-18: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: May 22, 1996 (61 FR 25701) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 20, 1996.No significant hazards consideration comments received: No

Local Public Document Room location: Jacobs Memorial Library, Illinois Valley Community College, Oglesby, Illinois 61348.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: February 6, 1996

Brief description of amendment: The amendment deletes the requirement to perform alternate train testing of redundant components when emergency core cooling system and containment cooling system components are found to be inoperable or are to be removed from service for maintenance.

Date of issuance: September 26, 1996

Effective date: September 26, 1996

Amendment No.: 172

Facility Operating License No. DPR-20. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: June 5, 1996 (61 FR 28611) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 26, 1996.No significant hazards consideration comments received: No.

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423

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: November 15, 1995

Brief description of amendments: The amendments revise the Technical Specifications to modify Section 3/4.7.5, ''Standby Nuclear Service Water Pond,'' for the Catawba Nuclear Station, Units 1 and 2, raising the minimum water level by 1 foot (from elevation 570 to 571 feet).

Date of issuance: September 20, 1996

Effective date: As of the date of issuance to be implemented within 30 days

Amendment Nos.: 152 and 144

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: December 20, 1995 (60 FR 65676) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 20, 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

Duquesne Light Company, et al., Docket No. 50-412, Beaver Valley Power Station, Unit 2, Shippingport, Pennsylvania

Date of application for amendment: April 29, 1996, as supplemented September 12, 1996

Brief description of amendment: This amendment revises TS 5.3.1 to allow the use of ZIRLO as an alternate zirconium-based fuel rod material and removes the word ''clad'' to be consistent with the text of the NRC's improved Standard Technical Specifications (NUREG-1431). Limited substitution of fuel rods by ZIRLO filler rods is permitted. The proposed revision to Note 2 on TS Table 3.9-1 to specify that the maximum burnup in the peak fuel rod in a fuel assembly stored in Region 2 spent fuel racks should not exceed the NRC-approved limit for WCAP-12610 was withdrawn by letter dated September 12, 1996.

Date of issuance: September 13, 1996

Effective date: As of date of issuance and shall be implemented within 60 days.

Amendment No: 82

Facility Operating License No. NPF-73. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 22, 1996 (61 FR 25703) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 13, 1996.No significant hazards consideration comments received: No

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: May 19, 1995, as supplemented by letters dated July 21, 1995, and June 10, September 10 and 13, 1996

Brief description of amendment: The amendment revises the technical specifications to permit the reactor building personnel airlock doors to remain open during fuel handling.

Date of issuance: September 20, 1996

Effective date: September 20, 1996

Amendment No.: 184

Facility Operating License No. DPR-51. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 2, 1995 (60 FR 39437) The additional information contained in the supplemental letters dated July 21, 1995, and June 10, September 10 and 13, 1996, were 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 amendment is contained in a Safety Evaluation dated September 20, 1996.No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: April 4, 1995, as supplemented April 25 and August 19, 1996

Brief description of amendment: The amendment revised operating criteria and requirements associated with containment personnel air locks.

Date of issuance: September 26, 1996

Effective date: September 26, 1996

Amendment No.: 175

Facility Operating License No. NPF-6. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 2, 1995 (60 FR 39438) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 26, 1996.No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801

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: December 18, 1995, as supplemented on May 3, June 11, July 1, July 3, and August 22, 1996.

Brief description of amendments: The amendments increase the authorized rated thermal power from 2200 Megawatt-thermal (MWt) to 2300 MWt. The amendment also approves changes to the Technical Specifications to implement uprated power operation.

Date of issuance: September 26, 1996

Effective date: September 26, 1996, to be implemented within 120 days

Amendment Nos. 191 and 185Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: July 3, 1996 (61 FR 34889) The initial Federal Register notice included information from the licensee's May 3 and May 11, 1996 supplemental letters. The July 1, July 3, and August 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 amendments is contained in an Environmental Assessment dated September 12, 1996 and in a Safety Evaluation dated September 26, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199.

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: May 15, 1996

Brief description of amendment: The amendment revises Technical Specification 3/4.3.2, ''Isolation Actuation Instrumentation,'' to establish a range of allowable values and trip setpoints for high temperatures in the Main Steam Line Tunnel Lead Enclosure.

Date of issuance: September 17, 1996

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 77

Facility Operating License No. NPF-69: Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: July 3, 1996 (61 FR 34893) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 17, 1996.No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: January 16, 1996

Brief description of amendment: The amendment changes the Technical Specification (TS) Limiting Condition for Operation Section 3.6.1 and Surveillance Requirement Section 4.6.1, ''Primary Containment,'' and the corresponding Bases, as well as, adds Administrative Controls Section 6.19, ''Containment Leakage Rate Testing Program.'' These changes will allow the use of the performance-based containment leakage testing requirements described in 10 CFR Part 50, Appendix J, Option B, for Type B, for Type A, B, and C testing.

Date of issuance: September 20, 1996

Effective date: As of the date of issuance.

Amendment No.: 203

Facility Operating License No. DPR-65. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 14, 1996 (61 FR 5816) as corrected on February 29, 1996 (61 FR 7825)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 20, 1996.No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, CT 06385

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: June 22, 1995, as supplemented August 10, 1995, and March 26, 1996

Brief description of amendment: The amendment modifies the Technical Specification requirements for avoidance and protection from thermal-hydraulic instabilities to be consistent with the previously approved Boiling

Water Reactor Owners Group long-term solution Option I-D described in the Licensing Topical Report, ''BWR Owners Group Long-Term Stability Solutions Licensing Methodology (NEDO-31960),'' dated June 1991, and Supplement 1 to NEDO-31960, dated March 1992. The amendment also adds the fuel cycle dependent stability power and flow limits in the Core Operating Limits Report.

Date of issuance: September 17, 1996

Effective date: September 17, 1996, with full implementation within 60 days

Amendment No.: 97

Facility Operating License No. DPR-22. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 30, 1995 (60 FR 45181) The August 10, 1995, and March 26, 1996, letters provided a nonproprietary version of the topical report GENE-637-043-0295 and clarifying information, respectively. This information was within the scope of the original application and did not change the staff's initial proposed no significant hazards consideration determination. Therefore, renoticing was not warranted. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 17, 1996.No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: May 31, 1995

Brief description of amendment: The amendment revised the technical specifications to require additional restrictions on the component cooling water system heat exchangers.

Date of issuance: September 19, 1996

Effective date: September 19, 1996

Amendment No.: 175

Facility Operating License No. DPR-40. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 5, 1995 (60 FR 35083) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 19, 1996.No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: July 12, 1996, as supplementedAugust 19, 1996, and August 21, 1996.

Brief description of amendment: The amendment extends the surveillance interval for certain instruments from 18 to 24 months.

Date of issuance: September 24, 1996

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 169

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 14, 1996 (61 FR 42282) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 24, 1996.No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Tennessee Valley Authority, Docket Nos. 50-259, 50-260, and 50-296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of application for amendments: May 3, 1996 (TS 352)

Brief description of amendments: The amendments provide administrative changes to the technical specifications.

Date of issuance: September 18, 1996

Effective Date: September 18, 1996

Amendment Nos.: 231, 246 and 206

Facility Operating License Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: August 14, 1996 (61 FR 42284) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 18, 1996.No significant hazards consideration comments received: None

Local Public Document Room location: Athens Public library, 405 E. South Street, Athens, Alabama 35611

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: June 28, 1996, as supplementedAugust 30, 1996.

Brief description of amendment: The amendment revises the Technical Specifications (TSs) to increase the required shutdown margin. It also revises TSs associated with this shutdown margin increase to allow calculational determination of the highest worth control rod and to relax the action requirements in the event the required shutdown margin is not met. The amendment also makes appropriate editorial changes and minor editorial corrections to the affected TSs.

Date of issuance: September 25, 1996

Effective date: As of the date of issuance, to be implemented within 30 days.

Amendment No.: 148

Facility Operating License No. DPR-28. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 31, 1996 (61 FR 40031) The August 30, 1996, letter provided clarifying information that did not change the scope of the application or affect the initial determination. The Commission's related evaluation of the amendment is contained in aSafety Evaluation dated September 25, 1996.No significant hazards consideration comments received: No

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: April 25, 1995

Brief description of amendment: The amendment adds a reactor water cleanup system high blowdown containment isolation trip function and associated limiting condition for operation and surveillance requirements to the Technical Specifications.

Date of issuance: September 19, 1996Effective date: September 19, 1996, to be implemented within 30 days of issuance.

Amendment No.: 147

Facility Operating License No. NPF-21: The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: June 28, 1996 (61 FR 33777) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 19, 1996.No significant hazards consideration comments received: No.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: June 10, 1996, as supplemented on August 27, and September 5, 1996.

Brief description of amendment: The amendment revises Kewaunee Nuclear Power Plant Technical Specification 4.2.b, ''Steam Generator Tubes,'' and its associated basis, by allowing the use of Westinghouse laser-welded sleeves to repair defective steam generator tubes.

Date of issuance: September 24, 1996

Effective date: September 24, 1996, and is to be implemented within 30 days of the date of issuance.

Amendment No.: 127

Facility Operating License No. DPR-43: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 3, 1996 (61 FR 34902) The August 27, 1996, submittal increased the TS required sample size for in-service inspection of repaired tubes in both SGs. The September 5, 1996, submittal incorporated the EPRI guidelines for SG inspection scope expansion for repaired SG tubes into the TS. These submittals provided clarifying information and did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 24, 1996. No significant hazards consideration comments received: No.

Local Public Document Room location: University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, Wisconsin 54311-7001

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: May 1, 1996 as supplemented on May 31, August 14, August 26, and September 11, 1996.

Brief description of amendment: The amendment revises Kewaunee Nuclear Power Plant Technical Specification 4.2.b, ''Steam Generator Tubes,'' its associated bases, and Figure TS 4.2-1 by redefining the pressure boundary for Westinghouse mechanical hybrid expansion joint (HEJ) steam generator (SG) tube sleeves.

Date of issuance: September 25, 1996

Effective date: September 25, 1996, and is to be implemented within 30 days of the date of issuance.

Amendment No.: 128

Facility Operating License No. DPR-43: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 22, 1996 (61 FR 25715) The May 31, August 14, August 26, and September 11, 1996, submittals 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 September 25, 1996.No significant hazards consideration comments received: No

Local Public Document Room location: University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, Wisconsin 54311-7001

Dated at Rockville, Maryland, this 2nd day of October 1996.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects - I/II, Office of Nuclear Reactor Regulation

[Doc. 96–25743 Filed 10–8–96; 8:45 am]

BILLING CODE 7590–01–F

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a proposed revision of a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide is a proposed Revision 3 to Regulatory Guide 1.8, and it is temporarily identified as DG–1012, ''Qualification and Training of Personel for Nuclear Power Plants.'' The guide will be in Division 1, ''Power Reactors.'' This regulatory guide is being revised to provide current guidance acceptable to the NRC staff regarding qualifications and training for nuclear power plant personnel. This regulatory guide would endorse ANSI/ANS–3.1–1993, ''Selection, Qualification and Training of Personnel for Nuclear Power Plants.''

The draft guide has not received complete staff review and does not represent an official NRC staff position.

Public comments are being solicited on the guide. Comments should be accompanied by supporting data. Written comments may be submitted 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. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by November 15, 1996.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Comments may be submitted electronically, in either ASCII text or Wordperfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet.

If using a personal computer and modem, the NRC subsystem on FedWorld can be accessed directly by dialing the toll free number: 1–800–303–9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT–100 terminal emulation, the NRC NUREGs and RegGuides for Comment subsystem can then be accessed by selecting the ''Rules Menu'' option from the ''NRC Main Menu.'' For further information about options available for NRC at FedWorld, consult the ''Help/Information Center'' from the ''NRC Main Menu.'' Users will find the ''FedWorld Online User's Guides'' particularly helpful. Many NRC subsystems and data bases also have a ''Help/Information Center'' option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS, 703–321–3339, or by using Telnet via Internet, fedworld.gov. If using 703–321–3339 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the ''Regulatory, Government Administration and State Systems,'' then selecting ''Regulatory Information Mall.'' At that point, a menu will be displayed that has an option ''U.S. Nuclear Regulatory Commission'' that will take you to the NRC Online main menu. The NRC Online area also can be accessed directly by typing ''/go nrc'' at a FedWorld command line. If you access NRC from FedWorld's main menu, you may return to FedWorld by selecting the ''Return to FedWorld'' option from the NRC Online Main Menu. However, if

you access NRC at FedWorld by using NRC's toll-free number, you will have full access to all NRC systems but you will not have access to the main FedWorld system.

If you contact FedWorld using Telnet, you will see the NRC area and menus, including the Rules menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact FedWorld using FTP, all files can be accessed and downloaded but uploads are not allowed; all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is included. There is a 15-minute time limit for FTP access.

Although FedWorld can be accessed through the World Wide Web, like FTP that mode only provides access for downloading files and does not display the NRC Rules menu.

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301)415–5780; e-mail AXD3@nrc.gov. For more information on this draft regulatory guide, contact I. Schoenfeld at the NRC, telephone (301)415–6778; e-mail ISS@nrc.gov.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Distribution and Mail Services Section; or by fax at (301)415–2260. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 23rd day of September 1996.

For the Nuclear Regulatory Commission.

M. Wayne Hodges,

Director, Division of Systems Technology, Office of Nuclear Regulatory Research.

[FR Doc. 96–25901 Filed 10–8–96; 8:45 am]

BILLING CODE 7590–01–P

[NUREG–0700, Rev. 1]

Notice of Issuance and Availability; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance and availability; Correction.

SUMMARY: This document corrects a notice appearing in the Federal Register on September 13, 1996 (61 FR 48513), that announces the availability of Revision 1 to NUREG–0700, ''Human-System Interface Design Review Guideline.'' This action is necessary to reflect the appropriate information concerning the availability of a final NUREG publication.

SUPPLEMENTARY INFORMATION: In the Federal Register of September 13, 1996, in the tenth line of the third column, remove the language, ''Requests for single copies of NUREGs (which may be reproduced) should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Distribution and Mail Services Section. Telephone requests cannot be accommodated.'', and insert in its place the following language: ''Copies of NUREGS may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is available for inspection and/or copying in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.''

Dated at Rockville, Maryland, this 4th day of October 1996.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 96–25902 Filed 10–8–96; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

The National Partnership Council; Notice of Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

TIME AND DATE: 10:00 a.m., October 9, 1996.

PLACE: Lincoln Room, Kellogg Conference Center, Michigan State University, East Lansing, Michigan 48824.

STATUS: This meeting will be open to the public. Seating will be available on a first-come, first-served basis. Individuals with special access needs wishing to attend should contact OPM at the number shown below to obtain appropriate accommodations.

MATTERS TO BE CONSIDERED: The National Partnership Council (NPC) will receive presentations by representatives of Michigan State University's School of Labor and Industrial Relations, and labor and management representatives of the Michigan National Guard.

CONTACT PERSON FOR MORE INFORMATION: Michael Cushing, Director, Center for Partnership and Labor-Management Relations, Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Room 7H28, Washington, DC 20415–0001, (202) 606–0010.

SUPPLEMENTARY INFORMATION: We invite interested persons and organizations to submit written comments. Mail or deliver your comments to Michael Cushing at the address shown above.

Office of Personnel Management.

James B. King,

Director.

[FR Doc. 96–25968 Filed 10–4–96; 4:17 pm]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, D.C. 20549

Existing Collection of Information:

Rule 10a–1, SEC File No. 270–413, OMB Control No. 3235–new

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'') has submitted to the Office of Management and Budget a request for approval of a collection currently in use on the following rule.

Rule 10a–1 (17 CFR 240.10a–1) under the Securities Exchange Act of 1934 (''Exchange Act'') is intended to limit short selling of a security in a declining market, by requiring, in effect, that each successive lower price be established by a long seller. The price at which short sales may be effected is established by reference to the last sale price reported in the consolidated system or on a

particular marketplace. Rule 10a–1 requires each broker or dealer that effects any sell order for a security registered on, or admitted to unlisted trading privileges, on a national securities exchange to mark the relevant order ticket either ''long'' or ''short.''

There are approximately 1,500 brokers and dealers registered with the national securities exchanges. The Commission has considered each of these respondents for the purposes of calculating the reporting burden under Rule 10a–1. Each of these approximately 1,500 registered broker-dealers effects sell orders for securities registered on, or admitted to unlisted trading privileges, on a national securities exchange. In addition, each respondent makes an estimated 55,663 annual responses, for an aggregate total of 83,493,861 responses per year. Each response takes approximately .000143 hours to complete. Thus, the total compliance burden per year is 11,902 burden hours.

General comments regarding the estimated burden hours should be directed to the Desk Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W. Washington, DC 20549 and Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: October 3, 1996.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–25922 Filed 10–8–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 22261; 811–7936]

Hercules Funds Inc.; Notice of Application

October 2, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (''Act'').

APPLICANT: Hercules Funds Inc.

RELEVANT ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on July 25, 1996, and amended on September 13, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 28, 1996, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 222 South Ninth Street, Minneapolis, Minnesota 55402.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Counsel, at (202) 942–0583, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a Minnesota corporation, is an open-end non-diversified management investment company consisting of six series: North American Growth and Income Fund (''North American Fund''), Pacific Basin Value Fund (''Pacific Basin Fund''), European Value Fund (''European Fund''), Latin American Value Fund (''Latin American Fund'') (collectively, the ''Acquired Funds''), World Bond Fund (''Bond Fund''), and Money Market Fund. On August 4, 1993, applicant filed a notification of registration on Form N–8A under section 8(a) of the Act and registered under section 8(b) of the Act and the Securities Act of 1933 by filing a registration statement on Form N–1A. The registration statement became effective on November 1, 1993, and the initial public offering commenced on November 9, 1993.

2. At a meeting held on March 29, 1996, applicant's board of directors (the ''Board'') approved the following plans by written action pursuant to Minnesota law; (a) a plan or reorganization between North American Fund and Growth and Income Fund, a series of Piper Funds Inc.; (b) a plan of reorganization between Pacific Basin Fund and Pacific-European Growth Fund (''Pacific-European Fund''), a series of Piper Global Funds Inc. (''Piper Global''); (c) a plan of reorganization between European Fund and Pacific-European Fund; (d) a plan of reorganization between Latin American Fund and Emerging Markets Growth Fund (with Growth and Income Fund and Pacific-European Fund, the ''Acquiring Funds''), a series of Piper-Global (collectively, the ''Plans''); and (e) a plan of liquidation of Bond Fund (the ''Liquidation Plan''). In approving the Plans and the Liquidation Plan, the Board considered, among other things: (a) the belief of Piper Capital Management Incorporated (the ''Manager''), applicant's investment adviser, that applicant's assets were unlikely to grow to an economically viable size; (b) the Manager's intent to cease waiving and absorbing expenses relating to any of applicant's series after June 30, 1996; (c) the Manager's agreement to incur all direct expenses associated with the Plans and the Liquidation Plan; and (d) the Manager's expectation that the Plans would not result in any Federal taxable income to the applicable funds or their shareholders.

3. Applicant and the Acquiring Fund may be deemed affiliated persons of each other because they share a common investment adviser, common directors, and common officers. Accordingly, applicant relied on the exemption provided in rule 17a–8 to effect the Plans.[1] The Board determined, in accordance with rule 17a–8, that the sale of each Acquired Fund's assets to the applicable Acquiring Fund was in the best interests of the Acquired Fund and its shareholders, and that the interests of the existing shareholders would not be diluted as a result of such transaction.

4. To solicit approval of each Plan by shareholders, applicant distributed to each Acquired Fund's shareholders a combined proxy statement and prospectus dated May 17, 1996. To solicit approval of the Liquidation Plan, applicant distributed to Bond Fund's shareholders a proxy statement dated

[1] Rule 17a–8 provides relief from the affiliated transaction prohibition of section 17(a) of the Act for a merger of investment companies that may be affiliated persons of each other solely by reason of having a common investment adviser, common directors, and/or common officers.

May 17, 1996. On June 18, 1996, the holders of a majority of outstanding shares of each Acquired Fund and Bond Fund voted to approve each Plan and the Liquidation Plan, respectively. There was no formal plan to liquidate Money Market Fund, nor was there a shareholder vote or consent to a liquidation. However, shareholders of Money Market Fund were informed of the Manager's intention to cease waiving and absorbing the Fund's expenses effective July 1, 1996 in a supplement to applicant's prospectus filed on February 7, 1996 and in applicant's semi-annual report for the period ended January 31, 1996. Shareholders of Money Market Fund subsequently began voluntarily redeeming their shares at an increased rate, and had redeemed all of their shares by the close of business on June 21, 1996 (the ''Closing Date'').

5. As of the Closing Date, North American Fund had 660,209 shares outstanding at a net asset value (''NAV'') of $11.11 per share and an aggregate NAV of $7,333,807, Pacific Basin Fund had 1,983,812 shares outstanding at a NAV of $9.29 per share and an aggregate NAV of $18,426,580, European fund had 984,469 shares outstanding at a NAV of $10.31 per share and an aggregate NAV of $10,146,588, Latin American fund had 1,617,505 shares outstanding at a NAV of $8.77 per share and an aggregate NAV of $14,191,312, and Bond Fund had 833,326 shares outstanding at a NAV of $10.34 per share and an aggregate NAV of $5,516,964. As of June 20, 1996, Money Market Fund had an aggregate NAV of $1,050,236, but by the close of business on the Closing Date, the Fund had an aggregate NAV of $0 as a result of shareholders' voluntary redemption of their shares in complete liquidation of the fund. Accordingly, as of the Closing Date, applicant had an aggregate NAV of $55,931,299.

6. On the Closing Date, the assets and state liabilities of each Acquired Fund were transferred to the relevant Acquiring Fund in exchange for shares of the Acquiring Fund. These shares, which had an aggregate NAV equal to the value of Acquired Fund assets transferred to the Acquiring Fund, less the Acquired Fund liabilities assumed by the Acquiring Fund, subsequently were distributed *pro rata* to each Acquired Fund shareholder. Also on the Closing Date, the portfolio securities and other assets of Bond Fund were sold, creditors were paid or reserves for such payments established, and the net proceeds of such sales were distributed to Bond Fund's shareholders in cash, *pro rata*, in accordance with their shareholdings.

7. All expenses incurred in soliciting proxies from applicant's shareholders for approval of each of the Plans and the Liquidation Plan, including the cost of preparing and mailing proxy statements and other materials, were borne by the Manager. Such expenses were approximately $750,000. Total brokerage fees paid by applicant in connection with the Plans and the Liquidation Plan amounted to $11,534 (with respect to North American Fund).

8. At the time of the application, applicant had no shareholders, assets, or liabilities, nor was applicant a party to any litigation or administrative proceeding. Applicant is not engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

9. Applicant intends to file articles of dissolution with the Secretary of State of Minnesota upon receipt of the order requested by this application.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–25827 Filed 10–8–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37772; File No. S7–24–89]

Joint Industry Plan; Solicitation of Comments and Order Approving Request To Extend Temporary Effectiveness of Plan, Including Temporary Effectiveness of Revised Amendment 9 Thereto, for Nasdaq/National Market Securities Traded on an Exchange on an Unlisted or Listed Basis, Submitted by the National Association of Securities Dealers, Inc., and the Boston, Chicago and Philadelphia Stock Exchanges

October 1, 1996.

The National Association of Securities Dealers, Inc., on behalf of itself and the Boston, Chicago, and Philadelphia Stock Exchanges (collectively, ''Participants'')[1] has submitted to the Commission a request[2] to extend through March 30, 1997, operation of a joint transaction reporting plan (''Plan'') and certain related exemptive relief for trading of Nasdaq/National Market securities traded on an exchange on an unlisted or listed basis.[3] This notice and order solicits comment on certain related substantive matters identified below and extends the effectiveness of the Plan and the exemptive relief discussed below. Temporary approval of the Plan incorporates temporary approval of Amendment No. 9, as revised, to the Plan relating to revenue sharing, through March 30, 1997.[4]

I. Background

The Commission originally approved the Plan on June 26, 1990.[5] The Plan

[1] The signatories to the Plan, i.e., the National Association of Securities Dealers, Inc. (''NASD''), and the Chicago Stock Exchange, Inc. (''Chx'') (previously, the Midwest Stock Exchange, Inc.), Philadelphia Stock Exchange, Inc. (''Phlx''), and the Boston Stock Exchange, Inc. (''BSE''), are the ''Participants.'' The BSE, however, joined the Plan as a ''Limited Participant,'' and reports quotation information and transaction reports only in Nasdaq/National Market (previously referred to as ''Nasdaq/NMS'') securities listed on the BSE. Originally, the American Stock Exchange, Inc. (''Amex''), was a Participant to the Plan, but did not trade securities pursuant to the Plan, and withdrew from participation in the Plan in August 1994.

[2] *See* letter from Robert E. Aber, Vice President, General Counsel and Secretary, Nasdaq, to Mr. Jonathan G. Katz, Secretary, Commission, dated September 30, 1996.

[3] Section 12 of the Act generally requires an exchange to trade only those securities that the exchange lists, except that Section 12(f) of the Act permits unlisted trading privileges (''UTP'') under certain circumstances. For example, Section 12(f), among other things, permits exchanges to trade certain securities that are traded over-the-counter (''OTC/UTP''), but only pursuant to a Commission order or rule. The present order fulfills this Section 12(f) requirement. For a more complete discussion of this Section 12(f) requirement, *see* November 1995 Extension Order, *infra* note 5, at n. 2.

[4] On March 18, 1996, the Commission, solicited comment on a revenue sharing agreement among the participants. *See* Securities Exchange Act Release No. 36985 (March 18, 1996), 61 FR 12122 (''March 18, 1996 Extension Order''). Thereafter, the Participants submitted certain technical revisions to the revenue sharing agreement (''revised Amendment 9''). *See* letter from Robert E. Aber, Vice President, General Counsel, and Secretary, Nasdaq, to Jonathan G. Katz, Secretary, Commission, dated September 13, 1996. *See also* Securities Exchange Act Release No. 37689, (September 16, 1996), (notice and order recognizing receipt of revised Amendment No. 9) (''September 16, 1996 Extension Order'').

[5] *See* Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 (''1990 Approval Order''). For a detailed discussion of the history of UTP in OTC securities, and the events that led to the present plan and pilot program, *See also* Securities Exchange Act Release No. 34371 (July 13, 1994), 59 FR 37103 (''1994 Extension Order''). *See also* Securities Exchange Act Release No. 35221, (January 11, 1995), 60 FR 3886 (''January 1995 Extension Order''), Securities Exchange Act Release No. 36102 (August 14, 1995), 60 FR 43626 (''August 1995 Extension Order''), Securities Exchange Act Release No. 36226 (September 13, 1995), 60 FR 49029 (''September 1995 Extension Order''), Securities Exchange Act Release No. 36368 (October 13, 1995), 60 FR 54091 (''October 1995 Extension Order''), Securities Exchange Act Release No. 36481 (November 13, 1995), 60 FR 58119 (''November 1995 Extension Order''), Securities Exchange Act Release No. 36589 (December 13, 1995), 60 FR 65696 (''December 13, 1995 Extension Order''), Securities Exchange Act Release No. 36650 (December 28, 1995), 60 FR 358 (''December 28, 1995 Extension Order''), Securities Exchange Act Release No. 36934 (March 6, 1996), 61 FR 10408 (''March 6 1996 Extension Order''), March 18, 1996 Extension Order, and September 16, 1996 Extension Order.

governs the collection, consolidation and dissemination of quotation and transaction information for Nasdaq/National Market securities listed on an exchange or traded on an exchange pursuant UTP. Commission approval of operation of the Plan was previously scheduled to expire September 30, 1996. Recently, the Commission received certain technical revisions to Amendment No. 9 to the Plan, which was originally noticed for comment on March 18, 1996, concerning the proposed revenue sharing agreement. In order to provide the Commission with an opportunity to review the revised Amendment No. 9 to the Plan, the Commission extended temporary approval of the Plan through September 30, 1996. The Commission received no comment letters on Amendment No. 9 to the Plan, either as originally proposed or as revised.

II. Description of the Proposal

As originally approved by the Commission, the Plan required the Participants to complete their negotiations regarding revenue sharing during the one-year pilot period. The Participants have now concluded those negotiations, as evidenced by their submission to the Commission of revised Amendment No. 9 to the Plan.

Under the Revenue Sharing Plan, Exchange Participants will receive annual payments in quarterly installments out of total net distributable operating revenue [6] based on their percentage of total Nasdaq volume,[7] subject to certain specified minimum and maximum payments for an initial period of four-and-one-half years (''buy-in period'').[8] Thereafter, once the ''buy-in'' period elapses with respect to a particular Exchange Participant, that exchange will receive annual payments in quarterly installments out of total net distributable operating revenue proportional to its percentage of total Nasdaq volume, without regard to any minimum or maximum payment amounts. Plan Participants would not be eligible to receive revenue under the Plan until they have established an automated interface with Nasdaq for the transmission of quotations and transaction information. Once an Exchange Participant is eligible to receive revenue under the Revenue Sharing Plan, that Exchange Participant also will be eligible to receive revenue based on its volume for the preceding twelve-month period, up to the maximum payment amount discussed below.[9]

Specifically, the maximum payment amount for any Exchange Participant will be an amount based on total net distributable operating revenue under the Plan for 1995. This maximum payment amount figure will be calculated and furnished to all Exchange Participants by the NASD by April 30, 1996. Based on revenue calculations performed by the NASD in the last quarter of 1995, it is expected that the maximum payment amount will be somewhere in the range of $820,000 and $880,000, but this figure could be higher or lower depending on the eventual revenue for 1995. Over time, this maximum payment amount will be adjusted upward or downward depending on fluctuations in net operating revenue relative to revenue in 1995. The minimum payment amount for the Chx would be $250,000 and likewise would be adjusted upward or downward depending on fluctuations in net operating revenue relative to revenue in 1995. The minimum payment for other exchanges becoming eligible to receive revenue under the Plan would be set relative to the trading volume of the Exchange Participant with the highest trading volume among Exchange Participants during the year before the Participant became eligible to receive revenue under the Plan. The minimum payment amount to other Exchange Participants also would be adjusted annually in the same manner as that of the Chx. Accordingly, for a period of four-and-one-half years, if an Exchange Participant's share of distributable revenue is less than its minimum payment amount, it would receive the minimum payment amount; if its share is equal to or greater than its minimum payment amount but less than its maximum payment amount, it would receive that share of revenue; and, if its share is greater than the maximum payment amount, it would receive the maximum payment amount. The interim plan found in the proposal for the buy-in period also contains provisions for the *pro rata* diminution of the minimum payment amount in the event that an Exchange Participant becomes eligible or ineligible to receive revenue during a calendar year. After this initial buy-in period, an Exchange Participant would receive a relative proportion of net distribution operating revenue based on its trading volume.[10] Payment dates are calculated based on the effective date of this order or, for amounts due after 1996, as of actual dates specified in revised Amendment No. 9.

III. Exemptive Relief

In conjunction with the Plan, on a temporary basis scheduled to expire on September 30, 1996, the Commission

[6] Revised Amendment No. 9 clarifies that net distributable operating revenue for any particular calendar year shall be calculated by adding all revenues from Level 1, Level 2, (non-market maker revenue only), Nasdaq/NMS/Last Sale, and NQDS, including revenues from the dissemination of information among Eligible Securities to foreign marketplaces, and subtracting from such revenues all operating and administrative expenses of the Processor in connection with the collection from the Participants, and consolidation and dissemination to Vendors and Subscribers, of Quotation Information and Transaction Reports in Eligible Securities.

[7] An Exchange Participant's percentage of total Nasdaq volume will be based on the average of that Exchange's proportion of total Nasdaq *trade* volume reported to Nasdaq and disseminated to securities information vendors, and total Nasdaq *share* volume reported to Nasdaq and disseminated to securities information vendors.

[8] Revised Amendment No. 9 clarifies that each Participant becoming a signatory to the Plan after June 26, 1990, shall as a condition to become a Participant, pay to the other Plan Participants a proportionate share of the aggregate development costs previously paid by Plan Participants to the Processor, which aggregate development costs totaled $439,530, with the result that each Exchange Participant's share of all development costs is the same. In this regard, the Commission notes that the Amex, prior to its withdrawal as a Participant to the Plan, presumably paid a share of development costs to the Processor. The Commission believes that, if the Amex rejoins as a participant to the Plan, the Amex would not be expected to repay any development costs that it has already paid. The Commission believes, however, that an open issue remains as to the proper handling of any payments received by the Participants from a new Participant to the Plan given any contribution to development costs made by the Amex. Specifically, it is not clear whether the Amex, either as a non-Participant to the Plan or after possibly rejoining as a Participant, would be due a proportionate share of development costs paid by a new Participant to the Plan.

[9] Because the Chx is the only Exchange Participant that has implemented and maintained an automated interface with Nasdaq for the reporting of transaction and quotation information pursuant to the Plan, the Chx will receive a lump-sum payment of $444,525 payable thirty days after the effective date of the Revenue Sharing Plan. The Commission notes that this amount is based on the following payments for previous periods: (1) For the six-month period ending December 1993, $50,000; (2) for the one-year period ending December 1994, $100,000; and (3) for the period between January 1, 1995 and March 5, 1996, $294,525. For the period March 6 to December 31, 1996, the NASD is scheduled to pay the Chx a *pro rate* amount of its payment for 1996.

[10] The Commission notes that the NASD, as discussed in the March 18, 1996 Extension order, states its strong belief that Participants should address the fact that, absent an additional amendment to the Plan, Participants would have the right to receive revenue for late trade reports. The NASD ''believes it is improper to reward a market center for transmitting stale transactions that, at best, have questionable, if any, redeeming economic value to market participants and, at worse, are potentially disruptive to the marketplace.'' The NASD also notes the numerous benefits that it believes would be derived from limiting Participant's revenues to those associated with timely-reported transactions. The Commission believes this to be an open matter, and expects the Plan participants to resolve the NASD's concerns in this regard.

granted an exemption from Rule 11Ac1–2 under the Act regarding the calculated best bid and offer (''BBO''), and granted the BSE an exemption from the provision of Rule 11Aa3–1 under the Act that requires transaction reporting plans to include market identifiers for transaction reports and last sale data.

IV. Comments on the Operation of the Plan

In the January 1995, August 1995, September 1995, October 1995, November 1995, December 13, 1995, December 28, 1995, March 6, 1996, March 18, 1996, and September 16, 1996 Extension Orders, the Commission solicited, among other things, comment on: (1) whether the BBO calculation for the relevant securities should be based on price and time only (as currently is the case) or if the calculation should include size of the quoted bid or offer; and (2) whether there is a need for an intermarket linkage for order routing and execution and an accompanying trade-through rule. The Commission continues to solicit comment on these matters.

V. Solicitation of Comment

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. All submissions should refer to File No. S7–24–89 and should be submitted by October 30, 1996.

VI. Conclusion

The Commission finds that an extension of temporary approval of the operation of the Plan through March 30, 1997, is appropriate and in furtherance of Section 11A of the Act as it will provide the Participants with additional time to make reasonable proposals concerning: (1) Whether the BBO calculation for the relevant securities should be based on price and time only (as currently is the case) or if the calculation should include size of the quoted bid or offer; and (2) whether there is a need for an intermarket linkage for order routing and execution and an accompanying trade-through rule. While the Commission continues to solicit comment on these matters, the Commission believes that these matters should be addressed directly by the Participants during the extension period so that issues presented by these matters will be resolved prior to March 30, 1997.

Concerning incorporation of the revenue sharing agreement within the present temporary approval of the operation of the Plan, the Commission believes that it is appropriate and in furtherance of the Act and the rules thereunder to approve revised Amendment No. 9 to the Plan. Accordingly, revised Amendment No. 9 to the Plan will be temporarily approved, as are all other elements of the Plan, through March 30, 1997. Consequently, any Participants due payments under revised Amendment No. 9 to the Plan (currently, the Chx) during the extension period are to be paid in accordance with the agreement within the time periods described in revised Amendment No. 9 as of this effective date.

The Commission finds further that extension of the exemptive relief through March 30, 1997, as described above, also is consistent with the Act, the Rules thereunder, and specifically with the objectives set forth in Sections 12(f) and 11A of the Act and in Rules 11Aa3–1 and 11Aa3–2 thereunder.

VII. Conclusion

It is therefore ordered, pursuant to Sections 12(f) and 11A of the Act and (c)(2) of Rule 11Aa3–2 thereunder, that the Participants' request to extend the effectiveness of the Joint Transaction Reporting Plan for Nasdaq/National Market securities traded on an exchange on an unlisted or listed basis, incorporating revised Amendment No. 9 thereto, and certain exemptive relief, through March 30, 1997, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(29).

Jonathan G. Katz,

Secretary.

[FR Doc. 96–25924 Filed 10–8–96; 8:45 am]

BILLING CODE 8010–01–M

[File No. 500–1]

Systems of Excellence, Inc.; Order of Suspension of Trading

October 7, 1996.

It appears to the Securities and Exchange Commission (''Commission'') that there is a lack of adequate and accurate current information about Systems of Excellence, Inc. (''SOE''), of Coral Gables, Florida and Mclean, Virginia. Questions have been raised about publicly-disseminated information concerning, among other things: (1) SOE's reported financial condition; (2) the existence and value of services rendered to SOE in exchange for stock issued by SOE; (3) whether stock was issued by SOE to consultants without registration; (4) the reasons for changes in SOE's independent accountants; and (5) SOE's sales of its video teleconferencing products.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12 (k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:00 a.m. EDT, October 7, 1996 through 11:59 p.m. EDT, On October 21, 1996.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–26066 Filed 10–7–96; 11:39 am]

BILLING CODE 8010–01–M

[Release No. 34–37773; File No. SR–Amex–96–05]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendments Thereto Relating to Assurances of Delivery for Short Sales of Derivative Securities into an Underwriting Syndicate's Stabilizing Bid

October 1, 1996.

On January 31, 1996, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to require that members trading derivative securities as Registered Options Traders

[1] 15 U.S.C. 78s(b)(1) (1988 & Supp. V 1993).

[2] 17 CFR § 240.19b–4 (1994).

(''ROTs'') pursuant to Amex Rule 958 make prior arrangements either to borrow the necessary securities or to obtain other affirmative assurances that delivery can be made on settlement date prior to effecting a short sale into an underwriting syndicate's stabilizing bid.

Notice of the proposed rule change was published for comment and appeared in the Federal Register on March 20, 1996.[3] No comments were received on the proposal. On June 12 and July 17, 1996, respectively, Amex submitted Amendments No. 1 and 2 to the proposal.[4] This order approves the proposal, as amended, and solicits comments on the Amendments.

I. Description of the Proposal

Since 1989, the Exchange has required members and member organizations effecting short sales for both customer and proprietary accounts either to make prior arrangements to borrow the securities sold short or to obtain other acceptable assurances that delivery can be made on settlement date.[5] Such assurances include knowledge that the security is available for borrowing, conversion privileges, rights exercises or other similar situations so long as the security needed for delivery can be timely obtained. Short sales by specialists, market makers and odd-lot dealers in fulfilling their market making responsibilities are excepted from this requirement. Arbitrageurs and other traders may not rely upon this ''market maker'' exception.

In 1992, the Exchange amended its rules to permit Registered Equity Market Makers (''REMMs'') to register as ROTs in order to trade index warrants for their own account subject to Amex Rule 958.[6] The Exchange deemed it desirable to enable members to trade these equity derivative securities[7] subject to Rule 958 (which affords specialist ''good faith'' margin treatment and an exemption from stabilization requirements) instead of the more restrictive provisions of Rules 111 and 114 applicable to REMMs because the Exchange believed that application of Rules 111 and 114 to index warrants would make it unlikely that members would trade such securities. The 1992 rule change also exempted members trading as ROTs from the short sale policy given their market making activities in index warrants.

According to the Exchange, the purpose of exempting Floor based market makers from ''pre-borrowing'' is that such a requirement would unacceptably interfere with market making activities, thereby degrading liquidity. The exemptions from the ''pre-borrowing'' policy may, however, create situations in the ordinary course of secondary market trading where a market maker or ROT may be unable to borrow a security it has sold short in connection with its market making obligations and, therefore, fails to deliver the security within the normal settlement cycle.

To prevent this result in one particular instance, the Exchange proposes to modify its short sale policy to require ROTs who trade equity derivatives pursuant to Rule 958 to make prior arrangements to borrow these securities or obtain other acceptable assurances that delivery can be made on settlement date in the limited situation where they are selling short into the stabilizing bid of an underwriting syndicate. Amex believes that implementation of this modified short sale policy will provide increased stability to the market for listed Amex equity derivative securities during a stabilized distribution. The result will be a reduction in the number of ''fails'' (*i.e.*, failure to effect delivery of the security to the purchaser), and resulting ''buy-ins'' (*i.e.*, the purchase of the security of the account of the short seller after it fails to deliver in accordance with the procedures of the clearing corporation).

The Amex asserts that this filing addresses only short selling in a distribution of equity derivatives that is being stabilized by the underwriter. The Exchange believes that there is little or no need for supplemental market making during a stabilized distribution since buy side investor interest, in all likelihood, has been accurately gauged and met by the underwriting syndicate either through the initial distribution or an overallotment option. Likewise, sell side investor interest will be met by the underwriting syndicate through the stabilizing bid. As is the case with any equity or equity derivative security, the Exchange notes that the specialist also is available to supply liquidity to investors.

The Exchange notes that it does not seek to impose a pre-borrowing requirement on ROTs who sell short on the offer in connection with satisfying investor buying interest. The Exchange, moreover, does not seek to prohibit short selling by ROTs. It only seeks to require ROTs to obtain adequate assurances that an equity derivative such as an index or currency warrant is available for borrowing. This ensures the ROT's ability to settle the trade in accordance with their contractual obligations.

According to the Exchange, selling into a stabilizing bid adds no liquidity to the market since it involves selling to a bidder who may prefer not to buy. The Exchange believes that to permit ROTs to sell short without pre-borrowing where the sale by definition does not provide liquidity and may result in a fail, is inconsistent with allowing stabilization by underwriters to facilitate a distribution. The Exchange believes that, while it is sound policy to permit market to sell short without pre-borrowing in circumstances where the short sale may add liquidity to the market, a short sale into a syndicate bid is not such a circumstance.

Amex represents that a specialist, unlike a ROT, needs Floor Official approval if it wishes to across the market to hit a bid to establish or increase a short position. In such a circumstance, the specialist must satisfy the Floor Official that the short sale is appropriate relative to the condition of the general market, the market in the particular stock and the adequacy of the specialist's position to the immediate and reasonably anticipated needs of the full lot and the odd lot market.[8] Amex expects that a Floor Official would not approve a specialist's short selling into an underwriting syndicate's stabilizing bid because it would be difficult to imagine a circumstance under which such a course of dealings would be necessary in relation to the needs of the market for the security. As such, Amex does not believe that a ROT would have any justification for selling short into a stabilizing bid. Therefore, rather than make his actions subject to Floor Official approval as could be required by the Exchange to address the problem identified in the instant proposal, Amex

[3] Securities Exchange Act Release No. 36956 (March 11, 1996), 61 FR 11451.

[4] Letters from William Floyd Jones, Amex, to Stephen M. Youhn, SEC dated June 10, 1996 (''Amendment No. 1'') and to Ivette Lopez, SEC, dated July 17, 1996 (''Amendment No. 2,'' together with Amendment No. 1, ''Amendments'').

[5] *See* Securities Exchange Act Release No. 27542 (Dec. 15, 1989) (''Release No. 27542'').

[6] *See* Securities Exchange Act Release No. 24277 (June 8, 1992) (''Release No. 24277''). The SEC has recently approved an Amex proposal to allow regular members to trade currency warrants for their own account subject to the provisions of Amex Rule 958. *See* Securities Exchange Act Release No. 36852 (Feb. 15, 1996).

[7] The term ''equity derivative security'' refers to an underwritten security the value of which is determined by reference to another security, or to a currency, commodity, interest rate or index of the foregoing. Such securities are commonly listed pursuant to Exchange Company Guide Sections 106, 107, 118 or Amex Rule 1102.

[8] *See* Amex Rule 170, Commentary .01.

believes it is more beneficial to impose a pre-borrowing requirement.[9]

Amex represents that the New York Stock Exchange (''NYSE'') also list equity derivative securities and that market makers on the NYSE are subject to rules analogous to those applicable to REMMs on the Amex, including rules relating to short selling (*i.e.*, pre-borrowing requirement). As a result, Amex believes that potential underwriters may view this distinction between the rules of the NYSE and Amex as an incentive to list equity derivatives on the NYSE.

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[10] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirement that the rules of an exchange be designated to promote just and equitable principles of trade and not to permit unfair discrimination between customers, issuers, brokers, and dealers.

In approving the Amex's current short sale policy in 1982, the Commission noted that the imposition of a formal affirmative borrowing requirement on members effecting short sales for both customer and proprietary accounts was appropriate for the protection of investors and the maintenance of fair and orderly markets.[11] By restricting naked short selling,[12] the Commission noted that the affirmative borrowing requirement should curtail downward speculative selling pressures in stocks traded on the Amex. The Commission noted, however, that it was appropriate for the Exchange to exempt specialists, market makers and odd-lot dealers from the general borrowing requirement in fulfilling their market-making responsibilities, because their short selling often was undertaken passively pursuant to their market-making operations. In this connection, the Commission noted it was reasonable for the Exchange not to exempt arbitrageurs and other traders from the borrowing requirement because their short selling activities were not passive in nature.[13]

When the Commission approved the Amex's 1992 proposal allowing REMMs to trade equity derivatives as ROTs pursuant to Amex Rule 958, these market makers assumed continuous affirmative market making obligations in their assigned securities and were treated as specialists.[14] As a result, these ROTs were entitled to good faith margin treatment and also were exempted from the affirmative determination pre-borrowing requirement when engaging in short sales of their assigned securities. The Commission stated that the purpose of that rule change was to enhance supplemental market making activitiy in equity derivatives, thereby increasing the depth and liquidity of the market.[15]

Consistent with that finding, the Commission believes it is reasonable for the Exchange to adopt this limited exception to its short sale policy in order to require ROTs to make an affirmative determination that an equity derivative security is available for borrowing prior to selling short into the stabilizing bid of an underwriting syndicate. The Commission believes that the imposition of a pre-borrowing requirement should help to reduce the number of times market makers sell short underwritten securities in distribution and are unable to deliver on settlement date. By improving the settlement mechanism of equity derivative securities which are sold short during stabilized distributions, the Commission believes the depth and liquidity of the equity derivative market will be enhanced.

As was stated in Release No. 27542, the Commission believes that short selling by market makers in furtherance of bona-fide market making obligations should not be restricted by imposing a pre-borrowing requirement. The Commission does not believe, however, that market makers who sell short for reasons other than in furtherance of their market making responsibilities (*e.g.*, speculation), should be relieved from the pre-borrowing requirement. As such, the Commission believes that the Amex proposal is a reasonable attempt to limit the availability of the exemption from the affirmative determination requirement to situations where a ROT is engaging in bona-fide market making transactions.

In approving this proposal, the Commission notes that this policy is strictly limited to instances where a ROT sells short into the stabilizing bid of an underwriting syndicate. This policy does not apply to a ROT's short sales outside of an underwritten distribution. The Commission notes that a ROT may sell short in an ordinary secondary market transaction without being required to make an affirmative determination as to the security's availability for pare-borrowing. Nor does this Ampex policy impose an affirmative borrowing requirement upon every short sale undertaken by a ROT during an underwritten distribution. A ROT may sell short into the offer side of the market without a pre-borrowing requirement. Finally, the Commission notes that this Amex policy will not operate as an outright prohibition of short selling by a ROT. While ROTs may still engage in short sale transactions, the availability of the exemption from the pre-borrowing requirement will be limited strictly to short sales undertaken in the course of bona fide market making activities. Accordingly, ROTs will be required to comply with the affirmative pre-borrowing requirement prior to selling short into the stabilizing bid of an underwriting syndicate.

The Commission finds good cause to approve the Amendments to the filing prior to the thirtieth date after the date of publication of notice thereof in the Federal Register. Although the Amendments clarify the original proposal and provide more detailed justification for adopting the instant policy, the Commission notes that they do not change the substance of the Amex proposal as originally filed. Although the filing results in an expansion of the applicability of the Amex short sale policy, the Commission notes that the underlying short sale policy is not changed by the Amendments. Accordingly, the

[9] According to Amex, in one recent situation, a ROT sold short into an underwriter's stabilizing bid more than five percent of the total issuance of a currency warrant. When questioned by the Exchange's staff as to how he intended to settle these trades, the ROT responded that he did not know where he was going to obtain the security and, in fact, expected to fail on settlement date. Amex asserts that it frequently is difficult to borrow index or currency warrants for short sale purposes as these securities may not be marginable. As anticipated, the ROT failed to deliver the security sold short and ultimately was ''bought-in.''

In the situation described above, the Exchange does not believe the ROT in question was providing liquidity to investors. Instead, the Exchange believes the ROT knowingly was taking advantage of the existence of a stabilizing bid of an underwriting syndicate in order to engage in a short sale speculation based on his opinion as to the appropriate price of the security. While short selling can be a perfectly proper strategy and can itself bring supply and demand into balance, Amex believes that it is appropriate to constrain potential excesses by rule.

[10] 15 U.S.C. 78f(b)(5) (1982).

[11] *See* Release No. 27542, *supra* note 5.

[12] A naked security position may be defined as an unhedged or uncovered security position that exposes the holder to the entire market risk associated with the position. A short sale becomes a naked short sale when the short seller or the short seller's broker fails to borrow and deliver stock to the broker's clearing agent. Brokers may fail to deliver stock to the clearing agent in long sales as well, but such fails are normally for short periods or for relatively small quantities of stock.

[13] *See* Release No. 27542, *supra* note 5.

[14] *See* Release No. 24277, *supra* note 6.

[15] *Id.*

Commission believes that Amendments raise no new or unique issues that were not already presented in the original filing. The Commission notes also that the original proposal was subject to the full notice and comment period and no comment letters were received. Accordingly, consistent with Section 6(b)(5) of the Act, the Commission believes that good exists to approve the Amendments to the filing on an accelerated basis.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the Amendments. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submission should refer to File No. SR–Amex–96–05 and should be submitted by October 30, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposal rule change (File No. SR–Amex–96–05) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–25925 Filed 10–8–96; 8:45 am]

BILLING CODE 8010–01–M

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–37778; File No. SR–DTC–96–15

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to the Procedures To Establish a Direct Registration System

October 3, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 17, 1996, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will establish (1) a new service called the Direct Registration System (''DRS''), which was developed by the securities industry, and (2) a new category of participants whose use of DTC's services will be limited to DRS.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change will amend DTC's rules (1) to establish a new category of participant called a limited participant which would be authorized to use only certain services of the depository; (2) to describe the DRS service to be offered by DTC; and (3) to set forth the requirements for (a) the admission of limited participants authorized to use only the DRS service and (b) the eligibility of securities for the DRS service. DRS will permit an investor to hold a security directly in electronic form as the registered owner of the security on the books of the issuer rather than (1) indirectly through a financial intermediary that holds the security in street name or in an account with a depository or (2) in the form of a certificate. The investor will have the right to transfer its DRS position in the security to a financial intermediary in order to sell or pledge the security or to receive a certificate representing the security.[3]

To facilitate the transfer of a DRS position to a financial intermediary, DTC will offer a new service to transfer agent, bank, and broker-dealer participants of DTC. A transfer agent that participates in the Fast Automated Transfer (''FAST'') program at DTC and meets the other qualifications described below will be able to become a DRS limited participant. Using the DRS service, an investor's DRS position could be transferred by the DRS limited participant (*i.e.*, the transfer agent) to the financial intermediary acting for the investor (*i.e.*, a bank or broker-dealer participant) through the facilities of DTC. Specifically, the limited participant will credit its DTC FAST account with the amount of the security to be transferred, and DTC in turn will credit the account of the receiving participant with that amount of the security.[4]

To qualify for admission as a limited participant for DRS services, an applicant must be a partnership, corporation, or other organization or entity that (1) is registered as a transfer agent pursuant to Section 17A(c) of the of the Act and Rule 17Ac2–1 thereunder, (2) participates in the FAST program, (3) provides Direct Mail Service on transfers, (4) accepts dividend reinvestment instructions from DTC on DRS eligible securities that offer dividend reinvestment plans, (5) communicates with DTC using DTC computer-to-computer (''CCF'') platforms, and (6) executes an accountholder agreement.[5] To qualify as an eligible security for processing

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The commission has modified parts of these statements.

[3] For a complete description of DRS, refer to Securities Exchange Act Release No. 35038 (December 1, 1994), 59 FR 63652 (concept release on a transfer agent operated book-entry registration system).

[4] A complete description of the DRS service may be found in the Important Notices issued by DTC on the implementation of a DRS, which are attached as Exhibit A and Exhibit B. Important Notice B# 1368–96 (July 15, 1996) and Important Notice B# 1505–96 (July 26, 1996).

[5] Under the accountholder agreement, the transfer agent, among other things, agrees to continue to meet the admission criteria, pay all applicable fees, and indemnify DTC for any expense caused by the limited participant's act or omission.

through the DRS service, a security must be eligible for the FAST program.

A DRS limited participant will be charged the following fees:

1. Limited Participant Accountholder fee—$225 per month
2. Deliver Order transaction processing fee—$.45 per transaction

DTC participants receiving such a DRS delivery will also be charged $.45 per transaction. In addition, when a DTC participant instructs a transfer agent to establish a DRS account for a shareholder and the transfer agent subsequently mails a transaction advice to the shareholder confirming that such an account has been established at the transfer agent, the transfer agent's fee of $.55 for mailing and handling the DRS transaction advice will be charged back to the participant directly by DTC. DTC will collect the advice fees and will periodically remit such fees to the transfer agent.

The proposed rule change is consistent with the Congressional objectives in Section 17A(a)(1) of the Act[6] in that it promotes efficiencies in the prompt and accurate clearance and settlement of securities transactions. DRS will enhance the availability of securities for settlement in a three business day settlement (''T+3'') environment. Individual investors electing book-entry positions on the books of the issuers (*i.e.*, DRS positions) will be able to subsequently arrange to have such positions transferred electronically to banks or broker-dealers in connection with sales or other dispositions of the securities. By effecting transfers through automated linkages between transfer agents and DTC, the DRS service to be offered by DTC will promote efficiencies in the clearance and settlement system. Moreover, DRS will foster cooperation and coordination between DTC and other entities engaged in the clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Although DTC did not solicit comments on DRS, over the last two years, a joint committee of representatives of the Securities Transfer Association, the Securities Industry Association, the Corporate Transfer Agents Association, and the depositories has met and agreed on the features of DRS.

[6] 15 U.S.C. section 78q–1(a)(1) (1988).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the file number SR–DTC–96–15 and should be submitted by October 30, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Exhibit A—The Depository Trust Company

Important Notice

July 15, 1996.

B #: 1368–96

TO: All Participants

ATTENTION: Managing Partner/Officer, Cashier, Transfer Manager

SUBJECT: *Implementation of a Direct Registration system*

Background

In 1994, the Securities and Exchange Commission requested that the Industry work to develop a ''Direct Registration System'' (DRS) process, in order to provide investors with additional approaches to holding their securities in certificateless form. Under DRS, Investors electing to have their ownership of securities registered on the issuer's records would be offered a choice between a registered certificate and a book-entry or ''direct registration'' position recorded on the books of the issuer's transfer agent. An investor electing a book-entry or DRS position would receive a ''transaction advice'' reporting creation of the position, as well as periodic account statements evidencing it. The investor would be able subsequently to arrange to have the DRS position transferred electronically to a bank or broker-dealer in connection with a sale or other disposition of the securities.

Over the last two years a joint committee of representatives of the Securities Transfer Association, Securities Industry Association, and the Corporate Transfer Agents Association has met and agreed on the features of a Direct Registration system. As a result of those discussions, it is anticipated that the DRS alternative will be offered to investors on an initial group of ''pilot'' issues some time late in 1996 (most probably in November). Highlights of the proposed system follow.

Overview

Eligibility

Because of the degree of systems sophistication required, the joint committee agreed that only issues that are eligible under DTC's Fast Automated Securities Transfer (FAST) Program should be eligible for DRS. The Joint committee also agreed that if the issue offers a dividend reinvestment plan (DRP) the plan must be open to DTC participation.

FAST eligibility and DRP availability have been recommended by the Committee to the SEC as criteria for an Issuer's DRS program.

When an issue becomes eligible for DRS, Participants will be notified by Important Notice, and a DRS Indicator will be added to the Eligible Corporate Securities File (ELISC and ELISCD).

Transfers

Any Withdrawal-by-Transfer (WT) request made via the Participant Terminal System (PTS) using functions NWTI or RWTI or Computer-to-Computer (CCF/CCFII) will be modified to include the following: DRS indicator, Participant account number, and Participant or correspondent broker name. The Participant should include in the ''DRS indicator'' field the appropriate code indicating whether the transferee wants a certificate issued or a DRS position established (instructions with this field left blank will be rejected). The ''account number'' specified should be transferee's account number at the Participant or correspondent broker (so that the DRS agent can include this information on its records to associate the investor's DRS position with the submitting Participant or its correspondent).

When a Participant's customer requests that a DRS position be established, the DRS

transaction advice will be mailed directly by the agent to the customer. The transfer agent's fee of 55¢ for mailing and handling the DRS transaction advice will be charged back to the participant directly by DTC, similar to the Direct Mail process. No DRS transaction advice will be mailed or forwarded to the Participant directly by DTC. However, DTC will receive an automated confirmation from the transfer agent that the DRS transaction advice has been processed and mailed and will notify the Participant.

Investor-Directed Sale

An Investor who has elected a DRS position instead of a physical certificate will be registered directly on the transfer agent's books. Under this option, if the investor subsequently sells the securities through a bank or broker-dealer, the investor would contact the agent to direct the movement of the DRS position to the investor's bank or broker-dealer. Upon receipt of this instruction, the agent will increase the depository position on its records and credit its agent account at DTC established for this purpose. The agent will also provide to DTC instructions to move the position by a book-entry delivery directly to the investor's bank or broker-dealer account at DTC. Systems modifications are now being made to identify these transactions as DRS deliver orders. New reason codes will be established for these transactions, and Participants will be notified when this is completed.

Action Required by Participants

DTC has recently conducted two forums with Participants, transfer agents, and service providers to discuss draft systems specifications for all components of DRS. Final specifications, along with a CCF user guide, are scheduled for distribution in mid-August. Participants are urged to plan for the implementation of these system modifications as a DRS pilot is expected to begin November 1996 with a gradual increase in the number of DRS-eligible issues by the end of the first quarter of 1997.

Please direct your questions to Al DeMalo, Director of Operations, at (212) 898–3171, Ronald Burns, Vice President of Operations, at (516) 227–4004, or your Participant Services representative.

Ronald J. Burns,

Vice President, Operations.

Exhibit B—The Depository Trust Company, Corporate Trust Services

Important Notice

July 26, 1996.

B#: 1505–96
TO: Transfer Agents and Issuers
SUBJECT: *Implementation of a Direct Registration System*

Background

In 1994, the Securities and Exchange Commission requested that the industry work to develop a ''Direct Registration System'' (DRS) process, in order to provide investors with additional approaches to holding their securities in certificateless form. Under DRS, investors electing to have their ownership of securities registered on the issuer's records would be offered a choice between a registered certificate and a book-entry or ''direct registration'' position recorded on the books of the issuer's transfer agent. An investor electing a book-entry or DRS position would receive a ''transaction advice'' reporting creation of the position, as well as periodic account statements evidencing it. The investor would be able subsequently to arrange to have the DRS position transferred electronically to a bank or broker-dealer in connection with a sale or other disposition of the securities.

Over the last two years a joint committee of representatives of the Securities Transfer Association, the Securities Industry Association, and the Corporate Transfer Agents Association has met and agreed on the features of a Direct Registration System. As a result of those discussions, it is anticipated that the DRS alternative will be offered to investors on an initial group of ''pilot'' issues some time late in 1996 (most probably in November). Highlights of the proposed system follow.

Overview

Participation

The joint committee agreed that a transfer agent or issuer wishing to offer a DRS program to investors will need to establish a DRS Limited Participant account at DTC in order that it may from time to time effect a book entry transfer of securities held in the form of a DRS position (e.g., in connection with an investor sale of a DRS position through a depository Participant). A party wishing to open a Limited Participant account must (1) be registered as a transfer agent with the Securities and Exchange Commission, (2) participate as a transfer agent in DTC's Fast Automated Securities Transfer (FAST) program, (3) provide Direct Mail Service on transfers, (4) accept dividend reinvestment instructions from DTC on DRS program issues which offer dividend reinvestment, and (5) communicate with DTC through a computer-to-computer interface using DTC's CCF platforms. Certain of these requirements relate to the standards for an issue's DRS eligibility (as described below).

To establish a DRS Limited Participant account, please contact your Corporate Trust Services Agent Liaison.

Issue Eligibility

The joint committee agreed that only issues that are eligible under DTC's Fast program can be eligible for DRS. The joint committee also agreed that if the issue offers a dividend reinvestment plan (DRP), the plan must be open to DTC participation. FAST eligibility and DRP availability have been recommended by the committee to the SEC as criteria for an issuer's DRS program.

DRS agents and issuers must provide standard 30 to 60 day prior notification to DTC when planning to introduce DRS issues. Once an issue becomes eligible for DRS, Participants and Limited Participants will be notified by Important Notice, and a DRS indicator will be added to the Eligible Corporate Securities File. Parties wishing to make issues DRS eligible should contact DTC's Transfer Agent Services Department.

Process Overview

Transfers/Buys

As agreed by the joint committee, all automated Withdrawal-by-Transfer (WT) requests made by DTC Participants on DRS issues will be modified to include the following: DRS indicator, Participant account number, and Participant or correspondent broker name. A DTC Participant submitting a WT on a DRS-eligible issue will include in the ''DRS indicator'' field the appropriate code indicating whether the transferee wants a certificate issued or a DRS position established. The ''account number'' specified will be the transferee's account number at the submitting Participant or correspondent broker (so that the DRS agent or issuer can include this information on its records to associate the investor's DRS position with the submitting Participant or its correspondent), as the joint committee agreed should be done.

Transfer Advice/Notifications

When a customer requests that a DRS position be established, the DRS transaction advice should be mailed directly by the DRS agent or issuer to the customer. Upon instruction by the DRS agent or issuer, a fee (not to exceed 55¢) for mailing and handling the DRS transaction advice will be charged back to the DTC Participant directly by DTC, similar to the Direct Mail Centralized Billing process, and remitted, upon collection, to the DRS agent or issuer. DTC will not accept from DRS agents or issuers, nor mail to its Participants, any DRS transaction advices. However, DTC should receive an electronic confirmation from the DRS agent or issuer that the DRS transaction advice has been processed and mailed and DTC, in turn, will notify the Participant that the transaction was completed.

Direct-Mail return transmissions (DMAX/CF2DMX) will enable the DRS agent or issuer to inform DTC of the certificates issued and mailed in accordance with the Direct Mail indicator received as part of the WT transmission.

Investor-Directed Sale

An investor who has elected a DRS position instead of a physical certificate will be registered directly on the DRS agent's or issuer's books. Under this option, if the investor subsequently sells the securities through a bank or broker-dealer, the investor would contact the DRS agent or issuer to direct the movement of the DRS position to the investor's bank or broker-dealer. Upon receipt of this instruction, the DRS agent or issuer will increase the depository FAST position on its records and credit its Limited Participant account at DTC established for this purpose. The DRS agent or issuer will also provide to DTC instructions to move the position by a book-entry delivery from its DRS Limited Participant account directly to the investor's bank or broker-dealer account at DTC. Systems modifications are now being made to identify these transactions as DRS deliver orders. New reason codes will be established for these transactions, and all parties will be notified when this is completed.

Next Steps

DTC has recently conducted two forums with transfer agents, issuers, Participants, and service providers to discuss draft systems specifications for all components of DRS. Final specifications will be distributed shortly. All interested parties are urged to plan for the implementation of these system modifications as a DRS pilot is expected to begin November 1996 with a gradual increase in the number of DRS eligible issues by the end of the first quarter of 1997.

For your convenience, please direct your questions to the Corporate Trust Services staff listed on the attached schedule.

Ann Vece,

Group Director, Corporate Trust Services.

[FR Doc. 96–25923 Filed 10–8–96; 8:45 am]

BILLING CODE 8010–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Trade and Environment Policy Advisory Committee

AGENCY: Office of the United States Trade Representative.

ACTION: Notice that the October 9, 1996, meeting of the Trade and Environment Policy Advisory Committee will be held from 10:00 a.m. to 3:00 p.m. The meeting will be closed to the public from 10:00 a.m. to 2:30 p.m. and open to the public from 2:30 p.m. to 3:00 p.m.

SUMMARY: The Trade and Environment Policy Advisory Committee will hold a meeting on October 9, 1996, from 10:00 a.m. to 3:00 p.m. The meeting will be closed to the public from 10:00 a.m. to 2:30 p.m. The meeting will include a review and discussion of current issues affecting U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code, I have determined that this portion of the meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. Those wishing to submit written comments on the meeting may submit them to Suzanna Kang, Office of the U.S. Trade Representative, 600 Seventeenth Street, N.W., Washington, D.C. 20508.

DATES: The meeting is scheduled for October 9, 1996, unless otherwise notified.

ADDRESSES: The meeting will be held at the Sheraton Carlton Hotel in the Chandelier Room, located at 16th and K Streets, Washington, D.C., unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Suzanna Kang, Office of the United States Trade Representative, (202) 395–6120.

Charlene Barshefsky,

Acting United States Trade Representative.

[FR Doc. 96–25865 Filed 10–8–96; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

[Docket No. 37554]

Notice of Order Adjusting the Standard Foreign Fare Level Index

Section 41509(e) of Title 49 of the United States Code requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile (ASM). Order 80–2–69 established the first interim SFFL, and Order 96–8–21 established the currently effective two-month SFFL applicable through September 30, 1996.

In establishing the SFFL for the two-month period beginning October 1, 1996, we have projected non-fuel costs based on the year ended June 30, 1996 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 96–10–6 fares may be increased by the following adjustment factors over the October 1979 level:

Atlantic—1.4919
Latin America—1.5593
Pacific—1.5101

FOR FURTHER INFORMATION CONTACT: Keith A. Shangraw (202) 366–2439.

By the Department of Transportation.

Dated: October 3, 1996.

Patrick V. Murphy,

Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 96–25885 Filed 10–8–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Receipt of Revision No. 1 to Approved Noise Compatibility Program and Request for Review for Palm Springs Regional Airport, Palm Springs, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed revision to the approved noise compatibility program that was submitted for Palm Springs Regional Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) (hereinafter referred to as ''the Act'') and 14 CFR Part 150 by the city of Palm Springs, California. This program was submitted subsequent to a determination by the FAA that the associated noise exposure maps submitted under 14 CFR Part 150 for Palm Springs Regional Airport were in compliance with applicable requirements effective November 28, 1994. The Noise Compatibility Program for Palm Springs Regional Airport was approved by the FAA on July 25, 1995. The proposed revision to the approved noise compatibility program will be approved or disapproved on or before March 26, 1997.

EFFECTIVE DATE: The effective date of the start of FAA's review of the noise compatibility program is September 27, 1996. The public comment period ends October 27, 1996.

FOR FURTHER INFORMATION CONTACT: David B. Kessler, Environmental Protection Specialist, AWP–611.2, Planning Section, Western-Pacific Region, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007, Telephone 310/725–3615 Street Address: 1500 Aviation Boulevard, Hawthorne, California 90261. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed revision to the approved noise compatibility program for Palm Springs Regional Airport which will be approved or disapproved on or before March 26, 1997. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the proposed revision to the approved noise

compatibility program for Palm Springs Regional Airport, effective on September 27, 1996. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before March 26, 1997.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, National Headquarters, 800 Independence Avenue, SW., Room 617, Washington, D.C. 20591

Federal Aviation Administration, Western-Pacific Region Office, 15000 Aviation Boulevard, Room 3012, Hawthorne, California 90261

Mr. Allen F. Smoot, A.A.E., Director, Department of Transportation, Palm Springs Regional Airport, 3400 E. Tahquitz Canyon Way, Palm Springs, California 92263–2743

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California on September 27, 1996.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region, AWP–600.

[FR Doc. 96–25951 Filed 10–8–96; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting on Aircraft Certification Procedures issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Amendment to notice of meeting.

SUMMARY: The FAA is amending a notice of meeting that was published October 2, 1996 (61 FR 51485), which advised the public of a meeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss aircraft certification procedures issues. This amendment adds an item to the published agenda.

SUPPLEMENTARY INFORMATION: The agenda set forth in the previous notice did not include the following item: The presentation of a Technical Standard Order (TSO) relating to Aircraft mechanical fasteners. This TSO will be presented to ARAC for consideration for recommendation to the FAA, and a vote may be taken. A copy of the TSO may be made available to interested parties by contacting Jeanne Trapani, Office of Rulemaking, Room 808, Independence Avenue SW, Washington, DC. 20591.

Issued in Washington, DC, on October 3, 1996.

Ava L. Robinson,

Assistant Executive Director for ARAC on Aircraft Certification Procedures.

[FR Doc. 96–25953 Filed 10–8–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application (96–02–C–00–PLB) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Clinton County Airport, Plattsburg, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Clinton County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before November 8, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Philip Brito, Manager New York Airports District Office, 600 Old Country Road, Room 446, Garden City, New York, 11530.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Ralph L. Hensek, Airport Manager for the County of Clinton, New York, at the following address: Clinton County Airport, 198 Airport Road, Plattsburg, New York 12901.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Clinton, New York under Section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Philip Brito, Manager New York Airports District Office, 600 Old Country Road, Room 446, Garden City, New York,, 11530 (Tel 516–227–3803). 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 to impose and use the revenue from a PFC at Clinton County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 27, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by the County of Clinton was substantially complete within the requirements of Section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 26, 1996.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: July 1, 1993.

Proposed charge expiration date: February 1, 1999.

Total estimated PFC revenue: $208,705.

Brief description of proposed projects: The PFC funds will be utilized to fund the local share of the following proposed AIP projects.

—Purchase Snow Blower
—Remove obstructions Runways 1, 14, 19 & 32
—Rehabilitate Apron and Taxiway E and F
—Purchase Runway Sweeper

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: All air taxi/commercial operators filing form 1800–31.

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: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Clinton County Airport.

Issued in Jamaica, New York on October 3, 1996.

Thomas Felix,

Acting Manager, Planning & Programming Branch Eastern Region.

[FR Doc. 96–25952 Filed 10–8–96; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Regulations Governing the Common Carrier Transportation of Household Goods

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: This document provides notice that the arbitration requirements imposed on household goods carriers providing service in interstate and foreign commerce by the ICC Termination Act of 1995 (ICCTA) are in effect with respect to all shipments transported after December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Stanley M. Braverman (202) 927–6316, or Paul Brennan (202) 366–0834, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh St., SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: This document provides notice that the arbitration requirements imposed on household goods carriers providing service in interstate and foreign commerce by the ICCTA, Pub. L. No. 104–88, 109 Stat. 803, are in effect with respect to all shipments transported after December 31, 1995.

The ICCTA mandates that, as a condition of registration, a carrier providing transportation of household goods must agree to offer shippers arbitration as a means of settling disputes regarding loss and damage claims, 49 U.S.C. 14708. The arbitration procedural requirements are detailed in the ICCTA, and the following is a general overview of those requirements as set forth in 49 U.S.C. 14708(b): (1) The arbitration offered must be designed to prevent the carrier from having special advantage; (2) the carrier must provide notice, before the goods are tendered for transport, to the shipper of the availability of neutral arbitration, including a summary of the arbitration procedure, any applicable costs, and disclosure of the legal effects of election to utilize arbitration; (3) upon the shipper's request, the carrier must provide forms and information necessary for initiating an action to resolve a dispute under arbitration; (4) each person authorized to arbitrate must be independent of the parties to the dispute and capable of resolving such disputes, and the carrier must ensure that the arbitrator is authorized and able to obtain from the carrier or shipper any material or relevant information to carry out a fair and expeditious decisionmaking process; (5) no shipper may be charged more than half the cost for instituting an arbitration and the arbitrator may make a determination as to payment of the costs in the arbitration decision; (6) the carrier must not require the shipper to agree to utilize arbitration before a dispute arises, and arbitration is binding, for claims of $1000 or less, if the shipper requests arbitration or, for claims of more than $1000, if the shipper requests arbitration and the carrier agrees to it; (7) if all parties agree, the arbitrator may provide for an oral presentation of a dispute by a party or representative of a party; and (8) the arbitrator must render a decision within 60 days of receipt of written notification of the dispute (that 60-day period may be extended for a reasonable period under certain circumstances), and a decision by an arbitrator may include any remedies appropriate under the circumstances.

Because the arbitration requirement is now a condition of registration, the registration regulations will be amended to reflect that condition. An interim final rule will be published to require each applicant seeking authority to transport household goods to certify, as a condition of registration, that it agrees to offer, in accordance with 49 U.S.C. 14708, its shippers arbitration as a means of settling disputes concerning damage or loss to household goods transported and that applicant has such a system in place. Failure to implement this required arbitration system could result in the suspension or revocation of the household goods carrier's registration. Further, by this notice, all carriers transporting household goods in interstate commerce are advised that arbitration programs must be in place and that all loss and damage claims arising from shipments transported after December 31, 1995, are subject to the arbitration requirements. The information for shippers will be amended to replace the required summary of any dispute settlement program with a summary of the arbitration procedure.

(23 U.S.C. 315; 49 U.S.C. 14708; 49 CFR 1.48)

Issued on: September 30, 1996.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 96–25879 Filed 10–8–96; 8:45 am]

BILLING CODE 4910–22–P

National Highway Traffic Safety Administration

[Docket No. 96–106; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1997 Mercedes-Benz Gelaendewagen Type 463 Multi-Purpose Passenger Vehicles are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Request for comments on petition for decision that nonconforming 1997 Mercedes-Benz Gelaendewagen Type 463 multi-purpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This notice requests comments on a petition submitted to the National Highway Traffic Safety Administration (NHTSA) for a decision that a 1997 Mercedes-Benz Gelaendewagen Type 463 MPV that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because it has safety features that comply with, or are capable of being altered to comply with, all such standards.

DATES: The closing date for comments on the petition is November 8, 1996.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm.]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all

applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards. Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the Federal Register.

Europa International, Inc. of Santa Fe, New Mexico (Registered Importer No. R–91–002) has petitioned NHTSA to decide whether 1997 Mercedes-Benz Gelaendewagen Type 463 MPVs are eligible for importation into the United States. Europa contends that this vehicle is eligible for importation under 49 U.S.C. § 30141(a)(1)(B) because it has safety features that comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards.

Specifically, the petitioner claims that the 1997 Mercedes-Benz Gelaendewagen Type 463 MPV has safety features that comply with Standard Nos. 102 *Transmission Shift Lever Sequence* * * * (based on visual inspection and operation), 103 *Defrosting and Defogging Systems* (based on visual inspection), 104 *Windshield Wiping and Washing Systems* (based on operation), 113 *Hood Latch Systems* (based on information in owner's manual describing operation of secondary latch mechanism), 116 *Brake Fluids* (based on visual inspection of certification markings and information in owner's manual describing fluids installed at factory), 119 *New Pneumatic Tires for Vehicles other than Passenger Cars* (based on visual inspection of certification markings), 124 *Accelerator Control Systems* (based on operation and comparison to U.S.-certified vehicles), 201 *Occupant Protection in Interior Impact* (based on test data and certification of vehicle to European standard), 202 *Head Restraints* (based on Standard No. 208 test data for prior model year vehicle with same head restraint and certification of vehicle to European standard), 204 *Steering Control Rearward Displacement* (based on test film for prior model year vehicle), 205 *Glazing Materials* (based on visual inspection of certification markings), 207 *Seating Systems*, (based on test results and certification of vehicle to European standard), 209 *Seat Belt Assemblies* (based on wiring diagram of seat belt warning system and visual inspection of certification markings), 211 *Wheel Nuts, Wheel Discs and Hubcaps* (based on visual inspection), 214 *Side Impact Protection* (based on test results for prior model year vehicle), and 219 *Windshield Zone Intrusion* (based on test results and certification information for prior model year vehicle).

The petitioner also contends that the 1997 Mercedes-Benz Gelaendewagen Type 463 MPV is capable of being altered to comply with the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) Substitution of a lens marked ''Brake'' for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a speedometer/odometer calibrated in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model sealed beam headlamps; (b) installation of U.S.-model side marker lamps and reflectors; (c) installation of a high mounted stop lamp. The petitioner asserts that testing performed on the taillamp reveals that it complies with the standard, even though it lacks a DOT certification marking, and that all other lights are DOT certified.

Standard No. 111 *Rearview Mirrors:* Inscription of the required warning statement on the convex surface of the passenger side rearview mirror.

Standard No. 114 *Theft Protection:* Installation of a warning buzzer in the steering lock electrical circuit.

Standard No. 118 *Power-Operated Window Systems:* rewiring of the power window system so that the window transport is inoperative when the front doors are open.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* Installation of a tire information placard. The petitioner asserts that even though the tire rims lack a DOT certification marking, they comply with the standard, based on their manufacturer's certification that they comply with the German TUV regulations, as well as their certification by the British Standards Association and the Rim Association of Australia.

Standard No. 206 *Door Locks and Door Retention Components:* Installation of interior locking buttons on all door locks and modification of rear door locks to disable latch release controls when locking mechanism is engaged.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of complying driver's and passenger's side air bag systems; (b) installation of a seat belt warning system; (c) placement of an air bag warning label on the visors of vehicles manufactured after November 1996. The petitioner states that the vehicle will meet frontal impact test requirements with structural modifications described in a submission that has been granted confidentiality by NHTSA's Office of Chief Counsel under 49 CFR Part 512.

Standard No. 210 *Seat Belt Assembly Anchorages:* Insertion of instructions on the installation and use of child restraints in the owner's manual for the vehicle. The petitioner certifies that the vehicle complies with this standard on the basis of tests performed to the standard's requirements by an independent testing and engineering laboratory.

Standard No. 212 *Windshield Retention:* Application of cement to the windshield's edges.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve.

Standard No. 302 *Flammability of Interior Materials:* Treatment of fabric seating surfaces with a flame-proof spray.

The petitioner additionally states that a vehicle identification number (VIN) plate must be attached to the vehicle's dash so that it is visible to an observer at the driver's side ''A'' pillar, as required by 49 CFR Part 565. The petitioner also states that a vehicle rollover warning statement must be inserted in the owner's manual and on a sticker affixed to the driver's side visor of short wheelbase Gelaendewagens, as required by 49 CFR 575.105.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W.,

Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action will be published in the Federal Register pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on October 3, 1996.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 96–25883 Filed 10–8–96; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 96–102; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1990–1993 Mercedes-Benz 300E 4Matic Passenger Cars are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1990–1993 Mercedes-Benz 300E 4Matic passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1990–1993 Mercedes-Benz 300E 4Matic passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is November 8, 1996.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the Federal Register.

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas (''Wallace'') (Registered Importer 90–005) has petitioned NHTSA to decide whether 1990–1993 Mercedes-Benz 300E 4Matic (Model ID 124.230) passenger cars are eligible for importation into the United States. The vehicles which Wallace believes are substantially similar are 1990–1993 Mercedes-Benz 300E 4Matic passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Daimler Benz A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1990–1993 Mercedes-Benz 300E 4Matics to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Wallace submitted information with its petition intended to demonstrate that the non-U.S. certified 1990–1993 Mercedes-Benz 300E 4Matics, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1990–1993 Mercedes-Benz 300E 4Matics are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * *.*, 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 107 *Reflecting Surfaces,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 211 *Wheel Nuts, Wheel Discs and Hubcaps,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked ''Brake'' for a lens with the ECE warning symbol on the brake system warning light; (b) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies; (b) installation of U.S.-model rear turn signal lenses; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* Inscription of the required warning statement on the passenger side rearview mirror.

Standard No. 114 *Theft Protection:* Installation of a warning buzzer.

Standard No. 115 *Vehicle Identification Number:* Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power Window Systems:* Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 206 *Door Locks and Door Retention Components:* (a) Replacement of the cap on each interior door locking button to permit operation from inside the vehicle; (b) modification of the rear door locks so that the interior

door handles are inoperative when the door lock is engaged.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a seat belt warning system; (b) installation of a seat belt latch with a microswitch to activate the seat belt warning system; (c) installation of a driver's side air bag and knee bolster identical to those found on the vehicles' U.S.-certified counterparts; (d) installation of a passenger's side air bag in vehicles for which the U.S.-certified counterpart is so equipped; (e) installation of U.S.-model front seat belt retractors. The petitioner states that the vehicles are equipped with Type 2 seat belts in all four outboard seating systems, and with a Type 1 seat belt in the rear center seating position.

Standard No. 214 *Side Impact Protection:* Installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on non-U.S. certified 1990–1993 Mercedes Benz 300E 4Matics must be modified to comply with the Bumper Standard found in 49 CFR Part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 3, 1996.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 96–25886 Filed 10–8–96; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 96–105; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1989 Honda Prelude Passenger Cars are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1989 Honda Prelude passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1989 Honda Prelude that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is November 8, 1996.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the Federal Register.

Champagne Imports, Inc. of Lansdale, Pennsylvania, California (''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether 1989 Honda Prelude passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1989 Honda Prelude that was manufactured for importation into, and sale in, the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1989 Honda Prelude to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1989 Honda Prelude, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1989 Honda Prelude is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence* * * *., 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 112 *Headlamp Concealment Devices,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints, 203 Impact Protection for the Driver From the Steering Control System,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion, and* 302 *Flammability of Interior Materials.*

Petitioner also contends that the vehicle is capable of being readily

altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked ''Brake'' for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies; (d) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* Replacement of the convex passenger side rearview mirror.

Standard No. 114 *Theft Protection:* Installation of a warning buzzer microswitch and a warning buzzer in the steering lock assembly.

Standard No. 118 *Power-Operated Window Systems:* Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a U.S.-model seat belt in the driver's seating position, or a belt webbing actuated microswitch inside the driver's seat belt retractor; installation of an ignition switch-actuated seat belt warning lamp and buzzer. The petitioner states that the vehicle is equipped with a combination lap and shoulder restraint that adjusts by means of an automatic retractor and releases by means of a single push button at each front designated seating position, and with a combination lap and shoulder restraint that releases by means of a single push button at each rear designated seating position.

Standard No. 214 *Side Impact Protection:* Installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on the non-U.S. certified 1989 Honda Prelude must be reinforced or replaced with U.S.-model components to comply with the Bumper Standard found in 49 CFR Part 581.

The petitioner also states that a certification plate that meets the requirements of 49 CFR Part 565 will be affixed to the vehicle.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 3, 1996.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 96–25887 Filed 10–8–96; 8:45 am]

BILLING CODE 4910–59–P

Surface Transportation Board [1]

[STB Finance Docket No. 33136]

Canadian Pacific Limited, Canadian Pacific Railway Company, and Napierville Junction Railroad Company—Corporate Family Transaction Exemption—St. Lawrence & Hudson Railway Company Limited

Canadian Pacific Limited (CPL), Canadian Pacific Railway Company (CP Rail),[2] Napierville Junction Railroad Company (NJR), and St. Lawrence & Hudson Railway Company Limited (StL&HR) have jointly filed a verified notice of exemption.

CP Rail will transfer its interest in certain U.S. rail assets to StL&HR, a newly-created subsidiary of CP Rail, as follows:

(1) Its interest in CNCP-Niagara Detroit, an Ontario partnership, which owns all of the stock of Detroit River Tunnel Company (DRTC) and Niagara River Bridge Company (NRBC).[3] StL&HR will acquire trackage rights from DRTC and NRBC: (a) Through the Detroit River Tunnel (a railway tunnel connecting Detroit, MI, and Windsor, Ontario, Canada) from the international border (mid-tunnel) to the end of the connecting track at milepost 228.2 in Detroit, a distance of approximately 2 miles, and (b) over the Suspension Bridge (a railway bridge between Niagara Falls, Ontario, Canada, and Niagara Falls, NY, between the international border (milepost 0.2) and the end of the access track at milepost 0.0 in Niagara Falls, NY, a distance of 0.2 miles. The trackage rights also include the short segments of connecting track at both the Detroit River Tunnel and the Suspension Bridge.

(2) StL&HR will acquire a leasehold interest in the rail properties of NJR,[4] a 1.1-mile segment of track on the U.S. side of the international border near Rouses Point, NY, where NJR connects with the lines of the Delaware and Hudson Railway Company, Inc. (DHRC).[5]

(3) StL&HR will acquire incidental overhead trackage rights, by assignment of existing CP Rail trackage rights agreements, to reach connections with U.S. carriers in the Detroit terminal area as follows: (a) Consolidated Rail Corporation (Conrail) trackage between the end of the Detroit River Tunnel connecting track (Conrail milepost 2.02 Main Line) and Conrail milepost 9.3, Detroit Line, including the Delray Interlocking at milepost 5.3, Detroit Line, and between milepost 2.02 and milepost 3.1, Mackinaw Branch, a total distance of approximate 8.4 miles; (b) The Norfolk and Western Railway Company (NW) line between the Delray Interlocking (NW milepost 4.4) and Oakwood Yard (NW milepost 8.87), a distance of approximately 4.47 miles; and (c) The CSX Transportation, Inc. (CSXT) line between Delray Interlocking (CSXT milepost 4.5) and Rougemere Yard (CSXT milepost 6.6), a distance of approximately 2.1 miles.

The transaction was expected to be consummated on or after October 1,

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[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. 11323–24.

[2] On July 4, 1996, Canadian Pacific Limited changed its name to Canadian Pacific Railway Company, and a new noncarrier holding company, Canadian Pacific Limited, was created.

[3] *See Canadian National Railway Company and Canadian Pacific Limited—Acquisition—Interests of Consolidated Rail Corporation in Canada Southern Railway and Detroit River Tunnel Company,* Finance Docket No. 30387 (ICC served Sept. 4, 1984).

[4] CP Rail obtained authorization to acquire NJR in *Canadian Pacific Limited, et al.—Purchase and Trackage Rights—Delaware & Hudson Railway Company,* Finance Docket No. 31700, 7 I.C.C.2d 85.

[5] DHRC is a wholly owned subsidiary of CP Rail operating as a rail carrier in the U.S.

1996. Upon consummation of this transaction, StL&HR will become a rail carrier.

The proposed transaction is part of an internal reorganization of CP Rail's railroad operations in the eastern United States and eastern Canada. It is designed to improve service and financial performance by realigning CP Rail's railroad operating units and by consolidating duplicate functions, primarily at the managerial and administrative levels.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the CPL corporate family.

As conditions to this exemption, as applicable to the continuance in control, any employees affected by the transaction will be protected under *New York Dock Ry.—Control—Brooklyn Eastern Dist.,* 360 I.C.C. 60 (1979); as applicable to the trackage rights, any employees affected by the transaction will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980); as applicable to the lease transaction, any employee affected by the transaction will be protected by the conditions imposed in *Mendocino Coast Ry., Inc.—Lease and Operate,* 354 I.C.C. 732 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980), *aff'd sub nom. RLEA v. ICC,* 675 F.2d 1248 (D.C. Cir. 1982).

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 revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33136, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Terence M. Hynes, Sidley & Austin, 1722 Eye Street, N.W., Washington, DC 20006.

Decided: October 2, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–25936 Filed 10–8–96; 8:45 am]

BILLING CODE 4915–00–P

[STB Docket No. AB–33 (Sub-No. 102X)]

Union Pacific Railroad Company—Discontinuance of Service Exemption—in Bannock and Bingham Counties, ID

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* to discontinue service over an approximately 21.49- mile line of railroad known as the Gay Branch (Fort Hall-Gay Line) from milepost 0.03, near Fort Hall, to the end of the line at milepost 21.52, near Gay, in Bannock and Bingham Counties, ID.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 8, 1996, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by October 21, 1996. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 30, 1996, with: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Joseph D. Anthofer, General Attorney, Union Pacific Railroad Company, 1416 Dodge Street, Room 830, Omaha, NE 68179.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

UP has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by October 11, 1996. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Surface Transportation Board, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: October 2, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–25937 Filed 10–8–96; 8:45 am]

BILLING CODE 4915–00–P

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[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29,95, 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 the Board's jurisdiction pursuant to 49 U.S.C. 10903.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[4] The Board will accept late-filed trail use requests as long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

Corrections

Federal Register

Vol. 61, No. 197

Wednesday, October 9, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release Nos. 33–7331; 34–37692; 35–26575; IC–22224; IA–1578; File No. S7–14–96]

Changes Selected Rules in Order To Eliminate Fees Previously Adopted by the Commission Pursuant to the Independent Offices Appropriations Act of 1952

Correction

In rule document 96–24368 beginning on page 49957 in the issue of Tuesday, September 24, 1996, on page 49960, in the third column, the heading for ''§ 240.15d–11 [Amended]'' should read ''§ 240.15d–1 [Amended]''.

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Retroactive Reduction of the Odd-Lot Equity Transaction Charges and the Specialist Odd-Lot Charge

September 24, 1996.

Correction

In notice document 96–24992 beginning on page 51133 in the issue of Monday, September 30, 1996, in the third column, insert the date ''September 24, 1996.'' below the document subject heading.

BILLING CODE 1505–01–D

federal register

Wednesday
October 9, 1996

Part II

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Part 1, et al.

Federal Acquisition Regulation; Proposed Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAR Case 93–019]

RIN 9000–AG89

Federal Acquisition Regulation; Contingent Fees

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Withdrawal of proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have decided to withdraw FAR case 93–019, Contingent Fees, published in the Federal Register at 60 FR 54920, October 26, 1995. The rule proposed revisions to selling costs to clarify that the costs of contingent fees are allowable only when stated as a sum certain or not-to-exceed amount agreed upon between the company and its agent (i.e, employee or commercial/selling agency) in advance of the services being rendered.

As a result of the public comments received in response to the proposed rule, the Councils have determined that the current cost principles, especially FAR 31.201–3, Determining reasonableness, and 31.205–38, Selling costs, are adequate to properly assess the allowability of these costs. Therefore, the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson at 202–501–3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAR case 93–019, withdrawal.

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: October 2, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 96–25724 Filed 10–8–96; 8:45 am]

BILLING CODE 6820–EP–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAR Case 93–026]

RIN 9000–AG59

Federal Acquisition Regulation; Business Meals

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Withdrawal of proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have decided to withdraw FAR Case 93–026, Business Meals, published in the Federal Register at 60 FR 43508, August 21, 1995. The rule proposed revisions to FAR 31.205–43, Trade, business, technical and professional activity costs, and 31.205–46, Travel costs to clarify when the costs of meals for contractor employees are allowable.

The Office of Federal Procurement Policy SWAT Team on Civilian Agency Contracting in its report of December 3, 1992, entitled ''Improving Contracting Practices and Management Controls on Cost-Type Federal Contracts,'' recommended several FAR changes, including revisions to the FAR cost principles to make them less general with regard to the allowability of costs.

One area identified for clarification was the costs of business meals of contractor employees who are not on official travel. A proposed rule was published relating to making the costs of meals for contractor employees unallowable unless the employee is on official company travel or the meals are an integral part of a bona fide business meeting.

As a result of our analysis of public comments received in response to the proposed rule, we have determined that the current cost principles, especially FAR 31.205–3, Determining reasonableness, and 31.205–43, Trade, business, technical and professional activity costs, are adequate to properly assess the allowability of these costs. Therefore, the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson at 202–501–3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4041, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 93–026, withdrawal.

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: October 2, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 96–25723 Filed 10–8–96; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 14, 15, 36, 52, and 53

[FAR Case 95–029]

RIN 9000–AH21

Federal Acquisition Regulation; Part 15 Rewrite—Phase I Public Meeting

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule, extension of comment period and change in public meeting date.

SUMMARY: The public comment period for the proposed rule is extended and the public meeting date is changed to encourage increased participation by interested parties.

DATES: *Public Meeting:* The public meeting will be conducted at the address shown below from 10:00 a.m. to 5:00 p.m., local time, on November 8, 1996.

Statements: Statements from interested parties for presentation at the public meeting should be submitted to the General Services Administration (address below) on or before October 31, 1996.

Comments: Comments on the proposed rule should be submitted in writing to the GSA (address below) on or before November 19, 1996, to be considered in the formulation of the final rule.

ADDRESSES: *Public Meeting:* The location of the meeting will be: National Aeronautics and Space Administration, Headquarters Building Auditorium, 300 E Street, SW., Washington, DC 20546. Individuals wishing to attend the meeting, including individuals wishing to make presentations on the topic

scheduled for discussion, should contact the FAR Part 15 Committee Chair at the following address: Ms. Melissa Rider, DAR Council, Attn: IMD 3D139, PDUSD(A&T) DP/DAR), 3062 Defense Pentagon, Washington, DC 20301–3062, Telephone: (703) 602–0131.

Comments: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), Attn: Sharon Kiser, 18th & F Streets, NW., Room 4037, Washington, DC 20405. Please cite FAR case 95–029 in all correspondence related to this issue.

Electronic Access: This proposed rule is posted on the Acquisition Reform Network (ARNET) at www-far.npr.gov. Comments may be submitted electronically at that address.

FOR FURTHER INFORMATION CONTACT: For information regarding the public meeting, contact the FAR Part 15 Rewrite Committee Chair, Ms. Melissa Rider, telephone (703) 602–0131. Fax (703) 602–0350. For general information, contact the FAR Secretariat, Attn: Victoria Moss, Room 4037, GS Building, Washington, DC 20405, telephone (202) 501–4755. Please cite FAR case 95–029.

SUPPLEMENTARY INFORMATION: The public comment period for the proposed rule, which was published in the Federal Register on September 12, 1996 (61 FR 48380), is extended through November 19, 1996. The public meeting date is changed from October 17, 1996, to November 8, 1996, to encourage increased participation by interested parties.

Dated: October 3, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 96–25941 Filed 10–8–96; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 6, 12, 15 and 52

[FAR Case 96–303]

RIN 9000–AH15

Federal Acquisition Regulation; Competitive Range Determinations

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule, extension of comment period.

SUMMARY: The public comment period on the proposed rule which was published in the Federal Register at 61 FR 40116, July 31, 1996, is extended through November 19, 1996. The rule implements Sections 4101 and 4103 of the Federal Acquisition Reform Act of 1996 and relates to providing the contracting officer with the authority to limit the size of the competitive range, in accordance with criteria specified in the solicitation, to the greatest number that will permit an efficient competition.

The public comment period is extended to conform with the public comment period on the proposed rule for the FAR Part 15 Rewrite—Phase I, FAR Case 95–029, which was published in the Federal Register at 61 FR 48380, September 12, 1996. Since it is important to consider the proposed rule for FAR Case 96–303, Competitive Range Determinations, in the broader context of FAR Part 15 as a whole, we encourage interested parties to express their positions on this rule as part of the public meeting on the rewrite of FAR Part 15, Phase I.

DATES: *Comments:* Comments on the proposed rule should be submitted in writing to the GSA on or before November 19, 1996.

Public Meeting: The meeting is scheduled for November 8, 1996, from 10 a.m. to 5 p.m., local time.

ADDRESSES: The location of the meeting will be the NASA Headquarters Building Auditorium, 300 E St., SW., Washington DC 20546. If you wish to attend the meeting, or to make presentations on competitive range determinations, please contact the FAR Part 15 Rewrite Committee Chair, Ms. Melissa Rider, DAR Council, Attn: IMD 3D139, PDUSD (A&T) DP/DAR, 3062 Defense Pentagon, Washington, D.C. 20301–3062; telephone (703) 602–0131.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph DeStefano at (202) 501–1758 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 96–303.

List of Subjects in 48 CFR Parts 6, 12, 15 and 52

Government procurement.

Dated: October 3, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 96–25942 Filed 10–8–96; 8:45 am]

BILLING CODE 6820–EP–P

federal register

Wednesday
October 9, 1996

Part III

Department of Agriculture

Office of the Secretary

7 CFR Part 6

Dairy Tariff-Rate Import Quota Licensing; Final Rule

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 6

Dairy Tariff-Rate Import Quota Licensing

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This final rule supersedes Import Regulation 1, Revision 7, which governs the administration of the import licensing system for certain dairy products which are eligible for in-quota tariff rates established in the Harmonized Tariff Schedule of the United States resulting from the entry into force of certain provisions in the Uruguay Round Agreement.

EFFECTIVE DATE: This final rule is effective October 9, 1996.

FOR FURTHER INFORMATION CONTACT: Diana Wanamaker, STOP 1021, U.S. Department of Agriculture, 1400 Independence Avenue, S.W., Washington, D.C. 20250–1021, or telephone (202) 720–2916.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866. It has been determined to be economically significant for the purposes of E.O. 12866 and, therefore, has been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the Office of the Secretary is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Executive Order 12372

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

Environmental Evaluation

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

Paperwork Reduction Act

In accordance with provisions of the Paperwork Reduction Act of 1995, the Department amended the information collection approved by the Office of Management and Budget (OMB) under OMB control number 0551–0001. Since this final rule provides for a substantial revision of the existing Import Regulation, the current information collection was amended to support the final rule. The information collection consists of an application for dairy import licenses, a certification that the applicant meets the eligibility requirements of § 6.23 and documentation which supports that certification as required under § 6.24. The total burden is estimated to be 375 hours. Copies of this information collection can be obtained from Pamela Hopkins, the Agency Information Collection Coordinator, at (202) 720–6173.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778. The provisions of this final rule would have preemptive effect with respect to any state or local laws, regulations, or policies which conflict with such provisions or which otherwise impede their full implementation. The final rule would not have retroactive effect.

Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 5 U.S.C. 801–808)

Further, a determination has been made that a delay in the implementation of this rule would be contrary to the public interest such that the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 5 U.S.C. §§ 801–808) is not applicable to this rule. If the effective date for this rule were delayed 60 days, the reform of the dairy licensing system would be delayed by an entire year since the rule must be in place prior to the application period for the next year's licenses.

Background

This final rule revises Import Regulation 1, Revision 7, which governs the administration of the import licensing system for certain dairy products which are eligible for in-quota tariff rates proclaimed in the Harmonized Tariff Schedule of the United States (HTS). In order to encourage public participation in the rulemaking process, the Department published an Advance Notice of Proposed Rulemaking (ANPR) in the Federal Register on June 2, 1994 (59 FR 28495) with a public comment period which ended on August 2, 1994, and held a public hearing on March 10, 1995. The Department solicited further comments from the public in response to the interim rules published in the Federal Register on January 6, 1995 (60 FR 1989), May 2, 1995 (60 FR 21425), and September 13, 1995 (60 FR 47453) which made certain modifications to the existing rule (Revision 7) and implemented Uruguay Round Agreement commitments for the 1995 and 1996 quota years. Comments received in response to the ANPR and the Interim Rules as well as written testimony and briefs submitted to the Department with respect to the public hearing were addressed in the proposed rule which was published in the Federal Register on January 18, 1996 (61 FR 1233).

The proposed rule substantially revised the existing rule to incorporate Uruguay Round Agreement commitments relating to increased market access for dairy articles; effected changes to the Harmonized Tariff Schedule of the United States pursuant to Presidential Proclamation 6763 of December 23, 1994; and reformed the regulatory process to update, strengthen, and simplify the requirements of the regulation. USDA encouraged interested persons to submit their comments, views, and suggestions on the proposed rule during a 60-day comment period which closed on March 18, 1996.

USDA received comments from 52 entities: two trade associations; seven representatives of foreign governments; seven Congressional representatives; three foreign exporting entities; and the remainder, importers or their legal counsel, nearly all of them participants in the existing import licensing program. In general, the comments focused on: strengthened eligibility requirements (§ 6.23), particularly the proposed increase in the license utilization requirement; the uniform application of provisions with respect to noncompliance with this requirement and the restriction on sales-in-transit; a broad range of issues related to allocation of licenses for in-quota quantities of dairy products; and transfer of license eligibility (§ 6.28).

Discussion of Major Comments

In General

A number of comments received argued that the proposed rule contained requirements that were ''retroactive'' and, therefore, could not legally be applied. The argument advanced was that USDA would be establishing eligibility for license, at least in part, on the past performance of the importers (e.g., the importers' utilization of its

license in the past), and new performance requirements could not legally be based on past transactions.

USDA disagrees. The consequences of these provisions occur only in the future. Further, the import licensing system has always been based, at least in part, on importer's past performance. The fundamental basis for historical license is that those eligible for such licenses are persons who, at some time in the past, were actively engaged in the business of importing cheese. There is nothing ''retroactive'' about such an eligibility rule and, equally, nothing retroactive about the eligibility rules or performance requirements proposed.

Definitions (§ 6.21)

In the proposed rule, USDA made a number of changes to the definitions in the existing regulation to conform to changes proposed in the operational provisions of the rule. The final rule incorporates most of these proposed changes with several additional modifications suggested in comments received from the public. USDA replaced the term ''quota article'' with the term ''article'' to be consistent with the terminology in the Harmonized Tariff System; added a definition of ''EC 15'' to reflect the recent accession of Finland, Sweden and Austria into the European Union; revised the definition of ''postmark'' to make it clear that all U.S. Postal Service deliveries including ''same day'' service, express service and priority mail are included; and deleted the term ''sales-in-transit'' which became unnecessary when the rules on limiting use of this practice were deleted from § 6.23 in the final rule.

USDA decided not to adopt several recommendations made in the comments. Some commentors suggested that USDA develop special definitions for the terms ''authorized agent,'' ''any country,'' and ''force majeure.'' USDA sees no need for special definitions for these terms since the regulation uses the terms as they would ordinarily and customarily be understood. Special definitions are appropriate only where a term does not have a commonly understood meaning. One commentor also suggested that USDA define the term ''Basic Annual Allocation'' (''BAA''); however, because BAA will cease to have any function in the regulatory scheme after the allocation of 1997 historical licenses, USDA determined that there is no purpose in developing such a definition.

Eligibility (§ 6.23)

USDA had proposed certain eligibility criteria to ensure that import licenses would be issued only to bona fide import/distribution or manufacturing concerns that would use the dairy articles imported in their own business operations. USDA received numerous comments on this section of the proposed rule.

In general, most comments received from the dairy industry supported USDA's proposal to strengthen eligibility requirements. One commentor, however, suggested that eligibility requirements be made gradually more stringent rather than all at once. Two commentors expressed concerns that small businesses might have difficulty in meeting these more stringent requirements and recommended that USDA make no changes in this area or even make the eligibility requirements less stringent. Several comments approved USDA's attempt to impose uniform eligibility standards for all license types; two comments suggested that USDA go even further and establish identical eligibility criteria for both cheese and non-cheese dairy products.

The comments received also contained a variety of other comments expressing widely divergent views on the eligibility provisions of the proposed regulation. For example, some comments favored issuing licenses only to importers and excluding exporters altogether, while others argued that exporters should be eligible to apply for cheese licenses as well as non-cheese licenses. One commentor wanted USDA to exclude historical license holders altogether from eligibility for nonhistorical licenses and to make nonhistorical licenses renewable in some unspecified way.

Most commentors expressed misgivings about USDA's proposal to increase the license utilization requirement from the previous 85 percent to the proposed 90 percent. They were especially concerned that this more stringent eligibility criterion would apply to applicants for historical licenses because failure to utilize 90 percent of a license amount in a single year would effectively result in permanent ineligibility to apply for that historical license. Commentors contended that they could lose eligibility not through their own fault, but because of economic conditions beyond their control such as fluctuating exchange rates, unavailability of supply or foreign government policy. These comments appear to have some empirical support: USDA took note of the increasingly complex international market situation, and of the fact that average quota utilization rates had declined from approximately 93 percent during the 1990–94 period to 87 percent during 1995.

On a similar issue, several commentors argued that the proposal to require 95 percent utilization for conversion of a Revision 8 nonhistorical butter license to a historical license was too stringent and that the level should be reduced to be in line with utilization requirements applicable to other dairy products. Several commentors objected to the provision in the proposed rule that would prohibit persons who hold such converted historical butter licenses from also applying for nonhistorical butter licenses.

Other comments with respect to butter licenses varied widely. Two commentors argued that there should be no historical licenses for butter. Another proposed that USDA issue historical licenses for butter in amounts 200 percent of the license amounts utilized during the 1997 and 1998 quota years, although that commentor failed to indicate how such license increases could be achieved given the limited quantities available for allocation under the tariff-rate quota.

Several comments were directed to the proposed rule's provisions governing applicant eligibility based on its status as a manufacturer. One comment argued that the rules were cumbersome and that USDA would find them hard to enforce. Two commentors recommended that USDA eliminate the requirement that a manufacturer be listed in the USDA publication of *Dairy Plants Surveyed and Approved for USDA Grading Service* (''Dairy Plants''). Two comments agreed with the use of ''Dairy Plants'' listings as a criterion for eligibility, but argued that USDA should limit eligibility to plants listed in Section I of that publication, and exclude ''packagers'' listed in Section II. Two comments suggested that the 75 percent processing requirement be moved from § 6.27(b) of the proposed rule to section § 6.23 and become a requirement for establishing eligibility, but did not explain how applicants could certify as to future behavior.

Ten comments were received on the proposed rule's provisions with respect to export monopolies. Essentially, the proposed rule relieved licensees of certain utilization requirements if the licensee must purchase its dairy articles from an export monopoly. Three comments argued that the provision discriminated against certain countries and that there was no evidence that export monopolies disadvantaged license holders. On the other hand, several comments favored the provision, stating that it recognized legitimate concerns about the economic power that

export monopolies could exercise in the marketplace. Two comments suggested that the Office of the Trade Representative, rather than USDA, make the export monopoly determination.

Nearly all comments received discussed the proposed rule's treatment of ''sales-in-transit.'' Most comments asked that USDA either remove, or provide exemptions from, the limitations on sales-in-transit. The comments stressed the commercial advantages of using sales-in-transit where an importer's requirements are less than a single container load; for importing higher-valued table cheeses; and for facilitating just-on-time deliveries. The comments also questioned whether the restrictions in the regulations would be effective in addressing suspected license misuse.

Several comments addressed the provisions of the proposed rule with respect to ''associated'' or ''affiliated'' persons. These provisions are intended to continue USDA's longstanding policy of ensuring wider distribution of licenses and of preventing groups of related persons from controlling unduly large proportions of the lottery licenses for specific dairy articles (nonhistorical and supplementary licenses under Revision 7). Because the proposed rule contemplated the conversion of certain (Revision 7) nonhistorical licenses to historical licenses, USDA had increased concern about concentration of lottery licenses and so proposed to further tighten the rules with respect to associated or affiliated persons. The comments received expressed uncertainty about the meaning of the ''economic benefits'' test included in the proposed rule and sought further clarification.

A number of comments were also received with respect to designated licenses. Several commentors complained that foreign governments were not meeting notification deadlines for importers. Two commentors opposed the provisions in the proposed rule that prohibit importers with designated licenses from also receiving nonhistorical licenses for the same article. Two foreign governments asked that the proposed rule be revised to permit them to redesignate importers during a quota year, a practice that is currently prohibited except where licenses are surrendered or revoked. Other comments suggested that USDA totally eliminate designated licenses; limit designation to entities not owned or controlled by foreign governments; replace designated licenses with certificates of quota eligibility that could be allocated by the exporting country; or permit designation with respect to non-cheese products.

Based on comments received, USDA has incorporated the following modifications in the final rule:

(1) Importer Eligibility—USDA has made three changes to the proposed rule. First, USDA will consider entries based on sales-in-transit or warehouse withdrawal in determining applicant eligibility. The limitations in the proposed rule on the use of sales-in-transit have been eliminated. Second, in cases where an importer seeks to qualify on the basis of at least eight entries of dairy products, the final rule clarifies that such entries must be made from ''separate'' shipments. Third, for non-cheese dairy product eligibility based on at least eight entries, the final rule reduces the minimum weight for each entry from ''not less than 2,000 kilograms'' to ''not less than 450 kilograms'' consistent with the way in which the rule treats entries of cheese.

(2) Manufacturer Eligibility—The final rule includes an eligibility criterion in addition to those proposed in § 6.23(b)(1)(i)(C). Under the final rule, an entity will also be eligible to apply for a license as a manufacturer if it owns or operates a plant listed as a ''processor'' of cheese in Section I of the most current issue of the USDA publication *Dairy Plants Surveyed and Approved for USDA Grading Service.*

(3) Certain Butter—The proposed rule provided that a person issued a nonhistorical license during the 1996 and 1997 quota years would be eligible to apply for an historical license thereafter if it satisfied certain criteria, including having utilized at least 95 percent of its license amount during the previous year. Persons receiving historical licenses under this provision could not also be issued nonhistorical licenses.

The final rule makes three changes. First, the quota years upon which eligibility will be determined have been changed from 1996 and 1997 to 1997 and 1998. This is because the nonhistorical licenses issued for 1996 are smaller than those that will be issued under the final rule for 1997 and 1998. Second, the proposed 95 percent utilization requirement has been reduced in the final rule to 90 percent. Third, the final rule incorporates an exception to the prohibition on historical license holders also receiving a nonhistorical license. Under the final rule, if all applicants that do not hold a converted historical license for butter have been issued a nonhistorical license and there is still such butter license available, a holder of a converted historical butter license may be eligible to receive a nonhistorical license for some or all of that remaining butter.

(4) Exceptions—Section 6.23(c) of the proposed rule established certain exceptions, i.e., circumstances under which an applicant would not be determined eligible to receive a license to import. The final rule makes four changes to the proposed rule in this respect.

First, the proposed rule would have excluded from license eligibility a person who failed to enter at least 90 percent of the amount of an article permitted under a license during the previous quota year. The final rule reduces the threshold from ''at least 90 percent'' to ''at least 85 percent.'' This is the same threshold that had been applicable under the existing rule.

Second, the proposed rule contained an exception to an exception, i.e., it provided that the 90 percent utilization rule (now changed to 85 percent in the final rule) would not apply where the licensee was dealing with an export monopoly. Under the proposed rule, USDA would have published a list of countries that operated or permitted export monopolies and provided an exception where countries on that list were specified on an import license. USDA has determined, however, that this is not a sufficiently flexible approach to this problem, particularly since, in the future, countries that have an export monopoly may discontinue this practice, or countries currently without an export monopoly could create one. Therefore, although the final rule maintains the export monopoly exception, the provision regarding publication of a list of countries has been deleted. Instead, a licensee may petition USDA to apply the exception and will be required to provide information regarding the alleged export monopoly. An ''export monopoly'' means a privilege vested in one or more persons consisting of the exclusive right to carry on the exportation of any article of dairy products from a country to the United States.

Third, the proposed rule would have excluded from license eligibility a person who during the previous quota year had entered more than 25 percent of its license amount through sales-in-transit or warehouse withdrawal. The final rule eliminates this provision and permits unrestricted use of sales-in-transit or warehouse withdrawal without affecting license eligibility.

Fourth, the proposed rule provided that certain persons would be ineligible for a nonhistorical license if they were either affiliated with or associated with persons who had applied for such a license. The final rule identifies two

additional classes of persons who will be deemed ineligible for nonhistorical licenses: children of an applicant for a nonhistorical license (who will be considered ''affiliates''); and persons who manage or are managed by applicants (who will be deemed to be ''associated'' with such applicants).

USDA did not make any changes to the ''economics benefits'' test incorporated in the proposed rule. USDA's intent, in establishing this test, is that it apply to regular, joint business relationships where one licensee consistently purchases primarily for the other's use, where one licensee manages the other's portfolio, or where imports of the two licensees are regularly commingled for sale to third parties.

Applications for License (§ 6.24)

The final rule changes the application period for the 1997 quota year to October 10 through October 31. Beginning in the 1998 quota year, the application period will be September 1 through October 15 of each quota year. In response to several comments, the final rule has been revised to simplify certain documentation requirements. An applicant seeking to establish eligibility as an importer will be required to submit Customs Forms 7501, but will not be required to submit commercial invoices or bills of sale showing the applicant as the owner and the original consignee for the number and level of entries required under § 6.23. USDA has determined that the requirement to submit commercial invoices or bills of sale is no longer necessary because the provision prohibiting consideration of sale-in-transit entries as a basis for eligibility has been eliminated. In addition, where the applicant is applying on the basis of at least eight separate shipments, the applicant will be required to submit (1) the required Customs or Census forms and commercial invoices where specified for eight shipments, (2) a certification that the remaining required documents are on file at its premises, and (3) in the case where the shipments are imports, a list of the entry numbers, dates of entry and volumes on those documents; or, in the case where the shipments are exports, a list of the dates of export and volumes on those documents.

One comment suggested that Customs Forms 7505 and 3416 be accepted in lieu of a Customs Form 7501. However, Form 7505 is no longer used and all entries require a Form 7501, which provides more information than Form 3461. Requiring Form 7501 for all imports will be simpler and will ease both the application process and program administration.

Allocation of Licenses (§ 6.25)

USDA received a broad range of comments concerning the allocation of both existing licenses and licenses for the Uruguay Round quantities. Most commentors agreed that there should be higher minimum license sizes than provided in the existing rule and a rank-order lottery for allocating nonhistorical licenses for cheese. USDA has taken into account the comments received and has modified the proposed rule as follows:

(1) Historical licenses—Approximately half of the comments discussed § 6.25(b) which deals with allocation of historical licenses in 1998 and subsequent years, and revises the existing rule so that a license that is being consistently underutilized will be permanently reduced. The proposed rule would have required that a licensee who surrendered a portion of a license in three consecutive years, or in at least three of five consecutive years, would thereafter be issued a license in an amount equal to the average annual quantity entered during that period. The final rule makes several changes.

First, USDA will permanently reduce the amount of a historical license only if a licensee surrenders more than 50 percent of a license over three consecutive years or three out of five years. Second, this rule will apply only to surrenders beginning with the 1996 quota year. Third, the final rule provides the Secretary of Agriculture with discretion not to implement this provision in 1999, when it would first take effect, if he deems it inappropriate in light of market conditions.

Under the previous rule, there was no consequence for surrendering license amounts. Commentors opposed to the provisions that would permanently reduce the amount of an historical license allege that the provision would violate the licensee's property rights. However, licensees do not acquire property rights in historical licenses; a license is an annual allocation of permission to import under the tariff-rate quota, and can be modified for public policy reasons. In light of the small amounts of license available to new entrants or others who wish to increase imports of a given article, USDA determined that it was sound public policy to reallocate license amounts that were consistently not being used. The provision in the final rule should increase the amount available in the nonhistorical pool while giving historical license holders a fair opportunity to demonstrate that they are using their licenses. The amount by which an historical license is permanently reduced will be transferred to Appendix 2—nonhistorical licenses. Some commentors were concerned that downturns in foreign supplies available for export to the United States or proposed limitation on sales-in-transit would lead to extensive reductions in historical licenses. However, the final rule, which changes the trigger level for reduction to surrenders exceeding 50 percent of a license, should assuage these concerns.

(2) Nonhistorical licenses—Two commentors submitted virtually identical proposals suggesting that eligible applicants who have no historical license for a particular dairy article from a particular country, or have an historical license which is smaller than the minimum license size for a particular article, should be given priority in the lottery. Another commentor opposed this proposal. USDA has determined that this proposal would result in only marginal improvement, if any, for small license holders. While, in theory, a new entrant or small license holder might be more likely to receive the license of its choice if some historical license holders were eliminated from bidding for that license during the first round, the actual probability could just as easily decrease. No historical license holder would be entirely eliminated from the first round, because none of the licensees hold historical licenses larger than the lottery minimum for every one of the items in the lottery. Thus holders of one or several historical licenses larger than the lottery minimum can simply indicate their preference for other cheese types which they might otherwise not have chosen.

One commentor suggested USDA immediately increase the size of the lottery license pool by taking from current historical licensees 50 percent of their license volume. The Department finds no justification for arbitrarily taking away 50 percent of an historical license under current circumstances. Under the final rule, the pool of nonhistorical lottery licenses will instead be gradually increased because of the impact of higher eligibility and utilization standards on historical licensees.

Certain commentors objected in principle to a rank-order lottery system. One preferred continuing the random lottery system, arguing that it gave importers a better chance to receive greater amounts of license. Another commentor criticized the use of any lottery system as impeding long-term commercial relationships and hindering market development for specialized dairy products. The final rule maintains

the rank-order lottery system because, although it does not guarantee continuity of license, it should increase an applicant's odds of receiving a license for the same article in consecutive years.

A commentor asked whether it will be possible to get a license which is smaller than the minimum cited in the rule. Sections 6.25(c)(1)(i)(E) and 6.25(c)(1)(ii)(E) of the final rule provide for such situations.

(3) Designated licenses—The comments submitted on license allocation were the same as those submitted with respect to eligibility for a designated license under § 6.23.

Surrender and Reallocation (§ 6.26)

The final rule provides that the final date for surrendering licenses will be October 1 and the application date for reallocation will be not later than September 15. The proposed rule would have advanced these dates one month. Five commentors expressed concerns that the proposed dates were too early given the new requirements of Revision 8. In addition, the final rule modifies § 6.26(d)(4) to allow a licensee who has surrendered part of a license to be issued a reallocated amount for the same article from the same country if all other licensees applying for a reallocated quantity of that article have been allocated a license. One commentor proposed that a provision should be made for new applications from new eligible applicants immediately following the first round of reallocations. The tight time frame for license reallocation, just two and a half months before the end of the quota year, does not permit another application period to establish eligibility.

Limitations on Use of License (§ 6.27)

Numerous comments criticized as vague the provision in the proposed rule that prohibited use of a license for the benefit of another person. That provision, § 6.27(a), has been rewritten in the final rule to be more specific, and states that a licensee shall not obtain or use a license for speculation, brokering, or offering for sale, or permit any other person to use the license for profit.

Several commentors questioned the need for the requirement that manufacturer licensees use a minimum of 75 percent of their licensed imports in their own processing operations in the United States. This requirement applies to persons who apply on the basis of being manufacturers under § 6.23(b)(1)(i)(C), § 6.23(b)(1)(ii)(C), or § 6.23(b) (3), (4), or (5). The provision for manufacturer eligibility was introduced in Revision 7, and was intended to give manufacturers who had no history of imports the opportunity to have direct access to imported dairy products for use in manufacturing. If a manufacturer also wishes to participate in the cheese distribution business in a manner which does not first subject imports under license to processing as defined in § 6.21, then it can apply for a license on the basis of imports or exports in the preceding year in accordance with the criteria established in § 6.23.

Transfer of License (§ 6.28)

Six comments recommended that USDA make the provisions of the proposed rule governing the acquisition and transfer of eligibility more flexible. Two comments included specific proposals. Based on comments received, USDA made several technical changes in the final rule.

Specifically, the final rule provides that after the Licensing Authority receives written notice of intent to sell or convey, it will respond within 20 days. The Licensing Authority may require additional information in order to make a determination. The parties to the sale or conveyance must demonstrate that the sale or conveyance complies with the requirements of paragraph § 6.28(a). In addition, § 6.28(c) and (d) have been combined and redrafted for greater clarity. Section 6.28(c) provides that USDA will, (1) for purposes of establishing historical eligibility, deem the person to whom the business was sold or conveyed to be the person to whom transferred historical licenses were issued in the preceding year and (2) will credit entries made by the person who sells or conveys the business to the person to whom the business is sold or conveyed. The person to whom the business is sold or conveyed must meet the required utilization levels to remain eligible in the following year, but will not be held responsible for pre-sale violations committed by the person who sold or conveyed the business.

Two comments suggested revising § 6.28 to permit the transfer of some but not all of the licenses held by a person when it sells one of the dairy product import businesses it operates. The recommendation is that USDA permit such a transfer if the business sold had maintained separate facilities at a separate location from those of the rest of the seller's businesses for at least three years prior to the proposed sale. USDA is studying this proposal but will not incorporate the recommendation into the final rule at this time. USDA could consider this proposed change as an amendment to the final rule at some future date.

Use of Licenses (§ 6.29)

The final rule also contains a provision that had been inadvertently left out of the proposed rule. Section 6.29(c)(3) was added and provides that if an article was placed in a warehouse by a foreign supplier and then sold to a licensee, the licensee must present, at time at time of entry, Customs Form 7501 endorsed by the foreign supplier and the commercial invoice.

Two comments proposed replacing the through-bill-of-lading requirement with a certificate of origin requirement to allow importers the flexibility to source products in the most efficient manner. USDA is currently reviewing this proposal to determine what impact it might have with respect enforcing the country of origin allocations of the tariff-rate quotas.

Record Maintenance and Inspection (§ 6.30)

One comment argued that a three-year rather than a five-year record keeping requirement would be more manageable for a small business. The final rule maintains the proposed five-year requirement which is standard under other Department regulations. Another commentor proposed that recordkeeping be limited only to entries of articles under license. The final rule requires that the records with respect to all transactions covered by this regulation be retained for five years subsequent to the end of the quota year in which the purchase, sale, or transaction occurred. This has been deemed necessary for the enforcement of this regulation. Failure to maintain documentation would be a violation of the regulation subject to suspension or debarment under § 6.31.

Debarment and suspension (§ 6.31)

On January 4, 1996, the Department of Agriculture published a final rule, 61 FR 250, governing nonprocurement debarment and suspension, which became effective on February 5, 1996, subsequent to the publication of the Dairy Tariff-Rate Import Quota proposed rule. The Department's new nonprocurement debarment and suspension regulations now apply to all persons who have participated, are currently participating or may reasonably be expected to participate in transactions under Federal nonprocurement programs and, for the first time, covers dairy import quota licensing.

The USDA nonprocurement debarment and suspension regulation accords with Executive Order 12549

which requires that, to the extent permitted by law, all Executive departments and agencies participate in a government-wide system for nonprocurement debarment and suspension. A person who is debarred or suspended is excluded from all Federal programs and activities. Debarment or suspension of a person participating in the dairy import licensing system will have a government-wide effect.

Therefore, § 6.31 ''Suspension or revocation of a license,'' and § 6.32 ''Administrative appeals'' are deleted from the proposed rule and a new § 6.31 ''Debarment and suspension'' has been inserted into the final rule. The new § 6.31 simply refers to the Department's nonprocurement debarment and suspension regulations at 7 CFR part 3017.

Globalization of Licenses (§ 6.32)

Section 6.33 ''Globalization of Licenses'' of the proposed rule has been revised and renumbered as § 6.32. The final rule, in response to comments, makes September 1 the final date for requesting a globalization rather than August 1 as was proposed. One commentor proposed that all licenses be fully globalized, eliminating the Licensing Authority's discretion to globalize only a portion thereof. Two commentors recommended automatic or semi-automatic globalization if a supplying country has a poor record of filling a TRQ or does not fill a specific percent of its total TRQ allocation by a specific date. Another commentor, however, argued that USDA should not globalize any licenses until after the license surrender and reallocation process has been completed. This would delay consideration of globalization until late October. The final rule does not reflect these comments. Most would be inconsistent with U.S. obligations to consult with and/or seek the consent of foreign governments regarding requests for globalization, while the suggestion to globalize in October would not provide importers sufficient time to seek alternative sources.

License Fee (§ 6.33)

Section 6.34 ''License fee'' of the proposed rule has been revised and renumbered as § 6.33. One commentor was confused about why § 6.31(a)(1) of the proposed rule provided that a license could be suspended or revoked for failure to pay a license fee in accordance with § 6.34, when § 6.34 itself contained an identical provision. USDA agrees that this was unnecessary and confusing and so § 6.31 has been totally revised, as discussed earlier. There is no longer any reference to the failure to pay a license fee. Failure to pay a license fee is dealt with in the new § 6.33 which provides that if a license fee is not paid by the final payment date, the license will be put on hold and a warning letter will be issued. If payment is not postmarked or received within 21 days of the date of the warning letter, the license will be revoked.

In general, commentors recognized the necessity and fairness of the fee. Individual commentors argued variously that the fee: was too high; should be based on the amount of licenses received; should be eliminated; or should be split into two separate payments, one for the processing applications and another upon receipt of the license. These issues were previously addressed in the background section of the proposed rule. The fee is required by an Office of Management and Budget Directive and must be based on the cost of services rendered, not on the size of the license. One comment also requested that the method of calculating the fee, which was included in Revision 7, be reinserted in the rule and that the date of the annual Federal Register Notice be moved back to July 31 as proposed. The method of calculation of the fee will appear in the Federal Register as in the past. The date will remain August 31 as its relationship to the application period remains the same as under Revision 7.

Adjustment of Appendices (§ 6.34)

Section 6.35 of the proposed rule—''Adjustment of Appendices'' has been revised and renumbered as § 6.34. In response to comments, Appendices 1, 2, and 3 have been combined into a single table for easier retrieval of information on TRQ allocations. This table will list the in-quota TRQ quantities in parallel columns by license type (Appendices 1, 2, and 3) for each dairy article by Additional U.S. Note number. The table will also show allocations by countries of origin, where applicable.

A further comment proposed that § 6.34(a) be modified to permit any reductions in or revocations of historical licenses for any reason in the 1997 and 1998 quota years be reallocated among other historical licenses (for that article and supplying country) which are less than 19,000 kilograms in size, rather than moving those amounts to Appendix 2 for the lottery. There will be no reductions of historical licenses in those years. Any revoked licenses will be transferred to Appendix 2 for nonhistorical licenses which may be applied for by any license holder.

List of Subjects in 7 CFR Part 6

Agricultural commodities, Cheese, Dairy products, Imports, Reporting and recordkeeping requirements.

Final Rule

Accordingly, 7 CFR part 6 subpart—Tariff Rate Quotas §§ 6.20–6.33 and Appendix 1, Appendix 2, and Appendix 3 thereto, are revised to read as follows:

Subpart—Dairy Tariff-Rate Import Quota Licensing

Sec.
6.20 Introduction.
6.21 Definitions.
6.22 Requiremtnt for a license.
6.23 Eligibility to apply for a license.
6.24 Application for a license.
6.25 Allocation of licenses.
6.26 Surrender and reallocation.
6.27 Limitations on use of license.
6.28 Transfer of license.
6.29 Use of licenses.
6.30 Record maintenance and inspection.
6.31 Debarment and suspension.
6.32 Globalization of licenses.
6.33 License fee.
6.34 Adjustment of Appendices.
6.35 Miscellaneous.
6.36 Supersedure of Import Regulation 1, Revision 7.

Appendices 1,2, and 3 to Subpart—Dairy Tariff-Rate Import Quota Licensing.

Subpart—Dairy Tariff-Rate Import Quota Licensing

Authority: Additional U.S. Notes 6, 7, 8, 12, 14, 16–23 and 25 to Chapter 4 and General Note 15 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), Pub. L. 97–258, 96 Stat. 1051, as amended (31 U.S.C. 9701), and secs. 103 and 404, Pub. L. 103–465, 108 Stat. 4819 (19 U.S.C. 3513 and 3601).

§ 6.20 Introduction.

(a) Presidential Proclamation 6763 of December 23, 1994, modified the Harmonized Tariff Schedule of the United States affecting the import regime for certain articles of dairy products. The Proclamation terminated quantitative restrictions that had been imposed pursuant to section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624); proclaimed tariff-rate quotas for such articles pursuant to Pub. L. 103–465; and specified which of such articles may be entered only by or for the account of a person to whom a license has been issued by the Secretary of Agriculture.

(b) Effective January 1, 1995, the prior regime of absolute quotas for certain dairy products was replaced by a system of tariff-rate quotas. The articles subject to licensing under the new tariff-rate quotas are listed in Appendices 1, 2, and 3 of this subpart. Licenses will be issued pursuant to the provisions of this

subpart for the 1997 and subsequent quota years. These licenses will permit the holder to import specified quantities of the subject articles into the United States at the applicable in-quota rate of duty. If an importer has no license for an article subject to a tariff-rate quota, such importer will, with certain exceptions, be required to pay the applicable over-quota rate of duty.

(c) The Secretary of Agriculture has determined that this subpart will, to the fullest extent practicable, result in fair and equitable allocation of the right to import articles subject to such tariff-rate quotas. The subpart will also maximize utilization of the tariff-rate quotas for such articles, taking due account of any special factors which may have affected or maybe affecting the trade in the articles concerned.

§ 6.21 Definitions.

As used in this subpart and the Appendices thereto, the following terms mean:

''Article''—One of the products listed in Appendices 1, 2, or 3 which are the same as those described in Additional U.S. Notes 6, 7, 8, 12, 14, 16–23 and 25 to Chapter 4 of the Harmonized Tariff Schedule.

''Customs''—The United States Customs Service.

''Country''—Country of origin as determined in accordance with Customs rules and regulations, except that ''EC 12'', ''EC 15'', and ''Other countries'' shall each be treated as a country.

''Cheese or cheese products''—Articles in headings 0406, 1901.90.34, and 1901.90.36 of the Harmonized Tariff Schedule.

''Commercial entry''—Any entry except those made by or for the account of the United States Government or for a foreign government, for the personal use of the importer or for sampling, taking orders, research, or the testing of equipment.

''Dairy products''—Articles in headings 0401 through 0406, margarine cheese listed under headings 1901.90.34 and 1901.90.36, ice cream listed under heading 2105, and casein listed under heading 3501 of the Harmonized Tariff Schedule.

''Department''—The United States Department of Agriculture.

''EC 12''—Belgium, Denmark, the Federal Republic of Germany, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, and the United Kingdom.

''EC 15''—Austria, Belgium, Denmark, the Federal Republic of Germany, Finland, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom.

''Enter'' or ''Entry''—To make or making entry for consumption, or withdrawal from warehouse for consumption in accordance with Customs regulations and procedures.

''Harmonized Tariff Schedule'' or ''HTS''—The Harmonized Tariff Schedule of the United States.

''Licensee''—A person to whom a license has been issued under this subpart.

''Licensing Authority''—The Dairy Import Quota Manager, Import Policies and Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture.

''Other countries''—Countries not listed by name as having separate tariff-rate quota allocations for an article in the Additional U.S. Notes to Chapter 4 of the Harmonized Tariff Schedule.

''Person''—An individual, firm, corporation, partnership, association, trust, estate or other legal entity.

''Postmark''—The postage cancellation mark or date applied by the United States Postal Service. This does not include the date on metered postage affixed by the applicant, or on mail delivered by private entities.

''Process'' or ''Processing''—Any additional preparation of a dairy product, such as melting, grating, shredding, cutting and wrapping, or blending with any additional ingredient.

''Quota year''—The 12-month period beginning on January 1 of a given year.

''Tariff-rate quota amount'' or ''TRQ amount''—The amount of an article subject to the applicable in-quota rate of duty established under a tariff-rate quota.

''United States''—The customs territory of the United States, which is limited to the 50 states, the District of Columbia, and Puerto Rico.

§ 6.22 Requirement for a license.

(a) General rule. A person who seeks to enter, or cause to be entered, an article shall obtain a license, in accordance with this subpart, except as provided in paragraph (b).

(b) Exceptions. Licenses are not required if:

(1) The article is imported by or for the account of any agency of the U.S. Government;

(2) The article is imported for the personal use of the importer, provided that the net weight does not exceed five kilograms in any one shipment;

(3) The article imported will not enter the commerce of the United States and is imported as a sample for taking orders, for exhibition, for display or sampling at a trade fair, for research, for testing of equipment; or for use by embassies of foreign governments. Written approval of the Licensing Authority shall be obtained prior to entry, and the importer of record (or a broker or agent acting on its behalf) shall provide to the Licensing Authority, prior to the release of such articles, the appropriate Customs documentation identifying the article, quantity to be imported, its location, intended use, an entry number and the importer of record. The Licensing Authority may also require as a condition of import that the article be destroyed or re-exported after such use; or

(4) Such person pays the applicable over-quota rate of duty.

§ 6.23 Eligibility to apply for a license.

(a) *In general.* To apply for any license, a person shall have:

(1) a business office, and be doing business, in the United States, and

(2) an agent in the United States for service of process.

(b) *Eligibility for the 1997 and subsequent quota years.*

(1) *Historical licenses (Appendix 1).* Any person issued a historical or nonhistorical license for the 1996 quota year for an article may apply for a historical license (Appendix 1) for the same article from the same country for the 1997 and subsequent quota years, if such person was, during the 12-month period ending August 31 prior to the quota year, either:

(i) where the article is cheese or cheese product,

(A) the owner of and importer of record for at least three separate commercial entries of cheese or cheese products totaling not less than 57,000 kilograms net weight, each of the three entries not less than 2,000 kilograms net weight,

(B) the owner of and importer of record for at least eight separate commercial entries of cheese or cheese products, from at least eight separate shipments, totaling not less than 19,000 kilograms net weight, each of the eight entries not less than 450 kilograms net weight, with a minimum of two entries in each of at least three quarters during that period; or

(C) the owner or operator of a plant listed in Section II or listed in Section I as a processor of cheese of the most current issue of ''Dairy Plants Surveyed and Approved for USDA Grading Service'' and had processed or packaged at least 450,000 kilograms of cheese or cheese products in its own plant in the United States; or

(ii) where the article is not cheese or cheese product,

(A) the owner of and importer of record for at least three separate commercial entries of dairy products totaling not less than 57,000 kilograms net weight, each of the three entries not less than 2,000 kilograms net weight;

(B) the owner of and importer of record for at least eight separate commercial entries of dairy products, from at least eight separate shipments, totaling not less than 19,000 kilograms net weight, each of the eight entries not less than 450 kilograms net weight, with a minimum of two entries in each of at least three quarters during that period;

(C) the owner or operator of a plant listed in the most current issue of ''Dairy Plants Surveyed and Approved for USDA Grading Service'' and had manufactured, processed or packaged at least 450,000 kilograms of dairy products in its own plant in the United States; or

(D) the exporter of dairy products in the quantities and number of shipments required under (A) or (B) above.

(2) *Certain butter.* A person issued a nonhistorical license for butter for the 1997 or 1998 quota year may annually apply for a historical license (Appendix 1) for the same quantity of butter for the subsequent quota year and each year thereafter, provided that such person has used at least 90 percent of the original license issued for the previous quota year and meets the requirements of paragraph (b)(1)(ii). However, if a person is issued a historical license pursuant to this paragraph, that person may not be issued a nonhistorical license for butter for any quota year in which that historical license is issued to that person, unless applicants who do not hold such a license have all been issued such a nonhistorical license.

(3) *Nonhistorical licenses for cheese or cheese products (Appendix 2).* A person may annually apply for a nonhistorical license for cheese or cheese products (Appendix 2) for the 1997 quota year and each quota year thereafter if such person meets the requirements of paragraph (b)(1)(i) of this section.

(4) *Nonhistorical licenses for articles other than cheese or cheese products (Appendix 2).* A person may annually apply for a nonhistorical license for articles other than cheese or cheese products (Appendix 2) for the 1997 quota year and each quota year thereafter if such person meets the requirements of paragraph (b)(1)(ii).

(5) *Designated license (Appendix 3).* A person may annually apply for a designated license (Appendix 3) for the 1997 quota year and for each quota year thereafter, provided that such person meets the requirements of paragraph (b)(1)(i), of this section and provided further that the government of the country has designated such person for such license. The designating country shall submit its selection of designated importers in writing directly to the Licensing Authority not later than October 31 prior to the beginning of the quota year.

(c) *Exceptions.*

(1) A licensee that fails in a quota year to enter at least 85 percent of the amount of an article permitted under a license, shall not be eligible to receive a license for the same article from the same country for the next quota year. For the purpose of this paragraph, the amount of an article permitted under the license will exclude any amounts surrendered pursuant to § 6.26(a), but will include any additional allocations received pursuant to § 6.26(b).

(2) Paragraph (c)(1) of this section will not apply where the licensee demonstrates to the satisfaction of the Licensing Authority that the failure resulted from breach by a carrier of its contract of carriage, breach by a supplier of its contract to supply the article, act of God or *force majeure*.

(3) Paragraph (c)(1) of this section may not apply in the case of historical or nonhistorical licenses, where the licensee demonstrates to the satisfaction of the Licensing Authority that the country specified on the license maintains or permits an export monopoly to control the dairy articles concerned and the licensee petitions the Licensing Authority to waive this requirement. The licensee shall submit evidence that the country maintains an export monopoly as defined in this paragraph. For the purposes of this paragraph ''export monopoly'' means a privilege vested in one or more persons consisting of the exclusive right to carry on the exportation of any article of dairy products from a country to the United States.

(4) The Licensing Authority will not issue a nonhistorical license (Appendix 2) for an article from a country during a quota year to an applicant who is affiliated with another applicant to whom the Licensing Authority is issuing a non-historical license for the same article from the same country for that quota year. Further, the Licensing Authority will not issue a nonhistorical license for butter to an applicant who is affiliated with another applicant to whom the Licensing Authority is issuing a historical butter license of 57,000 kilograms or greater. For the purpose of this paragraph, an applicant will be deemed affiliated with another applicant if:

(i) the applicant is the spouse, brother, sister, parent, child or grandchild of such other applicant;

(ii) the applicant is the spouse, brother, sister, parent, child or grandchild of an individual who owns or controls such other applicant;

(iii) the applicant is owned or controlled by the spouse, brother, sister, parent, child or grandchild of an individual who owns or controls such other applicant.

(iv) both applicants are 5 percent or more owned or directly or indirectly controlled, by the same person;

(v) the applicant, or a person who owns or controls the applicant, benefits from a trust that controls such other applicant.

(5) The Licensing Authority will not issue a nonhistorical license (Appendix 2) for an article from a country during a quota year to an applicant who is associated with another applicant to whom the Licensing Authority is issuing a nonhistorical license for the same article from the same country for that quota year. Further, the Licensing Authority will not issue a nonhistorical license for butter to an applicant who is associated with another applicant to whom the Licensing Authority is issuing a historical butter license for 57,000 kilograms or greater. For the purpose of this paragraph, an applicant will be deemed associated with another applicant if:

(i) the applicant is an employee of, or is controlled by an employee of, such other applicant;

(ii) the applicant manages or is managed by such other applicant, or economically benefits, directly or indirectly, from the use of the license issued to such other applicant.

(6) The Licensing Authority will not issue a nonhistorical license for an article from a country, for which the applicant receives a designated license.

§ 6.24 Application for a license.

(a) Application for license shall be made on forms provided by the Licensing Authority and shall be duly notarized and mailed in accordance with § 6.35(b). All parts of the application shall be completed. For the 1997 quota year, applications should be postmarked no earlier than October 10 and no later than October 31. For the 1998 and subsequent quota years, the application shall be postmarked no earlier than September 1 and no later than October 15 of the year preceding that for which license application is made. The Licensing Authority will not accept incomplete or unpostmarked applications.

(b)(1) Where the applicant seeks to establish eligibility on the basis of imports, applications shall include Customs Form 7501 showing the applicant as the importer of record of entries required under § 6.23, during the 12-month period ending August 31 prior to the quota year for which license is being sought.

(2) Where the applicant seeks to establish eligibility on the basis of exports, applications shall include:

(i) Census Form 7525 or a copy of the electronic submission of such form, and

(ii) The commercial invoice or bill of sale for the quantities and number of export shipments required under § 6.23, during the 12-month period ending August 31 prior to the quota year for which license is being sought.

(c) However, if the applicant is applying on the basis of more than eight shipments, the application shall include:

(1) the required documentary evidence for eight shipments;

(2) a signed certification that the remaining required documents are on file at the applicant's premises; and

(3)(i) if the application is made on the basis of imports, a listing of the entry numbers, dates of entry and volumes on those remaining documents; or

(ii) if the application is made on the basis of exports, a listing of the dates of export and volumes on those documents.

(d) An applicant requesting more than one nonhistorical license must rank order these requests by the applicable Additional U.S. Note number. Cheese and cheese products must be ranked separately from dairy articles which are not cheese or cheese products.

§ 6.25 Allocation of licenses.

(a) *Historical licenses for the 1997 quota year (Appendix 1).*

(1) A person issued a historical license for the 1996 quota year will be issued a historical license for the 1997 quota year in an amount equal to the Basic Annual Allocation level used by the Licensing Authority for the 1996 quota year provided that such person meets the requirements of § 6.23(b)(1) and § 6.23(c).

(2) A person issued a nonhistorical license for the 1996 quota year will be issued a historical license for the 1997 quota year for the same quantity as the license for the 1996 quota year, provided that such person meets the requirements of § 6.23.

(3) If a person was issued more than one historical license, or one or more historical licenses and a nonhistorical license, for the same article from the same country for the 1996 quota year, such person will be issued a single historical license for the 1997 quota year, the amount of which shall be determined in accordance with paragraphs, (a) (1) and (2) of this section.

(b) *Historical licenses for the 1998 and subsequent quota years (Appendix 1).*

(1) A person issued a historical license for the 1997 quota year will be issued a historical license in the same amount for the same article from the same country for the 1998 quota year and for each subsequent quota year except that:

(i) beginning with the 1999 quota year, a person who has surrendered more than 50 percent of such historical license in each of the prior three quota years will thereafter be issued a license in an amount equal to the average annual quantity entered during those three quota years; and

(ii) beginning with the quota year 2001, a person who has surrendered more than 50 percent of such historical license in at least three of the prior five quota years will thereafter be issued a license in an amount equal to the average annual quantity entered during those five quota years.

(2) However, prior to the beginning of the 1999 quota year, the Secretary of Agriculture may determine that the exceptions in paragraphs (b)(1) (i) and (ii) of this section shall not apply in light of market conditions.

(c) *Nonhistorical licenses (Appendix 2).* The Licensing Authority will allocate nonhistorical licenses on the basis of a rank-order lottery system, which will operate as follows:

(1) The minimum license size shall be:

(i) Where the article is cheese or cheese product:

(A) the total amount available for nonhistorical license where such amount is less than 9,500 kilograms;

(B) 9,500 kilograms where the total amount available for nonhistorical license is between 9,500 kilograms and 500,000 kilograms, inclusive;

(C) 19,000 kilograms where the total amount available for nonhistorical license is between 500,001 kilograms and 1,000,000 kilograms, inclusive;

(D) 38,000 kilograms where the total amount available for nonhistorical license is greater than 1,000,000 kilograms; or

(E) an amount less than the minimum license size established in paragraphs (c)(1)(i) (A) through (D) of this section, if requested by the licensee;

(ii) Where the article is not cheese or cheese product:

(A) the total amount available for nonhistorical license where such amount is less than 19,000 kilograms;

(B) 19,000 kilograms where the total amount available for nonhistorical license is between 19,000 kilograms and 550,000 kilograms, inclusive;

(C) 38,000 kilograms where the total amount available for nonhistorical license is between 550,001 kilograms and 1,000,000 kilograms, inclusive; and

(D) 57,000 kilograms where the total amount available for nonhistorical license is greater than 1,000,000 kilograms;

(E) an amount less than the minimum license sizes established in paragraphs (c)(1)(i) (A) through (D) of this section, if requested by the licensee.

(2) Taking into account the order of preference expressed by each applicant, as required by § 6.24(c), the Licensing Authority will allocate licenses for an article from a country by a series of random draws. A license of minimum size will be issued to each applicant in the order established by such draws until the total amount of such article in Appendix 2 has been allocated. An applicant that receives a license for an article will be removed from the pool for subsequent draws until every applicant has been allocated at least one license, provided that the licenses for which they applied are not already fully allocated. Any amount remaining after the random draws which is less than the applicable minimum license size may, at the discretion of the Licensing Authority, be prorated equally among the licenses awarded for that article.

(d) *Designated licenses (Appendix 3).*

(1) With respect to an article listed in Appendix 3, the government of the applicable country may, not later than October 31 prior to the beginning of a quota year, submit directly and in writing to the Licensing Authority:

(i) the names and addresses of the importers that it is designating to receive licenses; and

(ii) the amount, in percentage terms, of such article for which each such importer is being designated. Where quantities for designation result from both Tokyo Round concessions and Uruguay Round concessions, the designations should be made in terms of each.

(2) To the extent practicable, the Licensing Authority will issue designated licenses to those importers, and in those amounts, indicated by the government of the applicable country, provided that the importer designated meets the eligibility requirements set forth in § 6.23. Consistent with the international obligations of the United States, the Licensing Authority may

disregard a designation if the Licensing Authority determines that the person designated is not eligible for any of the reasons set forth in § 6.23(c) (1) or (2).

(3) If a government of a country which negotiated in the Uruguay Round for the right to designate importers has not done so, but determines to designate importers for the next quota year, it shall indicate its intention to do so directly and in writing to the Licensing Authority not later than July 1 prior to the beginning of such next quota year. Furthermore, if a government that has designated importers for a quota year determines that it will not continue to designate importers for the next quota year, it shall so indicate directly and in writing to the Licensing Authority, not later than July 1 prior to such next quota year.

§ 6.26 Surrender and reallocation.

(a) If a licensee determines that it will not enter the entire amount of an article permitted under its license, such licensee shall surrender its license right to enter the amount that it does not intend to enter. Surrender shall be made to the Licensing Authority in writing, mailed in accordance with § 6.35(b) and postmarked no later than October 1. Any surrender shall be final and shall be only for that quota year, except as provided in § 6.25(b). The amount of the license not surrendered shall be subject to the license use requirements of § 6.23(c)(1).

(b) For each quota year, the Licensing Authority will, to the extent practicable, reallocate any amounts surrendered.

(c) Any person who has been issued a license for a quota year may apply to receive additional license, or addition to an existing license for a portion of the amount being reallocated. The application shall be submitted to the Licensing Authority by mail postmarked no earlier than September 1 and not later than September 15, in accordance with § 6.35(b), and shall specify:

(1) The name and control number of the applicant;

(2) The article and country being requested, the applicable Additional U.S. Note number and, if more than one article is requested, a rank-order by Additional U.S. Note number; and

(3) If applicable, the number of the license issued to the applicant for that quota year permitting entry of the same article from the same country.

(d) The Licensing Authority will reallocate surrendered amounts among applicants as follows:

(1) The minimum license size, or addition to an existing license, will be the total amount of the article from a country surrendered, or 10,000 kilograms, whichever is less;

(2) Minimum size licenses, or additions to an existing license, will be allocated among applicants requesting articles on the basis of the rank-order lottery system described in § 6.25(c);

(3) If there is any amount of an article from a country left after minimum size licenses have been issued, the Licensing Authority may allocate the remainder in any manner it determines equitable among applicants who have requested that article; and

(4) No amount will be reallocated to a licensee who has surrendered a portion of its license for the same article from the same country during that quota year unless all other licensees applying for a reallocated quantity have been allocated a license;

(e) However, if the government of an exporting country chooses to designate eligible importers for surrendered amounts under Appendix 3, the Licensing Authority shall issue the licenses in accordance with § 6.25(d)(2), provided that the government of the exporting country notifies the Licensing Authority of its designations no later than September 1. Such notification shall contain the names and addresses of the importers that it is designating and the amount in percentage terms of such article for which each importer is being designated. In such case the requirements of paragraph (c) of this section shall not apply.

(f) Except for paragraph (a), the provisions of § 6.26 for surrendered and reallocated tariff-rate quota shares do not apply for the 1996 quota year. Reissued tariff-rate quota shares for licenses surrendered during 1996 will be made pursuant to the provisions in effect for the 1996 quota year (§ 6.26(f)(2) as contained in 7 CFR subtitle A, revised as of January 1, 1996).

§ 6.27 Limitations on use of license.

(a) A licensee shall not obtain or use a license for speculation, brokering, or offering for sale, or permit any other person to use the license for profit.

(b) A licensee who is eligible as a manufacturer or processor, pursuant to § 6.23, shall process at least 75 percent of its licensed imports in such person's own facilities and maintain the records necessary to so substantiate.

§ 6.28 Transfer of license.

(a) If a licensee sells or conveys its business involving articles covered by this subpart to another person, including the complete transfer of the attendant assets, the Licensing Authority will transfer to such other person the historical, nonhistorical or designated license issued for that quota year. Such sale or conveyance must be unconditional, except that it may be in escrow with the sole condition for return of escrow being that the Licensing Authority determines that such sale does not meet the requirements of this paragraph.

(b) The parties seeking transfer of license shall give written notice to the Licensing Authority of the intended sale or conveyance described in paragraph (a) by mail as required in § 6.35(b). The notice must be received by the Licensing Authority at least 20 working days prior to the intended consummation of the sale or conveyance. Such written notice shall include copies of the documents of sale or conveyance. The Licensing Authority will review the documents for compliance with the requirements of paragraph (a) of this section and advise the parties in writing of its findings by the end of the 20-day period. The parties shall have the burden of demonstrating to the satisfaction of the Licensing Authority that the contemplated sale or conveyance complies with the requirements of paragraph (a) of this section. Within 15 days of the consummation of the sale or conveyance, the parties shall mail copies of the final documents to the Licensing Authority, in accordance with § 6.35(b). The Licensing Authority will not transfer the licenses unless the documents are submitted in accordance with this paragraph.

(c) The eligibility for a license of a person to whom a business is sold or conveyed will be determined for the next quota year in accordance with § 6.23. For the purposes of § 6.23(b)(1) the person to whom a business is sold or conveyed shall be deemed to be the person to whom the historical licenses were issued during the quota year in which the sale or conveyance occurred. Further, for the purposes of § 6.23 (b) and (c), the entries made under such licenses by the original licensee during the year in which the sale of conveyance is made, shall be considered as having been made by the person to whom the business was sold or conveyed.

§ 6.29 Use of licenses.

(a) An article entered under a license shall be an article produced in the country specified on the license.

(b) An article entered or withdrawn from warehouse for consumption under a license must be entered in the name of the licensee as the importer of record by the licensee or its agent, and must be owned by the licensee at the time of such entry.

(c) If the article entered or withdrawn from warehouse for consumption was purchased by the licensee through a direct sale from a foreign supplier, the licensee shall present, at the time of entry:

(1) A true and correct copy of a through bill of lading from the country; and

(2) A commercial invoice or bill of sale from the seller, showing the quantity and value of the product, the date of purchase and the country; or

(3) Where the article was entered into warehouse by the foreign supplier, Customs Form 7501 endorsed by the foreign supplier and the commercial invoice.

(d) If the article entered was purchased by the licensee via sale-in-transit, the licensee shall present, at the time of entry:

(1) A true and correct copy of a through bill of lading endorsed by the original consignee of the goods;

(2) A certified copy of the commercial invoice or bill of sale from the foreign supplier to the original consignee of the goods; and

(3) A commercial invoice or bill of sale from the original consignee to the licensee.

(e) If the article entered was purchased by the licensee in warehouse, the licensee shall present, at the time of entry:

(1) Customs Form 7501 endorsed by the original consignee of the goods;

(2) A certified copy of the commercial invoice or bill of sale from the foreign supplier to the original consignee of the goods; and

(3) A commercial invoice or bill of sale from the original consignee to the licensee.

(f) The Licensing Authority may waive the requirements of paragraphs (c), (d) or (e), if it determines that because of strikes, lockouts or other unusual circumstances, compliance with those requirements would unduly interfere with the entry of such articles.

(g) Nothing in this subpart shall prevent the use of immediate delivery in accordance with the provisions of Customs regulations relating to tariff-rate quotas.

§ 6.30 Record maintenance and inspection.

A licensee shall retain all records relating to its purchases, sales and transactions governed by this subpart, including all records necessary to establish the licensee's eligibility, for five years subsequent to the end of the quota year in which such purchases, sales or transactions occurred. During that period, the licensee shall, upon reasonable notice and during ordinary hours of business, grant officials of the U.S. Department of Agriculture full and complete access to the licensee's premises to inspect, audit or copy such records.

§ 6.31 Debarment and suspension.

7 CFR part 3017—Governmentwide Debarment and Suspension (Nonprocurement) and Government Requirements for Drug-Free Workplace (Grants), Subparts A through E, applies to this subpart.

§ 6.32 Globalization of licenses.

If the Licensing Authority determines that entries of an article from a country are likely to fall short of that country's allocated amount as indicated in Appendices 1, 2, and 3, the Licensing Authority may permit, with the approval of the Office of the United States Trade Representative, the applicable licensees to enter the remaining balance or a portion thereof from any country during that quota year. Requests for consideration of such adjustments must be submitted to the Licensing Authority no later than September 1. The Licensing Authority will obtain prior consent for such an adjustment of licenses from the government of the exporting country for quantities in accordance with the Uruguay Round commitment of the United States.

§ 6.33 License fee.

(a) A fee will be assessed each quota year for each license to defray the Department's costs of administering the licensing system. To the extent practicable, the fee will be announced by the Licensing Authority in a notice published in the Federal Register no later than August 31 of the year preceding the quota year for which the fee is assessed.

(b) The license fee for each license issued is due and payable in full by mail, postmarked no later than May 1 of the year for which the license is issued, in accordance with § 6.35(b). The fee for any license issued after May 1 of any quota year is due and payable in full by mail, postmarked no later than 30 days from the date of issuance of the license, in accordance with § 6.35(b). Fee payments shall be made by certified check or money order payable to the Treasurer of the United States.

(c) If the license fee is not paid by the final payment date, a hold will be placed on the use of the license and no articles will be permitted entry under that license. The Licensing Authority shall send a warning letter by certified mail, return receipt requested, advising the licensee that if payment is not mailed in accordance with § 6.35(b) or received within 21 days from the date of the letter, that the license will be revoked. Where the license at issue is a historical license, this will result, pursuant to § 6.23(b), in the person's loss of historical eligibility for such license.

(d) Licensees may elect not to accept certain licenses issued to them; however, the Licensing Authority must be so notified by mail, postmarked no later than the May 1, in accordance with § 6.35(b).

§ 6.34 Adjustment of Appendices.

(a) Whenever a historical license (Appendix 1) is not issued to an applicant pursuant to the provisions of § 6.23, is permanently surrendered or is revoked by the Licensing Authority, the amount of such license will be transferred to Appendix 2.

(b) The cumulative annual transfers to Appendix 2 made in accordance with paragraph (a) will be published in the Federal Register. If a transfer results in the addition of a new article, or an article from a country not previously listed in Appendix 2, the Licensing Authority shall afford all eligible applicants for that quota year the opportunity to apply for a license for such article.

§ 6.35 Miscellaneous.

(a) If any deadline date in this subpart falls on a Saturday, Sunday or a Federal holiday, then the deadline shall be the next business day.

(b) All submissions required by mail in this subpart shall be by registered or certified mail, return receipt requested, with a postmarked receipt, with the proper postage affixed and properly addressed to the Dairy Import Licensing Group, STOP 1021, U.S. Department of Agriculture, 1400 Independence Avenue S.W., Washington D.C. 20250–1021.

§ 6.36 Supersedure of Import Regulation 1, Revision 7.

This subpart will supersede the provisions of Import Regulation 1, Revision 7 heretofore in effect (§§ 6.20 through 6.33 and appendices 1 through 3 as contained in 7 CFR subtitle A revised as of January 1, 1996). With respect to any violation of the provisions of that regulation by a licensee prior to the effective date hereof, the provisions of that regulation will be deemed to continue in full force; however, the debarment and suspension of § 6.31 of this subpart shall apply with respect to any violation of that regulation.

APPENDICES 1, 2, AND 3 TO SUBPART—DAIRY TARIFF-RATE IMPORT QUOTA LICENSING

[Articles subject to Appendix 1, Historical Licenses; Appendix 2, Nonhistorical Licenses; and Appendix 3, Designated Importer Licenses for Each Quota Year]

Article by additional U.S. note number and country of origin	Appendix 1 (historical)	Appendix 2 (nonhistorical)	Appendix 3—Designated	
			(Tokyo Round)	(Uruguay Round)
Non-Cheese Articles	1997 Tariff Rate Quota In-Quota Quantity (kilograms)			
Butter (Note 6)	320,689	4,856,311		
EC	96,161			
New Zealand	150,593			
Other Countries	73,935			
Any Country		4,856,311		
Dried Skim Milk (Note 7)	819,641	2,041,359		
Australia	600,076			
Canada	219,565			
Any Country		2,041,359		
Dried Whole Milk (Note 8)	3,175	1,548,125		
New Zealand	3,175			
Any Country		1,548,125		
Dried Buttermilk/Whey (Note 12)	224,981			
Canada	161,161			
New Zealand	63,820			
Butter Substitutes containing over 45 percent of butterfat and/or butteroil (Note 14)		5,420,500		
Any Country		5,420,500		
Total: Non-Cheese Articles	1,368,486	13,866,295		
Cheese Articles				
Cheese and substitutes for cheese (except cheese not containing cow's milk and soft ripened cow's milk cheese, cheese (except cottage cheese) containing 0.5 percent or less by weight of butterfat and articles within the scope of other import quotas provided for in this subchapter) (Note 16)	25,896,207	5,574,524	9,661,128	5,198,000
Argentina	7,690		92,310	
Australia	535,628	5,542	758,830	875,000
Canada	1,122,831	18,169		
Costa Rica				1,550,000
Czech Republic				200,000
EC;	17,194,649	5,137,783	1,132,568	1,173,000
of which:				
Austria	369,747		280,253	273,000
Finland	778,593	36,310	485,097	
Portugal	129,309		223,691	
Sweden	915,473		143,527	
Israel	79,696		593,304	
Iceland	294,000		29,000	
New Zealand	4,779,186	36,286	6,506,528	
Norway	150,000			
Poland	936,224			300,000
Slovak Republic				600,000
Switzerland	659,983	11,429	548,588	250,000
Uruguay				250,000
Other Countries	136,320	65,315		
Any Country		300,000		
Blue-mold cheese (except Stilton produced in the United Kingdom) and cheese and substitutes for cheese containing, or processed from, Blue-mold cheese (Note 17)	2,366,029	154,972		200,000
Argentina	2,000			
EC	2,364,028	114,972		150,000
Chile		40,000		
Czech Republic				50,000
Other Countries	1			
Cheddar Cheese, and cheese and substitutes for cheese containing, or processed from, Cheddar cheese (Note 18)	4,096,752	297,104	519,033	3,725,000
Australia	965,795	18,704	215,501	625,000
Chile		110,000		
Czech Republic				50,000
EC	263,000			500,000
New Zealand	2,728,068	68,400	303,532	2,550,000
Other Countries	139,889			
Any Country		100,000		
American-type cheese, including Colby, washed curd and granular cheese (but not including Cheddar) and cheese and substitutes for cheese containing or processed from such American-type cheese (Note 19)	3,001,796	63,757	357,003	50,000
Australia	867,129	13,869	119,002	

APPENDICES 1, 2, AND 3 TO SUBPART—DAIRY TARIFF-RATE IMPORT QUOTA LICENSING—Continued

[Articles subject to Appendix 1, Historical Licenses; Appendix 2, Nonhistorical Licenses; and Appendix 3, Designated Importer Licenses for Each Quota Year]

Article by additional U.S. note number and country of origin	Appendix 1 (historical)	Appendix 2 (nonhistorical)	Appendix 3—Designated	
			(Tokyo Round)	(Uruguay Round)
EC	240,392	13,608	.....	50,000
New Zealand	1,725,719	36,280	238,001	.....
Other Countries	168,556	.....	.....	.....
Edam and Gouda cheese, and cheese and substitutes for cheese containing, or processed from, Edam and Gouda cheese (Note 20)	5,593,856	12,546	.....	710,000
Argentina	125,000	.....	.....	110,000
Czech Republic	.....	.....	.....	100,000
EC;	5,283,546	5,454	.....	500,000
of which:				
Austria	.....	.....	.....	200,000
Sweden	41,000	.....	.....	.....
Norway	159,908	7,092	.....	.....
Other Countries	25,402	.....	.....	.....
Italian-type cheeses, made from cow's milk, (Romano made from cow's milk, Reggiano, Parmesan, Provolone, Provoletti and Sbrinz and Goya, not in original loaves) and cheese and substitutes for cheese containing, or processed from, such Italian-type cheeses, whether or not in original loaves (Note 21)	6,701,591	818,956	795,517	4,965,000
Argentina	4,095,986	29,497	367,517	1,890,000
EC	2,592,541	789,459	.....	350,000
Hungary	.....	.....	.....	400,000
Poland	.....	.....	.....	1,325,000
Romania	.....	.....	.....	250,000
Uruguay	.....	.....	428,000	750,000
Other Countries	13,064	.....	.....	.....
Swiss or Emmenthaler cheese other than with eye formation, Gruyere-process cheese and cheese and substitutes for cheese containing, or processed from, such cheeses (Note 22)	6,050,188	601,126	823,519	190,000
EC;	4,555,608	596,386	393,006	190,000
of which:				
Austria	760,070	18,924	141,006	40,000
Finland	743,176	4,824	252,000	.....
Switzerland	1,414,747	4,740	430,513	.....
Other Countries	79,833	.....	.....	.....
Cheese and substitutes for cheese, containing 0.5 percent or less by weight of butterfat (except articles within the scope of other tariff-rate import quotas provided for in this subchapter), and margarine cheese (Note 23)	4,117,992	181,600	1,175,316	.....
EC;	3,943,084	181,600	.....	.....
of which:				
Sweden	124,684	.....	125,316	.....
Israel	.....	.....	50,000	.....
New Zealand	.....	.....	1,000,000	.....
Poland	174,907	.....	.....	.....
Other Countries	1	.....	.....	.....
Swiss or Emmenthaler cheese with eye formation (Note 25)	19,480,205	2,817,126	9,557,945	1,660,000
Argentina	9,115	.....	70,885	.....
Australia	209,698	.....	290,302	.....
Canada	.....	.....	70,000	.....
Czech Republic	.....	.....	.....	400,000
Hungary	.....	.....	.....	400,000
EC;	13,896,912	2,579,916	4,003,172	760,000
of which:				
Austria	4,940,643	59,111	1,280,246	110,000
Finland	5,454,349	22,725	2,722,926	.....
Sweden	.....	.....	.....	300,000
Iceland	149,999	.....	150,001	.....
Israel	27,000	.....	.....	.....
Norway	3,481,310	174,000	3,227,690	.....
Switzerland	1,620,895	63,210	1,745,895	100,000
Other Countries	85,276	.....	.....	.....
Total: Cheese Articles	77,304,616	10,521,711	22,889,461	16,698,000

Signed at Washington, D.C. on October 2, 1996.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 96–25866 Filed 10–4–96; 3:39 pm]

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October 9, 1996

Part IV

Department of Energy

Personnel Assurance Program; Human Reliability Policies; Notice

DEPARTMENT OF ENERGY

Office of Defense Programs; Personnel Assurance Program; Human Reliability Policies

AGENCY: Department of Energy.

ACTION: Notice of interim Personnel Assurance Program procedures and standards with opportunity to comment.

SUMMARY: The Department of Energy (DOE) today publishes interim Personnel Assurance Program (PAP) procedures and standards for DOE personnel and contractor personnel who are assigned nuclear explosive duties at DOE facilities. The PAP is a systematic program, previously established by internal DOE Directive, to prevent accidental or unauthorized detonation of nuclear explosives as a result of assignment of nuclear explosives duties to employees who have or develop emotional and mental instability or physical incapacity.

DATES: The interim certification procedures and standards are effective October 9, 1996. Comments are due on or before November 8, 1996.

ADDRESSES: Comments (7 copies) may be submitted to Thomas Stepan, USDOE, DP–21, 1000 Independence Avenue, S.W., Washington, D.C. 20585. Copies of the written comments and any other docket material received may be read and copied at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Room 1E–190, 1000 Independence Avenue, S.W., Washington, D.C., telephone (202) 586–6020 between the hours of 8:30 a.m. and 4:00 p.m. Monday through Friday except Federal holidays. The docket file material will be filed under ''DP–RM–96–100.''

FOR FURTHER INFORMATION CONTACT: Thomas Stepan, USDOE, DP–21, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (301) 903–3463. For information concerning submission of written comments, contact Andi Kasarsky, (202) 586–3012.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

Pursuant to the Atomic Energy Act of 1954 (Act), DOE owns defense nuclear facilities in various locations in the United States which are operated by management and operating contractors with DOE supervision. These facilities are involved in researching, testing, producing, disassembling, and transporting of nuclear explosives which, when mated with Department of Defense-provided delivery systems, become nuclear weapons systems.

Pursuant to section 161 of the Act, 42 U.S.C. 2201(b), (i)(3), and (p), DOE and its predecessor agencies—the Atomic Energy Commission (AEC) and the Energy Research and Development Administration (ERDA)—have used some version of PAP to certify, actively monitor, and periodically recertify personnel as suitable to perform nuclear explosive duties in a safe and reliable manner. PAP provides for disqualification of persons from performance of nuclear explosive duties who fail to meet PAP requirements for emotional and mental stability and physical capability. In DOE's internal administrative directives, DOE Order 452.2, formerly DOE Order 5610.11, the term ''Nuclear Explosive Duty'' has been defined to include DOE or contractor employees who have custody of or ''access'' to a nuclear explosive. ''Access'' has been defined to mean: ''The proximity to a nuclear explosive that affords a person the opportunity to tamper with it or to cause a detonation.''

By active monitoring, PAP continuously applies to all PAP-certified employees. The certification of such employees is subject to immediate review in light of facts and circumstances about an employee or an employee's behavior indicating a reliability risk that warrants protective action to neutralize a nuclear explosive hazard by having an individual immediately removed from nuclear explosive duties. Immediate removal does not constitute a determination that the individual is unsuitable for nuclear explosive duties, but indicates that the individual's suitability is in question.

The PAP procedures and standards are legally binding on contractors under the terms and conditions of their contractual agreements which require them to comply with applicable DOE directives. They also apply to contractor personnel and could be the basis for the contractor to take some action affecting an employee's employment rights.

In 1992, the Independent Guard Association of Nevada, Local No. 1, representing PAP-certifiable civilian security guards employed by Wackenhut Security, Inc., at DOE's Nevada Test Site, brought suit challenging DOE Order 5610.11 which established the Department's nuclear explosive and weapons safety program, including the PAP. The DOE Order was challenged for failure to promulgate it through public notice and comment in compliance with the Administrative Procedure Act, 5 U.S.C. 553. In particular, the union challenged the requirement for disqualification from PAP of employees who had used hallucinogens at any time in the past. DOE defended its administrative directive under the military functions, statement of policy, and the agency practice and procedure exceptions from notice and comment rulemaking. *Id.*

The United States District Court for the District of Nevada initially ruled that the military functions exception applied. Subsequently, however, in *Independent Guard Association of Nevada, Local No.1* v. *O'Leary,* 57 F.3d 766 (C.A.9 1995), the United States Court of Appeals for the Ninth Circuit reversed the district court's judgment. The Court of Appeals held that although DOE performs military functions with regard to nuclear explosives, the military functions exception did not apply to the promulgation of DOE Order 5610.11 insofar as DOE sought to make the requirements section (containing the PAP procedures and standards) binding on civilian support contractor personnel performing duties that did not directly involve a military function. On remand in *Independent Guard Association of Nevada* v. *O'Leary,* No. CV–S–92–204–LDG–LRL (D. Nev. June 14, 1996), the district court concluded that none of the other categorical exceptions from notice and comment rulemaking on which DOE relied were applicable. The district court's judgment enjoined DOE from enforcing the ''requirements section'' (section 2) of DOE Order 5610.11, Chapter I, against contractor employees pending notice and comment rulemaking under 5 U.S.C. 553.

Consistent with the rulings in the *Independent Guard* litigation, DOE intends to issue a notice of proposed rulemaking under 5 U.S.C. 553 in the fall of 1996 to codify the PAP employee certification procedures and standards, as well as other PAP-related policies, such as the standards for the site office medical director. Subject to consideration of the comments that are submitted in response to that notice, DOE intends to issue a final rule establishing certification procedures and standards applicable to the DOE and contractor employees performing duties that involve nuclear explosive-related functions. DOE's goal is to publish a final rule by the end of 1996 or early 1997.

DOE today is publishing interim PAP procedures and standards pursuant to the good cause exceptions in 5 U.S.C. 553(b)(B) and (d)(3) and under the authority of section 161 of the Act, 42 U.S.C. 2201. DOE finds that certification, recertification, active monitoring of personnel assigned nuclear explosive duties, and provisions for the removal of individuals from such duties pending suitability determinations are necessary to mitigate

the risk of accidental or unauthorized detonation of a nuclear explosive. Absence of PAP procedures and standards with regard to employees assigned nuclear explosive duties during the period necessary to complete notice and comment rulemaking would create an intolerable occupational and public safety risk. Accordingly, DOE concludes that it would be impracticable and contrary to the public interest to provide prior notice or a 30-day delay of the effective date for these interim procedures and standards. Although the interim PAP procedures and standards published today will be effective immediately under the good cause exceptions in 5 U.S.C. 553(b)(B) and (d)(3), DOE invites and will consider comments on the interim procedures and standards.

II. Description and Basis for Interim Procedures and Standards

The program elements of certification, periodic recertification, and spot physical or psychological evaluation for cause are based on DOE's experience, as well as the experience of the DOE's predecessor agencies for over 30 years. Both the AEC and ERDA had internal provisions for PAP, and DOE has had internal administrative directives setting forth PAP policies.

Today's interim rule contains several modifications of the PAP as set forth in DOE directives. These modifications include: (1) A requirement for an individual to sign a form documenting ''refusal of consent'' if the individual chooses not to participate in the PAP; (2) flexibility in selecting and designating a psychological inventory evaluation tool as a substitute for the specific designation of the Minnesota Multi-Phasic Personality Inventory; (3) a requirement for a more flexible ''semi-structured'' interview, which is a substitute for the prior requirement for a ''structured'' interview; (4) the addition of a psychological evaluation in every third year, as part of an individual's annual recertification; (5) clarification of requirements for random drug testing, and (6) the addition of evaluation requirements for individuals who have used hallucinogenic drugs during the preceding five years.

This part of the Supplementary Information discusses the meaning of, and basis for, those provisions of the interim certification procedures and standards that require explanation. It does not discuss provisions that are largely self-explanatory.

Section 2 sets forth definitions. The definition of ''illegal drug'' lists the drugs that are set forth in ''Mandatory Guidelines for Federal Workplace Testing Programs'' issued by the Department of Health and Human Services, 53 FR 11970 (April 11, 1988). The definitions of ''access,'' ''custody,'' ''nuclear explosive,'' ''nuclear explosive area,'' and ''pit'' were developed in consultation with a variety of interested stakeholders and subject matter experts.

Section 11 of the interim procedures and standards identifies both the medical assessment requirements and the actions DOE may take based on medical evaluations. Paragraph (a) of section 11 summarizes the purpose of medical assessments and provides that such an assessment consists of physical examination and psychological evaluation for certification and periodic recertification. Paragraph (a) also indicates that such an assessment may be required to evaluate an employee for possible drug or alcohol abuse.

Paragraph (b) presents more details about the medical assessments for the purpose of initial certification and periodic recertification. It refers to the use of a ''generally accepted, self-reporting psychological inventory tool'' together with a ''semi-structured interview,'' both of which are required initially. Also, the semi-structured interview is part of the annual medical evaluation for recertification, while the psychological inventory tool is required every third year as part of the medical evaluation for recertification. The Minnesota Multi-Phasic Personality Inventory is an example of a psychological inventory tool. A ''semi-structured interview'' involves a series of questions by a clinical psychologist who has latitude to vary the focus and content of questions as a function of what the personality inventory or interviewee responses indicates should be probed.

Paragraph (c) deals with the policies applicable to detecting and acting with regard to positive indications of drug abuse. Paragraph (c)(2) cross references 10 CFR part 707 which provides DOE's general policy to promote drug free workplaces, and applies to DOE contractors and subcontractors performing work at DOE owned or controlled sites. However, paragraph (c) adds some requirements to those in part 707.

Paragraph (c) states a special policy for hallucinogenic drug use. The hallucinogens in question are listed in a definition of the term ''hallucinogenic drug'' which appears in section 2. The policy provides that hallucinogenic drug use more than five years earlier is not, in itself, an adequate basis for denying certification or recertification. The five-year rule reflects a period of time that should elapse, as a protective practice, to minimize the likelihood of flashbacks. ''Flashback'' is the term used to describe a transient, spontaneous recurrence of certain aspects of a person's hallucinogenic drug experience. Flashbacks typically have all the qualities of the original experience, and they are strongly felt. Because flashbacks are sudden, often unpredictable, largely involuntary, dramatic alterations of emotional state, perception, sensation, and behavior, an accident would likely result if a flashback were to occur during the performance of a hazardous task. Flashbacks may occur within a few days after drug use, or they may occur a few weeks, months, or even years later.

An individual who used hallucinogenic drugs more than five years earlier will be considered for nuclear explosive duties. However, paragraph (c)(6) further provides that an individual who has used hallucinogenic drugs must have an acceptable job record and observed behavior; not be susceptible to flashbacks resulting from hallucinogenic drug use; and must undergo a medical evaluation to determine the individual's reliability.

Paragraph (d) deals with medical assessments for alcohol abuse. It specifies the blood alcohol concentration that warrants enforcement action. Based on the practices of the Federal Aviation Administration with regard to airplane pilots, DOE has adopted the policy of prohibiting alcohol consumption within an eight hour period preceding nuclear explosive duties and does not permit an individual to perform nuclear explosive duties for a minimum of 24 hours in the event a confirmatory breath alcohol test result is at or above 0.02 percent. (Reference 14 CFR 91.17(a)(1); 49 CFR 382.505(b)). Removal from nuclear explosive duties due to results of a confirmatory breath alcohol test could lead to revocation of PAP certification, but there is provision for reinstatement following completion of an approved alcohol treatment program.

Issued in Washington, DC, on October 2, 1996.

Victor H. Reis,

Assistant Secretary for Defense Programs.

Nuclear Explosive Safety Interim Certification Procedures and Standards for the DOE Personnel Assurance Program

1. General

These interim procedures and standards apply to all Department of Energy (DOE) personnel or contractor personnel who are assigned nuclear explosive duties. The Personnel

Assurance Program (PAP) is a human reliability program designed to ensure that individuals assigned to nuclear explosive duties do not have or develop emotional, mental, or physical incapacities that could result in the accidental or unauthorized detonation of a nuclear explosive. In general:

(a) PAP certification is required for assignment to nuclear explosive duties, and, in addition, the individual must meet all other applicable job qualification requirements;

(b) Failure of an individual to be certified or recertified for assignment to nuclear explosive duties shall not, in itself, reflect on the individual's suitability for assignment to other duties and shall not, in itself, be a cause for loss of pay or other benefits or other changes in employment status;

(c) Personnel management actions based on the consideration of technical competence and other job qualification requirements shall not affect the qualification for the PAP;

(d) Except for the functions in section 8(b), managers of Operations Offices may delegate PAP functions to the deputy managers, assistant managers, division directors, and/or area office managers; and

(e) These interim procedures and standards do not apply to responses to unplanned events (e.g., Accident Response Group activities), which are addressed in DOE 5530-series Orders and DOE Order 151.1, ''Comprehensive Emergency Management System.''

2. Definitions

(a) ''Access'' means the proximity to a nuclear explosive that affords a person the opportunity to tamper with it or to cause a detonation.

(b) ''Custody'' means responsibility for control of and access to nuclear explosives.

(c) ''Hallucinogenic drug'' means D-lysergic acid diethylamide (LSD), mescaline (peyote cactus), methoxylated amphetamines, or psilocybin (Psilocybin fungus).

(d) ''Illegal drug'' means cocaine, marijuana, opiates, amphetamines, or phencyclidine.

(e) ''Nuclear explosive'' means an assembly containing fissionable and/or fusionable materials and main charge high explosive parts or propellants capable of producing a nuclear detonation (e.g., a nuclear weapon or test device).

(f) ''Nuclear explosive area'' means any area that contains nuclear explosive or collocated pit and main charge high explosive parts.

(g) ''Nuclear explosive duty'' means work assignments that allow custody of a nuclear explosive device or access to a nuclear explosive device or area.

(h) ''PAP certifying official'' means the DOE Operations Office manager or the manager's delegate, unless the Secretary of Energy delegates the certification function to another individual. The certification function shall not be delegated to a level lower than area office manager.

(i) ''Pit'' means a fissile component, or a set of fissile components, designed to fit in the central cavity of an implosion system and which if placed therein will create a nuclear explosive.

(j) ''SOMD'' means the Site Occupational Medical Director.

3. Requirements

Prior to being assigned to nuclear explosive duties, personnel shall be certified in the PAP by a PAP certifying official and be recertified annually, not to exceed 12 months between recertifications. To be certified, an individual must:

(a) Have an active DOE Q access authorization;

(b) Sign an acknowledgment and agreement to participate in the PAP on a form for certification and recertification provided by DOE;

(c) Complete a medical assessment for certification and recertification as required by the SOMD in compliance with section 11 of these interim certification procedures and standards; and

(d) Be interviewed and briefed on the importance of the nuclear explosive duty assignment, PAP requirements, and the nature and objectives of the PAP. If an individual chooses to not participate in the PAP, he or she shall sign a form provided by DOE documenting that refusal.

4. PAP Certification Process

The PAP Certifying Official determines certification or recertification and reviews circumstances concerning an individual's decertification from nuclear explosive duties and possible recertification. Managers of Operations Offices who exercise jurisdiction over PAP certification shall issue instructions for implementing the PAP. As a minimum, the instructions shall provide for:

(a) Conducting a supervisory interview of each individual, during which the supervisor shall determine the individual's willingness to accept the requirements and conditions of the PAP;

(b) Ensuring that individuals undergo the medical assessment required by section 11;

(c) Ensuring that the personnel security file has been reviewed for PAP concerns;

(d) Ensuring that other available personnel data has been reviewed for PAP concerns;

(e) Allowing the exchange of information concerning a PAP individual among responsible DOE or DOE contractor officials during the certification, recertification, or decertification process;

(f) Requesting DOE certification or recertification of contractor personnel when the contractor has determined, on the basis of all information available, that the individual is suitable. The contractor requesting certification or recertification shall assure the PAP certifying official that all PAP certification requirements have been met;

(g) Addressing any requirement not met during the recertification process. The contractor shall provide any personal data that may have a bearing on the individual's recertification;

(h) Documenting PAP certification/recertification on a form provided by DOE;

(i) Developing a mechanism for co-workers, supervisors, and managers to communicate concerns regarding an individual's suitability to perform nuclear explosive duties; the instructions shall ensure that these concerns are reported to the appropriate official, as specified in sections 5 and 6, for timely resolution; and

(j) Ensuring that if an individual is no longer being considered for assignment to nuclear explosive duties or is no longer assigned to such duties, any processing of a decision with respect to the individual's certification will be terminated. If, at a later date, the same individual is again being considered for assignment to nuclear explosive duties, processing of the individual's certification shall be completely redone.

5. Supervisor Responsibilities

Supervisory personnel are responsible for observing PAP-certified individuals and reporting and documenting behavior that would cause a reasonable belief that the individual's ability to perform assigned tasks in a safe, secure and reliable manner may be impaired. An individual whose PAP suitability is in question shall be immediately removed from nuclear explosive duties, as provided in section 7. Behavior that could indicate unsuitability for the PAP, regardless of how the knowledge was obtained or where the incident occurred, shall be reported immediately to the SOMD and/or other PAP official

for evaluation. Examples of such behavior include the following:

(a) Psychological or physical disorders that impair performance of assigned duties;

(b) Illegal conduct, arrest, or conviction;

(c) Indications of deceitful or delinquent behavior;

(d) An attempt or implied threat to destroy property or life;

(e) Suicidal tendencies or attempted suicide;

(f) Use of illegal drugs, the abuse of alcohol, or the abuse of legal drugs;

(g) Recurring financial irresponsibility;

(h) Irresponsibility in performing assigned duties;

(i) Inability to deal with stress, or the appearance of being under unusual stress;

(j) Evidence of failure to understand work directives, hostility or aggression toward fellow workers or authority, uncontrolled anger, willful violation of safety or security procedures, or repeated absenteeism; and

(k) Significant behavioral changes, moodiness, depression, or other evidence of loss of emotional control.

6. Individual Responsibilities

(a) Individuals in the PAP are responsible for reporting any behavior of other PAP personnel that could indicate unsuitability for nuclear explosive duties, including the types of behavior listed in section 5, to a supervisor, the SOMD, or a PAP official.

(b) Individuals who are in the PAP are responsible for reporting any condition that may affect their own suitability for nuclear explosive duties to a supervisor, to the SOMD, or to a PAP official.

7. Immediate Removal From Nuclear Explosive Duties

(a) An individual whose PAP suitability is in question shall be immediately removed from nuclear explosive duties. Immediate removal from nuclear explosive duties requires, as a minimum, that:

(1) The individual ceases performance of nuclear explosive duties;

(2) The individual shall be denied access to nuclear explosive areas; and

(3) The circumstances that led to the removal of the individual from nuclear explosive duties shall be documented.

(b) Immediate removal from nuclear explosive duties does not constitute a determination that the individual is unsuitable for nuclear explosive duties. It only means that the individual's suitability is in question.

(c) Immediate removal action will not, in itself, be cause for loss of pay or other benefits or other changes in employment status.

8. Removal From PAP

(a) When the DOE PAP certifying official receives official written notification that an individual has been removed from nuclear explosive duties and the reasons for such removal, the individual shall be temporarily removed from PAP.

(b) The PAP certifying official shall conduct and document an evaluation of the circumstances of the temporary removal. The evaluation shall include the PAP certifying official's determination regarding the individual's suitability for continuing PAP certification and appropriate recommendations.

(1) If the certifying official determines that continuing PAP certification is appropriate, the Operations Office manager shall be notified and the individual reinstated in the PAP. The individual may resume nuclear explosive duties.

(2) If the certifying official determines that continuing PAP certification is inappropriate, the Operations Office manager shall be notified and provided with the PAP certifying official's evaluation and recommendations.

(c) The operations office manager, after receiving the evaluation from the PAP certifying official that an individual is not suitable for continuing PAP certification, shall take one of the following actions:

(1) Direct that the individual be reinstated in the PAP and document the basis for reinstatement.

(2) Direct that action be initiated to revoke the individual's PAP certification, in accordance with Section 12, and document the basis for the action; or

(3) Direct that appropriate actions be taken to resolve PAP concerns (e.g., medical assessment, security evaluation, rehabilitation); based on the results of these actions, the PAP certifying official will provide a written recommendation to the operations office manager, who shall take action (1) or (2) above, as appropriate.

9. List of PAP-Certified Personnel

Managers of operations offices who grant PAP certifications shall establish procedures for developing and maintaining a current list of DOE and DOE contractor personnel certified in the PAP. The list will be used for PAP program administration; it is not an authorization for personnel to perform nuclear explosive duties. The list shall be promptly updated and verified on a quarterly basis.

10. PAP Training Requirements

Managers of Operations Offices shall ensure a program is developed and maintained to:

(a) Provide special training in the nature and objectives of the PAP to all individuals with nuclear explosive duties;

(b) Provide special training to medical personnel performing medical assessments for PAP certification and recertification; the medical training program shall:

(1) Explain nuclear explosive duties and nuclear explosive safety;

(2) Explain the objectives, purposes, policies, and requirements of the PAP;

(3) Include an orientation visit to nuclear explosive areas; and

(4) Emphasize the importance of timely reporting of any PAP concern to appropriate personnel;

(c) Provide supervisory-level PAP training to DOE and DOE contractor supervisors of PAP individuals and to DOE PAP certifying officials; and the supervisory training program shall:

(1) Explain nuclear explosive duties and nuclear explosive safety;

(2) Explain the objectives, purposes, policies, and requirements of the PAP;

(3) Include training on the early identification of behavior (including attitude, job performance, use of illegal drugs, abuse of alcohol, or the abuse of legal drugs) that indicates a degradation in reliability or judgment; and

(4) Emphasize the importance of timely reporting of any PAP concern to appropriate personnel;

(d) Establish and maintain PAP training records for supervisors of PAP personnel, PAP personnel, and medical personnel.

11. Medical Assessments

(a) The purpose of medical assessments is to ensure that an individual does not have a condition that may prevent performance of nuclear explosive duties in a safe and reliable manner. Medical assessments consist of physical examinations and psychological evaluations for PAP certification and recertification. In addition, individuals in the PAP are subject to evaluation for drug and alcohol abuse.

(b) A medical assessment for PAP certification and recertification shall include:

(1) A comprehensive physical examination;

(2) A psychological evaluation by the clinical psychologist designated by the SOMD, with concurrence from the DOE Office of Occupational Medicine:

(i) For the initial certification, the psychological evaluation consists of a

generally accepted, self-reporting psychological inventory tool approved by the Director of the Office of Occupation Medicine, and a semi-structured interview;

(ii) For recertification, the psychological evaluation consists of a semi-structured interview;

(iii) Every third year, the medical evaluation for recertification shall include a generally accepted self-reporting psychological inventory tool approved by the Director of the Office of Occupational Medicine; and

(iv) Additional psychological evaluations may be required by the SOMD when necessary to resolve PAP concerns.

(c) The policies applicable to a medical assessment in order to evaluate for drug abuse are as follows.

(1) Except as otherwise provided by this paragraph, a medical assessment for Federal employees shall be conducted under DOE 3792.3, ''Drug-Free Federal Workplace Testing Implementation Program'';

(2) Except as otherwise provided by this paragraph, a medical assessment for contractor employees shall be conducted under 10 CFR part 707;

(3) For any individual in the PAP, there shall be a test for illegal drugs at least once during every 12 months in an unannounced and unpredictable manner, and if warranted, for cause or reasonable suspicion.

(4) If, in a medical assessment, an individual refuses to submit a urine sample or attempts deception by substitution, adulteration or other means, then DOE immediately shall remove the individual from nuclear explosive duties.

(5) Confirmation of use of illegal drugs through drug testing shall result in revocation of PAP certification.

(6) When DOE suspects use of a hallucinogenic drug, the Department will review the circumstances, and for reasonable suspicion or cause may test an individual for hallucinogenic drug use. If DOE determines that an individual has used any hallucinogenic drug, then the individual shall not be eligible for PAP certification or recertification unless:

(i) Five years has passed since the last use of the hallucinogenic drug;

(ii) The individual has a record of acceptable job performance and observed behavior;

(iii) The individual is not susceptible to flashbacks resulting from hallucinogenic drug use; and

(iv) A medical evaluation is performed to determine reliability.

(7) In each case of drug abuse, the SOMD, in consultation with the clinical psychologist, shall evaluate the individual for evidence of psychological impairment and make a recommendation to the PAP certifying official as to the individual's reliability.

(8) After successfully completing an SOMD-approved drug rehabilitation program, and subject to SOMD-directed unannounced tests for illegal drugs and relevant counseling for three years, DOE may reinstate an individual in the PAP based on the SOMD's follow-up evaluation and recommendation.

(d) The policies applicable to a medical assessment for alcohol use or abuse are as follows.

(1) When alcohol abuse is suspected, an individual shall be examined for evidence of alcohol abuse. Evidence of alcohol abuse is reason to question the individual's certification or continued certification in PAP and shall require further evaluation, which may include psychological assessment.

(2) Alcohol consumption is prohibited within an eight-hour period preceding and during nuclear explosive duties. DOE shall implement or require the contractor to implement procedures that will ensure that persons called in to perform unscheduled work are fit to perform the task assigned.

(3) Individuals in the PAP shall be tested at the work site if there is reasonable indication of alcohol use in violation of the requirements of paragraph 11(d)(2) of these interim procedures and standards.

(4) Tests for alcohol must be administered by a certified Breath Alcohol Technician using an evidential-grade breath analysis device that conforms to the Department of Transportation's (DOT) National Highway Traffic Safety Administration model specifications (58 FR 48705, September 17, 1993), and the most recent ''Conforming Products List'' issued by DOT.

(5) An individual whose confirmatory breath alcohol test result is at or above a blood alcohol concentration of 0.02 percent shall not be allowed to perform nuclear explosive duties for a minimum of 24 hours.

(6) Individuals refusing to submit to a breath alcohol test shall be immediately removed from nuclear explosive duties.

(7) The SOMD, in conjunction with the clinical psychologist, shall evaluate each case of alcohol abuse for evidence of psychological impairment and provide the PAP certifying official a recommendation as to the individual's reliability.

(8) After successfully completing an SOMD-approved alcohol treatment program, DOE may reinstate an individual in the PAP based on the SOMD's follow-up evaluation and recommendation.

12. Due Process

(a) The operations office manager, prior to rendering a decision not to certify or to revoke the PAP certification of a DOE employee or contractor employee, shall provide, in writing, the following information to the individual regarding the PAP suitability decision and review process:

(1) The individual has three options after receiving notification of the manager's decision:

(i) Take no action; or

(ii) Respond to the information giving rise to the question of the individual's suitability in writing to the manager, under oath or affirmation before a notary public, within 20 working days of receipt of the notification; or

(iii) Request, in writing to the manager, to appear before a certification review hearing officer, as provided in subparagraph (b), for a review of the information giving rise to the question as to the individual's suitability. The individual must request this option within 20 working days from receipt of the notification.

(2) At the review conducted by the certification review hearing officer, the individual may be represented by counsel of the individual's own choosing and at the individual's own expense;

(3) At the review, the individual may provide witnesses and documents in support of his or her claim for suitability for PAP certification or recertification; and

(4) If the individual does not request a certification review hearing, the final decision as to suitability shall be based upon the individual's response and other information available to the manager.

(b) Upon receipt of a request from the individual for a certification review hearing, the operations office manager shall appoint a certification review hearing officer, who shall be a DOE attorney, with the appropriate DOE access authorization. The manager shall also appoint a DOE attorney as counsel to the Department to assist in the following:

(1) Obtaining evidence;

(2) Arranging for the appearance of witnesses;

(3) Examining and cross-examining witnesses; and

(4) Notifying the individual in writing, at least 7 working days in advance, of the scheduled place, date, and hour where the review will take place.

(c) The certification review hearing officer shall:

(1) Conduct the review in an orderly and impartial manner with every effort made to protect the interests of the Government and the individual;

(2) Present all information relating to the individual's suitability through witnesses or documentation;

(3) Ensure that the individual is allowed the opportunity to refute the information and to submit mitigating information relating to his or her suitability. The individual shall be permitted to offer information in his or her behalf; to call, confront, examine, and cross-examine witnesses and other persons who have made written or oral statements, except as provided in subparagraph (4); and to present and examine evidence;

(4) Have the option to receive and consider oral or written statements adverse to the individual without affording the individual the opportunity to cross-examine the person making the statement in either of the following circumstances:

(i) The substance of the statement was contained in the individual's personnel clearance investigative file before the question as to the individual's suitability arose; and the head of the Federal agency supplying the statement certifies that the person who furnished the information is a confidential informant who has been engaged in obtaining intelligence information for the Government, and the disclosure of that person's identity would substantially harm the national security; or

(ii) The substance of the statement was contained in the individual's personnel clearance investigative file before the question as to the individual's suitability arose, and the Assistant Secretary for Defense Programs (ASDP) or his or her designee for that particular purpose has determined, after considering information furnished by the investigative agency as to the reliability of the person and the accuracy of the statement, that—

(A) The statement appears to be reliable and material; and

(B) Failure of the hearing officer to receive and consider such statement would substantially harm the national security; and

(C) The person who furnished the information cannot appear to testify due to death or severe illness, or some other good cause as determined only by ASDP.

(5) Ensure that whenever procedures under subparagraph (4) are used, the individual is given a summary of the information, which shall be as comprehensive and detailed as the national security permits. In addition, whenever a statement is received under subparagraph (4)(ii), the identity of the person making the statement and the information to be considered shall be made available to the individual. Appropriate consideration shall be accorded to the fact that the individual did not have an opportunity to cross-examine such person. When the procedures under subparagraph (4) are used, the operations office manager shall assist the hearing officer in obtaining the necessary verifications or determinations.

(6) Require the testimony of the individual and of all witnesses to be given under oath or affirmation.

(7) Record the review proceedings verbatim and forward a copy of the record to the operations officer manager; and

(8) Provide written findings and recommendations, with supporting rationale, to the operations office manager.

(d) Upon receipt of the certification review hearing officer's submissions, and after receiving the individual's response in cases in which the individual did not request a hearing, the operations office manager shall promptly issue a decision in the matter. If the manager decides not to certify or to revoke the PAP certification, the manager shall inform the individual in writing of the decision and the reasons supporting it.

(e) If a hearing was conducted, the operations office manager shall forward, along with his or her decision, a copy of the record of the review proceedings and of the certification review hearing officer's findings and recommendations, with supporting rationale, to the individual.

(1) Within 20 working days of the individual's receipt of the Operations Office manager's decision, the individual may request a review by ASDP. The individual must request this review and provide supporting justification in writing to ASDP through the operations office manager and the Deputy Assistant Secretary for Military Application and Stockpile Management. The request must be in writing and include:

(i) A copy of the operations office manager's decision and supporting documentation; and

(ii) If a hearing was conducted, a copy of the record of the review proceedings and of the certification review hearing officer's findings and recommendations.

(2) Upon receipt of an individual's request for review, ASDP shall review all information forwarded by the operations office manager and issue a decision.

(3) If the individual does not request a ASDP review within 20 working days of receipt of the manager's decision, the manager's decision shall be final.

[FR Doc. 96–25881 Filed 10–8–96; 8:45 am]

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federal register

Wednesday
October 9, 1996

Part V

Environmental Protection Agency

Calculation of the Economic Benefit of Noncompliance in EPA's Civil Penalty Enforcement Cases; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5629–9]

Calculation of the Economic Benefit of Noncompliance in EPA's Civil Penalty Enforcement Cases

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for comment.

SUMMARY: The Environmental Protection Agency (''EPA'') requests comment on how it calculates the economic benefit obtained by regulated entities as a result of violating environmental requirements. In particular, the Agency is seeking comment on three categories of issues: The most effective mechanism for recapturing economic benefit; the methodology and assumptions incorporated in the economic benefit (''BEN'') computer model used by the Agency to calculate that benefit; and the model's precision and user-friendliness. After the comment period closes, the Agency plans to review all the comments and revise its benefit recapture approach as appropriate.

DATES: EPA urges interested parties to comment in writing on the BEN model and the EPA's benefit recapture approach. Comments must be received by EPA at the address below by January 1, 1997. Comments may also be communicated verbally at two public meetings EPA will hold during the comment period. The first one is scheduled for Washington, DC in the auditorium at EPA's Education Center at 401 M Street, SW., on November 6, 1996. The second one is scheduled for San Francisco at the Holiday Inn Golden Gateway at 1500 Van Ness Ave on November 13. Both meetings will begin at 9:30 a.m. and end at 4:00 p.m.

ADDRESSES: Written comments should be submitted in triplicate to: U.S. Environmental Protection Agency, Office of Enforcement and Compliance Assurance, Economic Benefit Docket Clerk, Mail Code 2248–A, 401 M Street, SW., Washington, DC 20460, and reference this docket.

EPA will maintain a record of all written comments submitted pursuant to this notice. Copies of the comments may be reviewed at the Ariel Rios Federal Building, 1200 Pennsylvania Avenue, Washington, DC 20044. Persons interested in reviewing the comments must make advance arrangements to do so by calling (202) 564–2235.

FOR FURTHER INFORMATION CONTACT: Copies of the BEN computer model and the BEN Users Manual may be obtained from the National Technological Information Service by calling (703) 487–4650. Callers should request order number PB95–502514INC. Electronic copies of these items are also downloadable through the Office of Enforcement and Compliance Assurance's communications network called ''Enviroene.'' Enviroene is a free public network accessible via the World Wide Web on the Internet (http://es.inel.gov), and via an electronic Bulletin Board System ([703] 908–2092). For further information, contact Jonathan Libber, Office of Regulatory Enforcement, Multimedia Enforcement Division, at (202) 564–6011.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Overview

One of the Environmental Protection Agency's most important responsibilities is ensuring compliance with the federal environmental laws. These laws, and their implementing regulations, set minimum standards for protecting human health and welfare and achieving environmental protection goals, such as clean air and clean water. EPA upholds these laws through vigorous enforcement actions that correct the violations and appropriately penalize violators.

A cornerstone of the EPA's civil penalty program is recapture of the economic benefit that a violator may have gained from illegal activity, whenever EPA can effectively measure that gain. Recapture helps level the economic playing field, preventing violators from obtaining an unfair financial advantage over their competitors who timely made the necessary investment in environmental compliance. Generically, penalties serve as incentives to protection of the environment and public health by encouraging the adoption of pollution prevention and recycling practices that limit exposure to liability for pollutant discharges. Finally, appropriate penalties help deter future violations by the violator and by others similarly situated.

EPA has promulgated a generic civil penalty policy, as well as specific penalty policies tailored to suit the needs of particular programs. For example, there is a civil penalty policy specifically designed to address violations of the Clean Water Act. Civil penalties imposed by EPA usually have two components: gravity and economic benefit. The gravity component reflects the seriousness of the violation and is generally determined through the application of the appropriate EPA civil penalty policy.

The economic benefit component focusses on the violator's economic gain from noncompliance, which may occur in three basic ways. It can: (1) Delay necessary pollution control expenditures; (2) avoid necessary pollution control expenditures; or (3) gain an illegal competitive advantage during the period of noncompliance. This advantage may occur, for example, if a company sells banned products, or captures an extra market share through selling its products at a lower cost than its complying competitors.

The Agency designed the BEN computer model, for settlement purposes only, to calculate the economic benefit from these first two types of economic gain. The Agency does not have a standard methodology for calculating the benefit gained from an illegal competitive advantage, which is considered on a case-by-case basis.

B. EPA Policy and Guidance on Recapturing the Economic Benefit of Noncompliance

Since its development in 1984, the BEN computer model has been extensively used by EPA staff in generating penalty figures for settlement purposes that reflect the economic benefit a violator derived from delaying or avoiding compliance with environmental statutes.

1. Policy Background

Calculating a violator's economic benefit using the BEN computer model is usually the first step in developing a civil penalty figure under the Agency's *Policy on Civil Penalties* (PT.1–1) February 16, 1984, and *A Framework for Statute-Specific Approaches to Penalty Assessments* (PT.1–2) February 16, 1984 (hereinafter the *''Framework''*). The Agency developed the BEN computer model to assist in fulfilling one of the main goals of the *Policy on Civil Penalties:* recovery, at a minimum, the economic benefit from noncompliance.

The BEN computer model is intended to be used in calculating economic benefit for purposes of developing a *settlement* penalty, not for use at trial or in an administrative hearing. In presenting economic benefit testimony at trial or in an administrative hearing, the Agency typically relies on an expert to provide an independent financial analysis of the economic benefit the violator obtained as a result of its violations. This independent financial assessment reflects the expert's analytical approach as applied to the particular facts of that case. Although such an analysis is usually consistent

with the principles of the BEN model, it may not be identical to that set forth in the *BEN User's Manual*.

2. BEN Calculates the Economic Benefit From Delayed and Avoided Pollution Control Expenditures

The BEN model is designed to calculate two types of economic benefits: those gained from *delaying* and from *avoiding* required environmental expenditures. Delayed costs can include capital investments in pollution control equipment, delayed costs to remediate environmental damages caused (*e.g.*, remove unpermitted dredged or fill material and restore wetlands), or one-time expenditures required to comply with environmental regulations (*e.g.*, the cost of setting up a reporting system, or land purchases). Avoided costs include operation and maintenance costs and/or other recurring costs (*e.g.*, off-site disposal of fluids from injection wells). BEN does not calculate a third type of benefits: those derived from a competitive advantage gained by a violator.

3. Current Model Usage and Applicability

The BEN model can be used in all cases where there is a measurable benefit from delaying or avoiding compliance, except for Clean Air Act Section 120 enforcement actions. (Section 120 requires the application of a specific computer model.) BEN was designed to be easy to use for people with little or no background in economics, financial analysis, or computers. Because the program contains standard values for many of the variables needed to calculate the economic benefit, BEN can be run with only a small number of inputs from the user. The program also allows the user to replace those standard values with user-specific information. Table 1 lists the inputs to the BEN model. The optional inputs listed in Table 1 are those for which the model has standard values.

The model can estimate economic benefit for many types of organizations: corporations, partnerships, sole proprietorships, not-for-profit organizations and municipalities. The BEN model has two sets of standard values: one applies to for-profit business violators and the other applies to not-for-profit organizations. The BEN inputs listed in Table 1 are discussed in detail in Chapter 4 of the *BEN Users Manual* for both for-profit and not-for-profit organizations.

TABLE 1.—INPUTS FOR BEN

Required Inputs:
(1) Case Name, Profit Status, and Filing Status.
(2) Capital Investment.
(3) One-Time Nondepreciable Expenditure.
(4) Annual Expenses.
(5) Date of Noncompliance.
(6) Date of Compliance.
(7) Date of Penalty Payment.
Optional Inputs (Standard Values that May be Modified):
(8) Useful Life of Pollution Control Equipment.
(9) Marginal Income Tax Rate for 1986 and Before.
(10) Marginal Income Tax Rate for 1987 to 1992.
(11) Marginal Income Tax Rate for 1993 and Beyond.
(12) Inflation Rate.
(13) Discount Rate.

C. How a Firm Obtains an Economic Benefit From Delaying or Avoiding Compliance Costs

An organization's decision to comply with environmental regulations usually implies a commitment of financial resources, both initially (in the form of a capital investment or one-time expenditure) and over time (in the form of annual, continuing expenses). These expenditures should result in better protection of public health or environmental quality; however, they are unlikely to yield any direct economic benefit (*i.e.*, net gain) to the organization. If these financial resources were not used for compliance, they presumably are invested in projects with an expected direct economic benefit to the organization. This concept of alternative investment—that is, the amount the violator would normally expect to make by not investing in pollution control—is the basis for calculating the economic benefit of noncompliance.

As part of the Civil Penalty Policy, the Agency uses its penalty authority to remove or neutralize the economic incentive to violate environmental regulations. In the absence of enforcement and appropriate penalties, an organization's best economic interest will usually be to delay the commitment of funds for compliance with environmental regulations and to avoid certain other associated costs, such as operation and maintenance expenses.

1. The Components of Economic Benefit Measured by the BEN Model

A violator may gain economic benefit from either delayed or avoided compliance costs. By delaying compliance, the violator can earn a return on the delayed capital or one-time costs of pollution control equipment. In other words, violators have the opportunity to invest their funds in projects other than those required to comply with environmental regulations. These other investments are ordinarily expected to yield a monetary return at the violator's marginal rate of return on capital. But environmental expenditures typically yield no direct economic benefit. Thus, by delaying compliance, the violator benefits by the amount of earnings that could be expected from alternative investments.

A violator can also gain an economic benefit from avoiding pollution control expenditures. Avoided expenditures typically include the annual continuing expenses that a violator would have incurred if the facility had complied with environmental regulations on time, such as the costs of labor, raw materials, energy, lease payments and any other expenditures directly associated with the operation and maintenance of the pollution control equipment. Unlike capital and one-time expenditures which are only postponed, annual expenditures are avoided altogether. The resulting benefits to the violator are the total avoided annual costs as well as the return that could be expected on these avoided costs.

2. Taking Indirect Costs Into Account

EPA's BEN model evaluates economic benefit in terms of the effect that delayed or avoided pollution control expenditures have on an entity's cash flows. Cash flow analysis is a standard and accepted technique for evaluating costs and investments. In essence, the result of cash flow calculations is to determine the actual dollar costs and revenue resulting from an expenditure. Thus, noncash expenditures, such as depreciation, are only considered to the extent that they affect cash income or expenses. The three factors the model accounts for here are tax, inflation and discounting.

a. After-Tax Cash Flows

The BEN model computes economic benefit in after-tax terms to take into account certain financial impacts associated with environmental expenditures. For example, one important impact of these expenditures is a reduction in income tax liability. Depreciation and annual expenditures serve to reduce taxable income, thereby reducing income taxes. Also, depending upon the tax year, the original purchase of equipment might have resulted in an investment tax credit. To account for these tax effects, BEN calculates the economic benefit using after-tax cash flows.

b. Inflation

Inflation is another indirect factor that the BEN model accounts for. The BEN model initially converts all costs to dollars of the noncompliance year before it compares the cost of complying on time with the cost of complying late. The model uses the inflation rate to adjust the current or future cost of compliance into dollars from the year noncompliance began. The *BEN Users Manual* (see pages 4–27 to 4–29 and Appendix A of the manual) contains a more detailed discussion of the inflation factor.

c. Discounting

A third impact relates to the *timing* of the cash flows since cash flows occurring in different years are not directly comparable. A basic concept of financial theory is ''present value.'' This concept is based on the principle that: ''A dollar today is worth more than a dollar a year from now,'' because today's dollar can be invested immediately to earn a return over the coming year. Therefore, the earlier a cost (or benefit) is incurred, the greater its economic impact. BEN accounts for this ''time value of money'' effect by reducing all estimated future cash flows to their ''present value'' equivalents. This widely-used technique is known as ''discounting'' and ''net present value'' analysis. The *BEN Users Manual* (see pages 4–30 to 4–35 and Appendix A of the manual) contains a more detailed discussion of discounting and the concept of present value.

II. Issues

The Agency is seeking comment on three categories of issues: (1) Broad economic benefit recapture questions, (2) the BEN model's calculation methodology and assumptions, and (3) the model's user-friendliness.

First, we invite comment on some fundamental questions the benefit recapture approach has raised. Is there a better way to measure benefit for settlement purposes than using the BEN model? In addition, what is the best approach to calculate the economic benefit derived from illegal profits?

Second, we invite comment on the BEN model's calculation methodology. While the Agency is confident that the BEN model's overall approach is theoretically sound, it welcomes constructive and documented comment on alternative approaches. In addition, EPA is aware of substantial differences of opinion with respect to the basis of some of the model's assumptions, particularly the discount rate and inflation rate. EPA requests comment on the BEN model's calculation methodology, or any other aspect of the model's assumptions or methodology.

Third, we request comment on the model's user-friendliness. The Agency has heard comments that the model is too difficult to use, particularly regarding BEN's ease of operation or how difficult it may be to obtain the data needed to run BEN. EPA has never been presented with any concrete evidence in support of these assertions. Thus, the Agency would like to either substantiate the problems and address them, or put these issues to rest.

A. Broad Economic Benefit Recapture Issues

1. Alternatives to BEN

EPA requests comment on whether there is a more accurate, simpler approach to measuring the economic benefit of delayed and avoided pollution control expenditures than the BEN model. The BEN model was designed to calculate the economic benefit of noncompliance for the vast majority of EPA's cases. While BEN has effectively served this purpose, the Agency recognizes that it should be improved or even replaced if a better alternative exits or could be easily be developed. This is particularly relevant as an increasing number of State and local government enforcement personnel are using the BEN model regularly. Any alternative approach must meet EPA's policy objective of ensuring that violators are put on an even financial footing with those regulated entities that comply on time. Alternatives should also be reasonably accurate, simple to use and readily understandable to the vast majority of the BEN model's users. These Federal, State and local government enforcement officials usually have limited knowledge of corporate or municipal finance or accounting.

2. Illegal Competitive Advantage

The Agency would like routinely to evaluate the economic benefit a violator derives from a competitive advantage gained as a result of the violation. While the Agency has maintained since 1984 that this was one aspect of economic benefit we would seek to recapture, EPA is seeking advice on what should be employed as a standard methodology to measure what that benefit is. This benefit can accrue to a violator in a number of different ways:

a. Violator Sells Products at Below Market Price

Depending upon the particular market situation, a violator could sell its products at a lower price than its complying competitors because it does not have to pay for environmental compliance costs. It could then secure a bigger share in that particular market. For example, instead of controlling 25% of the market for a particular product, it controls 35% of the market. In theory, the extra 10% of the market is the economic benefit. Some of the key questions are: how do we assess and prove what share of the market came from underpricing, and how do we determine the value of that market share?

b. Violator Sells Products That Were Prohibited by Law

Many of EPA's regulations prohibit the sale of certain products either permanently or until EPA reviews and approves them. If the violator produces and sells the prohibited product, the violator will achieve an economic benefit in two ways. First, it will make money directly from the sale of the product. Second, it will capture the market for the product, particularly if it is a new product. Some of the key questions here are: should the measure of economic benefit be gross sales, gross sales minus expenses, or some other measure? If it is the net, what expenses should be considered in determining the

net (*e.g.,* how should EPA allocate advertising expenses for a violator producing more than one product)?

c. Violator Initiates Construction or Operation Prior to Government Approval

Some regulatory requirements prohibit an entity from initiating construction or operation until it obtains a permit from EPA or another government agency. When a violator initiates construction or operation prior to this approval, it can begin operating earlier than it would have been able to do had it complied with the law. For example, if the violator's operation begins nine months earlier than it should have, the violator has an opportunity to generate sales it should not have made and gain a head start in developing its market. Some of the motivation to violate could be to take advantage of a business cycle (*e.g.,* the violator illegally completes construction of a golf course without the required permits so that it can open at the start of the golfing season). Another incentive might be to initiate construction as soon as the financing is available and not wait until approval is given. (In either of these situations, we assume that the government will eventually issue the permit, if it does not, then every dollar produced by the new facility is an illegal economic benefit.)

One of the key issues here is: how should EPA determine the amount of benefit when a violator initiates construction or operation prior to government approval? Firms often expect to lose money on a new facility in the first few years of operation. Similarly, new businesses expect to lose money in the first few years of operation. For example, if a firm starts operating one year earlier than it should have, and if EPA only looks at the gross income minus the expenses, then the violator may be able to argue that it actually lost money the year it was in violation. Although that violator will ultimately be able to start showing a profit one year earlier than it should have, it will show a loss for that first year.

B. The BEN Model's Calculation Methodology

Over the years, the BEN model has been criticized for alleged flaws in its calculation methodology. The two issues with the greatest potential impact involve the model's discount rate and its inflation rate. The Agency requests substantive and constructive comments on how the BEN model handles these two issues. In addition, comments are invited on all aspects of the calculation methodology. Comments that address issues involving the calculation methodology should clearly state the rationale for the proposed changes. In addition, the commenters should address whether the proposed changes would add any complexity to the computer model. If any of them do add complexity, the commenter should state why the benefit of the change justifies the added complexity.

1. Discount Rate Assumptions

The discount rate is an interest rate that reflects the violator's cost of capital. In essence, this is the cost of financing pollution control investments. The BEN model bases its discount rate for for-profit entities on the weighted average cost of capital (WACC) for a typical firm. This means that the cost of financing a project is based on a weighted average of a typical firm's cost of debt capital (*e.g.,* bonds and bank loans) and equity capital (*e.g.,* stocks). For municipalities, the discount rate is based on an average municipal bond yield for the top four grades as reported in Moody's *Municipal and Government Manual.*

The discount rate is a key assumption employed in the computer model. Any changes to the discount rate have a substantial effect on the BEN results. For a more detailed discussion of the discount rate, see the *BEN Users Manual* (at pages 4–30 to 4–35 and Appendix A).

2. Inflation Rate Assumptions

The inflation rate variable is the annual rate at which the costs of environmental control measures have grown and are expected to grow over time. These cost increases are the result of various factors affecting supply and demand for particular products and services, as well as general inflationary pressures in the economy. BEN applies the inflation rate to adjust the cost of compliance measures as appropriate. The standard value of the inflation rate is based on a ten-year running average of the ''Plant Cost Index'' that appears in *Chemical Engineering.* For a more detailed discussion of the inflation rate, see the *BEN Users Manual* (pages 4–27 to 4–29).

C. Improving the BEN Model's User Friendliness

EPA understands that some users find the program difficult to use. While that has not been EPA's experience, the Agency is interested in learning of any difficulties associated with running the model. Comments on these issues will be particularly helpful if they suggest realistic alternatives that would also preserve the model's degree of precision.

1. Is BEN Too Complex to Operate?

EPA invites comments on whether an aspect of the model's operation or its user's manual is overly complex. Although designed to be straight-forward and easy to use, the Agency would welcome any suggestions to make the model and manual easier to use as long as we can preserve its degree of precision.

2. Is the Information BEN Needs Difficult or Expensive to Obtain?

One of the main breakthroughs BEN achieved over its predecessor model was its streamlining of the data needed to operate the model. While the model requires a minimum of seven and a maximum of only eighteen pieces of data, some users find that the data is hard to obtain. This has not been EPA's experience as most, if not all the required data inputs, are based on facts that are already known to the litigation team as they are important to other parts of the settlement. Nevertheless, the Agency would welcome any suggestions as to how to make this data easier to obtain as long as we can preserve the model's degree of precision.

III. Public Process

As part of EPA's effort to obtain comments on the BEN model, the Agency is planning to hold two public comment sessions. At those two meetings, interested parties may attend and provide verbal comments on the issues. The first one is scheduled for Washington, D.C. in the auditorium at EPA's Education Center at 401 M Street, SW, on November 6, 1996. The second one is scheduled for San Francisco at the Holiday Inn Golden Gateway at 1500 Van Ness Ave on November 13. Both meetings will begin at 9:30 a.m. and end at 4:00 p.m.

The Agency is especially interested in comments relating to the issues specified in this Notice. After the comment period closes, the Agency plans to review all the comments and revise its benefit recapture approach and the BEN computer model as appropriate. EPA encourages parties of all interests, including State and local government, industry, not-for-profit organizations, municipalities, public interest groups and private citizens to comment so that we can have as broad a spectrum as possible.

Dated: September 24, 1996.

Steven A. Herman,

Assistant Administrator, Office of Enforcement and Compliance Assurance.

[FR Doc. 96–25893 Filed 10–8–96; 8:45 am]

BILLING CODE 6560–50–P

federal register

Wednesday
October 9, 1996

Part VI

Department of Education

Education of Individuals With Disabilities: Proposed Priorities; Notice

DEPARTENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Proposed Priorities

AGENCY: Department of Education.

ACTION: Notice of proposed priorities.

SUMMARY: The Secretary proposes priorities for three programs administered by the Office of Special Education and Rehabilitative Services (OSERS) under the Individuals with Disabilities Education Act. The Secretary may use these priorities in Fiscal Year 1997 and subsequent years. The Secretary takes this action to focus Federal assistance on identified needs to improve results for children with disabilities. These proposed priorities are intended to ensure wide and effective use of program funds.

DATES: Comments must be received on or before December 9, 1996 for the Research in Education of Individuals with Disabilities Program; for the Educational Media Research, Production, Distribution, and Training Program and the Technology, Educational Media, and Materials Program.

ADDRESSES: All comments concerning proposed priorities under the Research in Education of Individuals with Disabilities Program (CFDA 84.023), and the Technology, Educational Media, and Materials for Individuals with Disabilities Program (CFDA 84.180) should be addressed to Linda Glidewell, U.S. Department of Building, Washington, D.C. 20202–2641. All comments concerning proposed priorities under the Educational Media Research, Production, Distribution, and Training Program (CFDA 84.026) should be addressed to Joseph Clair, U.S. Department of Education, 600 Independence Avenue, S.W., Room 4622, Switzer Building, Washington D.C., 20202–2644. Internet: NPP—Research@ed.gov

FOR FURTHER INFORMATION CONTACT: The name, address, and telephone number of the person at the Department to contact for information on each specific proposed priority is listed under that priority.

SUPPLEMENTARY INFORMATION: This notice contains six proposed priorities under three programs authorized by the Individuals with Disabilities Education Act, as follows: Research in Education of Individuals with Disabilities Program (one proposed priority); Educational Media Research, Production, Distribution, and Training Program (four proposed priorities) and Technology, Education Media, and Materials for Individuals with Disabilities Program (one proposed priority). The purpose of each program is stated separately under the title of that program.

These proposed priorities would support the National Education Goals by improving understanding of how to enable children and youth with disabilities to reach higher levels of academic achievement.

The Secretary will announce the final priorities in a notice in the Federal Register. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the content of the final priorities, and the quality of the applications received. Further, priorities could be affected by enactment of legislation reauthorizing these programs. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

These proposed priorities may also be found on the Internet by accessing the World Wide Web at http://www.ed.gov/news.html

Note: This notice of proposed priorities does *not* solicit applications. Notices inviting applications under these competitions will be published in the Federal Register concurrent with or following publication of the notices of final priorities.

Research in Education of Individuals With Disabilities Program

Purpose of Program: To advance and improve the knowledge base and improve the practice of professionals, parents, and others providing early intervention, special education, and related services—including professionals in regular education environments—to provide children with disabilities effective instruction and enable these children to learn successfully.

Priority: Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only those applications that meet this absolute priority:

Proposed Absolute Priority—Initial Career Awards

The Secretary establishes an absolute priority for the purpose of awarding grants to eligible applicants for the support of individuals in the initial phases of their careers to initiate and develop promising lines of research consistent with the purposes of the program. For purposes of this priority, the initial phase of an individual's career is considered to be the first four years after completing a doctoral program and graduating (e.g., for fiscal year 1997 awards, projects may support individuals who completed a doctoral program and graduated no earlier than the 1991–92 academic year).

Projects must—

(a) Pursue a line of inquiry that reflects a programmatic strand of research emanating either from theory or a conceptual framework. The line of research must be evidenced by a series of related questions that establish directions for designing future studies extending beyond the support of this award. The project is not intended to represent all inquiry related to the particular theory or conceptual framework; rather, it is expected to initiate a new line or advance an existing one;

(b) Include, in its design and conduct, sustained involvement with nationally recognized experts having substantive or methodological knowledge and expertise relevant to the proposed research. Experts do not have to be at the same institution or agency at which the project is located, but the interaction must be sufficient to develop the capacity of the researcher to pursue effectively the research into mid-career activities. At least 50 percent of the researcher's time must be devoted to the project;

(c) Prepare its procedures, findings, and conclusions in a manner that informs other interested researchers and is useful for advancing professional practice or improving programs and services to infants, toddlers, children, and youth with disabilities and their families; and

(d) Disseminate project procedures, findings, and conclusions to appropriate research institutes and technical assistance providers.

A project's budget must include funds to attend the two-day Research Project Directors' meeting to be held in Washington, D.C. each year of the project.

FOR FURTHER INFORMATION CONTACT: Doris Andres, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3526, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–8125. FAX: (202) 205–8105. Internet: Doris—Andres@ed.gov Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953.

Program Authority: 20 U.S.C. 1441.

Educational Media Research, Production, Distribution, and Training Program

Purpose of Program: To promote the general welfare of individuals who are deaf or hard of hearing and individuals with visual disabilities, and to promote the educational advancement of individuals with disabilities.

Priorities: Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet one or more of the following priorities. The Secretary proposes to fund under these competitions only applications that meet one or more of these absolute priorities:

Proposed Absolute Priority 1—Closed-Captioned Sports Programs:

Background: This priority supports cooperative agreements to continue and to expand closed-captioning of major national sports programs shown on national commercial broadcast or basic cable television networks. Captioning provides a visual representation of the audio portion of the programming and enables individuals who are deaf or hard of hearing to participate in the shared educational, social, and cultural experiences of national supporting events. Funds provided under this priority may be used to support no more than sixty percent of the captioning costs for the first year of the project, fifty-five percent of the second year, and fifty percent for the third year.

Priority: To be considered for funding under this competition, a project must—

(1) Include criteria for selecting programs for captioning that take into account the preference of consumers for particular sports programs, the diversity of programming available, and the contribution of programs to the general educational, social, and cultural experiences of individuals who are deaf or hard of hearing;

(2) Provide a flexible plan, including back-up systems, to ensure closed-captioning of sports programs without interruption, while accommodating last-minute program substitutions and new programs;

(3) Identify the total number of hours and the projected cost per hour for each of the programs to be captioned;

(4) Identify for each proposed program to be captioned the source of private or other public support and the projected dollar amount of that support;

(5) Identify the methods of captioning to be used for each program—indicating whether captioning is provided in realtime, live display, offline, or reformatted—and the projected cost per hour for each method used;

(6) Demonstrate the willingness of major national commercial broadcast or basic cable networks to permit captioning of their programs; and

(7) Implement procedures for monitoring the extent to which full and accurate captioning is provided and use this information to make refinements in captioning operations.

Proposed Absolute Priority 2—Video Description

Background: This priority supports cooperative agreements to provide video description in two areas: (1) broadcast and cable television programs; and (2) home video. The purpose of this activity will be to describe television programs and videos to make television programming and home videos more accessible to children and adults with visual disabilities. The intent of this priority is to provide access to described television programming and home videos in order to enhance shared educational, social, and cultural experiences for children and adults with visual disabilities.

Priority: To be considered for funding under this priority, a project must—

(1) Include criteria for selecting programs and videos that take into account the preference of consumers for particular topics of interest, the diversity of programs or videos available, and the contribution of these programs or videos to the general educational, social, and cultural experiences of individuals with visual disabilities;

(2) Identify the total number of hours to be described and the projected cost per hour for each program or video to be described;

(3) Identify the source of private or public support, if any, for each program or video to be described, and the projected dollar amount of that support;

(4) Demonstrate the willingness of program or video producers to permit video description and distribution of their program or video, and

(5) Evaluate the effectiveness of the methods and technologies used in providing this service and the impact on intended populations.

Proposed Absolute Priority 3—Educational Video Selection and Captioning

Background: This priority supports one cooperative agreement that would screen, evaluate, obtain, caption, and make available educational videos, including classics and general interest titles, for use by students and other individuals who are deaf or hard of hearing, parents of individuals who are deaf or hard of hearing, and other individuals directly involved in activities promoting the advancement of individuals who are deaf or hard of hearing. This activity includes the preparation of captions on computer diskettes or CD–ROM, as appropriate, and the preparation of lesson guides for educational videos. This priority would ensure that students and other individuals who are deaf or hard of hearing may benefit from the same educational and general interest videos used to enrich the educational experiences of students and other individuals without hearing disabilities.

Priority: To be considered for funding under this priority, the project must—

(1) Develop strategies and procedures to be used in determining curricular needs of students who are deaf or hard of hearing in all types of school settings for captioned videos;

(2) Develop and implement an on-going evaluation program for incorporating the reaction and suggestions of users into the selection and captioning process;

(3) Develop and implement criteria and procedures for screening, evaluating, and captioning selected videos;

(4) Obtain videos from film and video distributors for screening, evaluation, and possible captioning. Select from among video titles submitted by evaluators those that closely match the curricular needs identified under paragraph (1) of this proposed priority, taking into account the videos most commonly used in school districts across the Nation for all students;

(5) Make arrangements with respective producers and distributors to have selected videos captioned and made available through general distribution mechanisms (such as video sales catalogues), as well as through the captioned film and video loan service authorized under Part F of IDEA and 34 CFR Part 330 (by purchasing up to 100 copies of each captioned title, which must be open-captioned. Closed-captioned masters must be made available to producers and distributors in an effort to promote the use of captioned videos.

(6) For selected titles, prepare captions on computer diskettes or CD–ROM, as appropriate, and check for accuracy. These captions would take into account the age and reading levels of the likely target audience;

(7) For selected educational videos, prepare lesson guides;

(8) Identify, select, and, if necessary, provide training or technical assistance

to video evaluators, caption checkers, and captioning service providers; and

(9) Develop and implement quality control guidelines and procedures for checking videocassettes after they are captioned.

Proposed Absolute Priority 4—Research on Educational Captioning

Background: This priority supports research on captioning of educational media and materials. Research can be based on the instructional use of captioning or the use of captioning as a language development tool for enhancing the reading and literacy skills of individuals who are deaf or hard of hearing. Media and technologies explored or used by projects funded under this priority may include, but are not limited to (1) television—including high-definition television; (2) videos; and (3) other media and multi-media technologies such as interactive videodiscs and CD–ROMs.

Priority: Under this competition, projects must—

(1) Identify specific technological approaches that would be investigated;

(2) Carry out the research within a conceptual framework, based on previous research or theory, that provides a basis for the strategies to be studied, the research design, and target population;

(3) Collect, analyze and report (a) characteristics and outcome data (actual rather then expected results), including the settings, the service providers, and the individuals targeted by the project; and (b) multiple, functional outcome data on the individuals who are the focus of the technological approaches;

(4) Conduct the research in realistic settings such as residential or integrated schools or colleges, or in community settings, as appropriate; and

(5) Conduct the research using methodological procedures that would: (a) produce unambiguous findings regarding the effects of approaches and effects of the interaction among particular approaches and particular groups of individuals or particular settings; and (b) permit use of the findings in policy analyses.

FOR FURTHER INFORMATION CONTACT: Ernest Hairston, U.S. Department of Education, 600 Independence Avenue, S.W., Room 4629, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–9172. FAX: (202) 205–8971. Internet: Ernest__Hairston@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8169.

Program Authority: 20 U.S.C. 1451, 1452.

Technology, Educational Media,and Materials for Individuals With Disabilities Program

Purpose of Program: To support projects and centers for advancing the availability, quality, use, and effectiveness of technology, educational media, and materials in the education of children and youth with disabilities and the provision of related services and early intervention services to infants and toddlers with disabilities.

Priority: Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only applications that meet this absolute priority:

Proposed Absolute Priority—Technology, Educational Media, and Materials Projects That Create Innovative Tools for Students With Disabilities

This priority provides support for development projects that design or adapt technology, assistive technology, educational media, or materials to improve the education of children and youth with disabilities.

Invitational Priority: Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

The Secretary is particularly interested in projects that—

(a) *Create Innovative Tools*—by encouraging development of varied and integrated technologies, media, and materials that open up and expand the lives of those with disabilities. This work should enable individuals with disabilities to achieve the outcomes expected of all students, such as independence, productivity and an improved quality of life, that promote equity in opportunity; or

(b) *Foster the Creation of State-of-the-Art Instructional Environments*—both in and out of school. These environments should use technology, educational media, and materials to enable students with disabilities to access knowledge, develop skills and problem-solving strategies, and engage in educational experiences necessary for their success as adults who are fully included in our society.

FOR FURTHER INFORMATION CONTACT: Jane Hauser, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3521, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–8126. FAX: (202) 205–8105. Internet: Jane__Hauser@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953.

Program Authority: 20 U.S.C. 1461.

Intergovernmental Review

The programs (except for Research in Education of Individuals with Disabilities program) included in this notice are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed priorities.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 3524, 300 C Street, S.W., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

(Catalog of Federal Domestic Assistance Numbers: Research in Education of Individuals with Disabilities Program, 84.023; Media Research, Production, Distribution, and Training Program, 84.026; and Technology, Educational Media, and Materials for Individuals with Disabilities Program, 84.180)

Dated: August 12, 1996.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 96–25944 Filed 10–8–96; 8:45 am]

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Alcohol, Tobacco and Firearms Bureau

Alcohol; viticultural area designations:

Redwood Valley, CA; comments due by 10-18-96; published 9-3-96

Firearms:

Firearms and ammunition; manufacurers excise tax; comments due by 10-15-96; published 7-16-96

TREASURY DEPARTMENT

Comptroller of the Currency

Risk-based capital:

Collateralized transactions; comments due by 10-15-96; published 8-16-96

TREASURY DEPARTMENT

Thrift Supervision Office

Risk-based capital:

Collateralized transactions; comments due by 10-15-96; published 8-16-96