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# federal register

Wednesday
September 22, 1999

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# Rules and Regulations

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

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

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 72

**RIN 3150–AG36**

### List of Approved Spent Fuel Storage Casks: (VSC–24) Revision

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Direct final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations revising the Pacific Sierra Nuclear Associates (PSNA) VSC–24 cask system listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 1 to the Certificate of Compliance. Amendment No. 1 will modify the present cask system design to permit a licensee to store burnable poison rod assemblies in the VSC–24 cask system design along with the spent fuel under a general license.

**DATES:** The final rule is effective December 6, 1999, unless significant adverse comments are received by October 22, 1999. If adverse comments are received, a timely withdrawal will be published in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Comments may be sent to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff. Hand deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 am and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website through the NRC's home page (http://ruleforum.llnl.gov). This site provides the availability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail CAG@nrc.gov.

Certain documents related to this rule, including comments received by the NRC, may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. These documents also may be viewed and downloaded electronically via the interactive rulemaking website established by NRC for this rule.

**FOR FURTHER INFORMATION CONTACT:** Stan Turel, telephone (301) 415–6234, e-mail spt@nrc.gov, of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

**SUPPLEMENTARY INFORMATION:**

## Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that ''[t]he Secretary [of the Department of Energy (DOE)] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the NWPA states, in part, that ''[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule in 10 CFR part 72 entitled ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181, July 18, 1990). This rule also established a new Subpart L within 10 CFR part 72, entitled ''Approval of Spent Fuel Storage Casks,'' containing procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on April 7, 1993 (58 FR 17948) that approved the VSC–24 cask design and added it to the list of NRC-approved cask designs in § 72.214 as Certificate of Compliance Number (CoC No.) 1007.

## Discussion

On December 30, 1998, the certificate holder (Pacific Sierra Nuclear Associates (PSNA)) submitted an application to the NRC to amend CoC No. 1007 to permit a Part 72 licensee to store burnable poison rod assemblies (BPRAs) with Babcock & Wilcox (B&W) 15 x15 spent fuel assemblies in the VSC–24 cask design. A BPRA is a reactor core component that is inserted inside a fuel assembly during core refueling. BPRAs provide a means of controlling reactor power distribution and do not contain fissile material. No other changes to the VSC–24 cask system design were requested in this application. The staff performed a detailed safety evaluation of the proposed CoC amendment request and found that the addition of the BPRAs to the B&W 15 x15 fuel does not reduce the VSC–24 safety margin. In addition, the staff has determined that the storage of BPRAs in the VSC–24 does not pose any increased risk to public health and safety.

This direct final rule revises the VSC–24 cask design listing in § 72.214 by adding Amendment No. 1 to CoC No. 1007. The amendment consists of changes to the Technical Specifications for the VSC–24 cask design which will permit a Part 72 licensee to store burnable poison rod assemblies (BPRAs) with B&W 15 x15 spent fuel assemblies in a VSC–24 cask system design. The particular Technical Specifications which are changed are identified in the NRC Staff's Safety Evaluation Report for Amendment No. 1.

The title of the safety analysis report (SAR) will be changed from ''Safety Analysis Report for the Ventilated Storage Cask System'' to ''Final Safety Analysis Report for the Ventilated Storage Cask System.'' This action is being taken to ensure the SAR title is consistent with the approach taken in new § 72.248, recently approved by the Commission. Additionally, other minor, nontechnical, changes have been made to CoC No. 1007 to ensure consistency with the NRC's new standard format and content for CoCs.

The amended VSC–24 cask system, when used in accordance with the conditions specified in the CoC, the Technical Specifications, and NRC regulations, will meet the requirements

of Part 72; thus, adequate protection of public health and safety will continue to be ensured.

CoC No. 1007, the revised Technical Specifications, and the underlying Safety Evaluation Report for Amendment No. 1, dated September 3, 1999, and the Environmental Assessment, are available for inspection at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies of the CoC may be obtained from Stan Turel, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6234, email spt@nrc.gov.

**Discussion of Amendments by Section**

*Section 72.214 List of Approved Spent Fuel Storage Casks*

Certificate No. 1007 is revised by adding the effective date of the initial certificate, the effective date of Amendment Number 1, and revising the title of the SAR submitted by Pacific Sierra Nuclear Associates to ''Final Safety Analysis Report for the Ventilated Storage Cask System.''

**Procedural Background**

This rule is limited to the changes contained in Amendment 1 to CoC No. 1007 and does not include other aspects of the VSC–24 cask system design. Because NRC considers this amendment to its rules to be noncontroversial and routine, the NRC is using the direct final rule procedure for this rule. The amendment to the rule will become effective on December 6, 1999. However, if the NRC receives significant adverse comments on this direct final rule by October 22, 1999, then the NRC will publish a document that withdraws this action and will address the comments received in response to the amendment. These comments will be addressed in a subsequent final rule based on a proposed rule published elsewhere in this issue of the **Federal Register**. The NRC will not initiate a second comment period on this action.

**Finding of No Significant Environmental Impact: Availability**

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in Subpart A of 10 CFR part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The rule would amend the CoC for the VSC–24 cask system within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. The amendment will modify the present cask system design to permit a Part 72 licensee to store burnable poison rod assemblies in the VSC–24 cask system design along with the spent fuel. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and finding of no significant impact are available from Stan Turel, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6234, email spt@nrc.gov.

**Paperwork Reduction Act Statement**

This direct final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150–0132.

**Public Protection Notification**

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

**Voluntary Consensus Standards**

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC would revise the PSNA VSC–24 cask system design listed in § 72.214 (List of NRC-approved spent fuel storage cask designs). This action does not constitute the establishment of a standard that establishes generally-applicable requirements.

**Plain Language**

The Presidential Memorandum dated June 1, 1998, entitled ''Plain Language in Government Writing,'' directed that the Government's writing be in plain language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

**Regulatory Analysis**

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. On April 7, 1993 (58 FR 17948), the NRC issued an amendment to Part 72 that approved the VSC–24 cask design, added it to the list of NRC-approved cask designs in § 72.214, and issued CoC No. 1007. On December 30, 1998, the certificate holder (Pacific Sierra Nuclear Associates (PSNA)), submitted an application to the NRC to amend CoC No. 1007 to permit a Part 72 licensee to store burnable poison rod assemblies (BPRAs) with Babcock & Wilcox (B&W) 15 x15 spent fuel assemblies in the VSC–24 cask design.

This rule will permit storage of reactor core components, which are BPRAs that do not contain fissile material, in the VSC–24 cask system. The alternative to this action is to withhold approval of this amended cask system design and issue an exemption to each general license that proposes to use the casks to store BPRAs. This alternative would cost both the NRC and the utilities more time and money because each utility would have to pursue an exemption.

Approval of the direct final rule will eliminate the above described problem and is consistent with previous Commission actions. Further, the direct final rule will have no adverse effect on public health and safety. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on the above discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

**Small Business Regulatory Enforcement Fairness Act**

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

Information and Regulatory Affairs, Office of Management and Budget.

**Regulatory Flexibility Certification**

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This direct final rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and Pacific Sierra Nuclear Associates. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

**Backfit Analysis**

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined. Therefore, a backfit analysis is not required.

**List of Subjects In 10 CFR Part 72**

Administrative practice and procedure, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is adopting the following amendments to 10 CFR part 72.

## PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for part 72 continues to read as follows:

**Authority:** Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 10d–48b, sec. 7902, 10b Stat. 31b3 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, the entry for Certificate of Compliance Number 1007 is revised to read as follows:

**§ 72.214 List of approved spent fuel storage casks.**

* * * * *

*Certificate Number:* 1007.

*Initial Certificate Effective Date:* May 7, 1993.

*Amendment Number 1 Effective Date:* December 6, 1999.

*SAR Submitted by:* Pacific Sierra Nuclear Associates.

*SAR Title:* Final Safety Analysis Report for the Ventilated Storage Cask System.

*Docket Number:* 72–1007.

*Certificate Expiration Date:* May 7, 2013.

*Model Number:* VSC–24.

* * * * *

Dated at Rockville, Maryland, this 3rd day of September, 1999.

For the Nuclear Regulatory Commission.

**William D. Travers,**

*Executive Director for Operations.*

[FR Doc. 99–24572 Filed 9–21–99; 8:45 am]

BILLING CODE 7590–01–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 99–NM–118–AD; Amendment 39–11328; AD 99–19–41]**

**RIN 2120–AA64**

## Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes, that requires modification of the insulation pads in the lower side of the fuselage at the wing aft area. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent loose insulation from interfering with an aileron control cable, which could result in reduced aileron control.

**DATES:** Effective October 27, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 27, 1999.

**ADDRESSES:** The service information referenced in this AD may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes was published in the **Federal Register** on July 14, 1999 (64 FR 37917). That action proposed to require modification of the insulation pads in the lower side of the fuselage at the wing aft area.

**Comments**

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

**Conclusion**

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

**Cost Impact**

The FAA estimates that 303 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the

average labor rate is $60 per work hour. Based on these figures, the cost impact of the required AD on U.S. operators is estimated to be $54,540, or $180 per airplane.

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

## Regulatory Impact

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

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

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

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

**99–19–41 Saab Aircraft AB:** Amendment 39–11328. Docket 99–NM–118–AD.

*Applicability:* Model SAAB SF340A series airplanes, serial numbers 004 through 159 inclusive; and Model SAAB 340B series airplanes, serial numbers 160 through 459 inclusive; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent loose insulation from interfering with an aileron control cable, which could result in reduced aileron control, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the insulation pads in the lower side fuselage at the wing aft area in accordance with Saab Service Bulletin 340–53–061, dated April 21, 1999.

**Alternative Methods of Compliance**

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

**Special Flight Permits**

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

**Incorporation by Reference**

(d) The modification shall be done in accordance with Saab Service Bulletin 340–53–061, dated April 21, 1999. 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 Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 3:** The subject of this AD is addressed in Swedish airworthiness directive SAD No. 1–141, dated April 21, 1999.

(e) This amendment becomes effective on October 27, 1999.

Issued in Renton, Washington, on Seeptember 10, 1999.

**D.L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 99–24202 Filed 9–21–99; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 99–NM–110–AD; Amendment 39–11327; AD 99–19–40]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A310 and A300–600 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A310 and A300–600 series airplanes, that requires a detailed visual inspection to detect damage to the terminal lugs on the 12XC and 15XE connectors and the mounting lugs on the 15XE connector; and repair or replacement of the terminal lugs or the 15XE connector with new parts, if necessary. This amendment is prompted by the issuance of a mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct broken terminal and mounting lugs on the 15XE and 12XC connectors in the 101VU panel in the avionics compartment, which could result in loss of electrical power from the standby generator.

**DATES:** Effective October 27, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 27, 1999.

**ADDRESSES:** The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be

examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A310 and A300–600 series airplanes was published in the **Federal Register** on July 15, 1999 (64 FR 38154). That action proposed to require a detailed visual inspection to detect damage to the terminal lugs on the 12XC and 15XE connectors and the mounting lugs on the 15XE connector; and repair or replacement of the terminal lugs or the 15XE connector with new parts, if necessary.

## Comments

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

## Explanation of Changes Made to Proposal

The FAA has added a note to the final rule to clarify the definition of a detailed visual inspection. Additionally, the FAA has corrected a typographical error of a part number in paragraph (a)(2)(i) of this final rule.

## Conclusion

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

## Interim Action

This is considered to be an interim action until final action is identified, at which time the FAA may consider further rulemaking.

## Cost Impact

The FAA estimates that approximately 109 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the required AD on U.S. operators is estimated to be $13,080, or $120 per airplane.

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

## Regulatory Impact

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

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

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

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

**99–19–40 AIRBUS INDUSTRIE:** Amendment 39–11327. Docket 99-NM–110-AD.

*Applicability:* Model A310 series airplanes on which Airbus Modification 05911 has been installed, and Model A300–600 series airplanes on which Airbus Modification 06214 has been installed; equipped with a standby generator (FIN 25XE); certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To detect and correct broken terminal lugs on the 12XC and 15XE connectors, and mounting lugs on the 15XE connector in the 101VU panel in the avionics compartment, which could result in loss of electrical power from the standby generator, accomplish the following:

**Inspection and Corrective Actions**

(a) Prior to the accumulation of 5,000 total flight hours, or within 600 flight hours after the effective date of this AD, whichever occurs later, accomplish the actions required by paragraphs (a)(1) and (a)(2) of this AD in accordance with Airbus All Operators Telex (AOT) 24–09, Revision 01, dated August 13, 1998.

(1) Perform a detailed visual inspection of the terminal lugs on the 12XC and 15XE connectors to detect damage (i.e., overheat, cracking, twisting, or total rupture). If any damage is detected, prior to further flight, replace the terminal lugs with new terminal lugs, part number NSA936501TA1004.

(2) Perform a detailed visual inspection of the mounting lugs on connector 15XE to detect damage (i.e., cracking or breaking). If any damage is detected, prior to further flight, accomplish the requirements of either paragraph (a)(2)(i) or (a)(2)(ii) of this AD.

**Note 2:** For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required.''

(i) Replace connector 15XE with a new connector, part number 25811BOSHUNTKL vendor code F0214 ECE. Or,

(ii) Repair connector 15XE in accordance with Airbus AOT 24–09, Section 4.2.2.3. Repeat the detailed visual inspection required by paragraph (a)(2) of this AD of the repaired connector thereafter at intervals not to exceed 1 week, and repeat the repair with new cable ties thereafter at intervals not to exceed 3 months, until the replacement required by paragraph (a)(2)(i) of this AD is accomplished.

**Alternative Methods of Compliance**

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

**Special Flight Permits**

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

**Incorporation by Reference**

(d) The actions shall be done in accordance with Airbus All Operators Telex (AOT) 24–09, Revision 01, dated August 13, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 4:** The subject of this AD is addressed in French airworthiness directive, 1999–077–278(B), dated February 24, 1999.

(e) This amendment becomes effective on October 27, 1999.

Issued in Renton, Washington, on September 10, 1999.

**D.L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 99–24201 Filed 9–21–99; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 99–NM–92–AD; Amendment 39–11326; AD 99–19–39]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100) Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100) series airplanes, that requires removal of the insulation blankets surrounding the emergency overwing exit hatches. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent the freezing of moisture entrapped in the fiberglass/foam insulation installed on the fuselage structure between the overwing exit door and the fuselage door frame and intercostal, which could interfere with the opening of the overwing emergency exit hatches during an emergency evacuation of the airplane.

**DATES:** Effective October 27, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 27, 1999.

**ADDRESSES:** The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Paolo Farina, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7530; fax (516) 568–2716.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100) series airplanes was published in the **Federal Register** on July 20, 1999 (64 FR 38844). That action proposed to require removal of the insulation blankets surrounding the emergency overwing exit hatches.

### Comments

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

### Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

### Cost Impact

The FAA estimates that 157 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the required AD on U.S. operators is estimated to be $28,260, or $180 per airplane.

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

### Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a

substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

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

**99–19–39 Bombardier, Inc. (Formerly Canadair):** Amendment 39–11326. Docket 99–NM–92–AD.

*Applicability:* Model CL–600–2B19 (Regional Jet Series 100) series airplanes, serial numbers 7003 through 7067 inclusive, and 7069 through 7292 inclusive; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent the freezing of moisture entrapped in the fiberglass/foam insulation installed on the fuselage structure between the overwing exit door and the fuselage door frame and intercostal, which could interfere with the opening of the overwing emergency exit hatches during an emergency evacuation of the airplane, accomplish the following:

(a) Within 100 flight hours or 30 days after the effective date of this AD, whichever occurs first, remove the insulation blankets surrounding the emergency overwing exit hatches in accordance with Canadair Regional Jet Alert Service Bulletin S.B. A601R–25–152, Revision ''A,'' dated February 25, 1999.

**Note 2:** Removal of the insulation blankets surrounding the emergency overwing exit hatches accomplished in accordance with Canadair Regional Jet Alert Service Bulletin S.B. A601R–25–152, dated December 26, 1998, prior to the effective date of this AD, is considered acceptable for compliance with paragraph (a) of this AD.

**Alternative Methods of Compliance**

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

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

**Special Flight Permits**

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

**Incorporation by Reference**

(d) The removal shall be done in accordance with Canadair Regional Jet Alert Service Bulletin S.B. A601R–25–152, Revision ''A,'' dated February 25, 1999. 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 Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 4:** The subject of this AD is addressed in Canadian airworthiness directive CF–99–01, dated February 9, 1999.

(e) This amendment becomes effective on October 27, 1999.

Issued in Renton, Washington, on September 10, 1999.

**D.L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 99–24200 Filed 9–21–99; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 99–NM–91–AD; Amendment 39–11325; AD 99–19–38]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A310 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A310 series airplanes, that requires repetitive high frequency eddy current inspections to detect fatigue cracking at the hole in the lower web of the inner and outer attachment fittings of the number 3 wing spoilers; and corrective actions, if necessary. This amendment also provides for an optional modification, which terminates the repetitive inspections. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct fatigue cracking and eventual failure of the attachment fittings of the number 3 wing spoilers.

**DATES:** Effective October 27, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 27, 1999.

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

**FOR FURTHER INFORMATION CONTACT:** Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A310 series airplanes was

published in the **Federal Register** on July 23, 1999 (64 FR 39946). That action proposed to require repetitive high frequency eddy current inspections to detect fatigue cracking at the hole in the lower web of the inner and outer attachment fittings of the number 3 wing spoilers; and corrective actions, if necessary. That action also provides for an optional modification, which would terminate the repetitive inspections.

## Comments

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

## Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

## Cost Impact

The FAA estimates that 44 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the required AD on U.S. operators is estimated to be $5,280, or $120 per airplane, per inspection cycle.

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

Should an operator elect to accomplish the optional terminating action rather than continue the repetitive inspections, it would take approximately 110 work hours per airplane to accomplish the modification, at an average labor rate of $60 per work hour. Required parts will cost approximately $13,280 per airplane. Based on these figures, the cost impact of this optional terminating action is estimated to be $19,880 per airplane.

## Regulatory Impact

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

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

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

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

**99–19–38 Airbus Industrie:** Amendment 39–11325. Docket 99–NM–91–AD.

*Applicability:* Model A310 series airplanes, on which Airbus Industrie Modification 04117 or 04799 has been installed in production; except those airplanes on which Airbus Industrie Modification 11929 (reference Airbus Industrie Service Bulletin A310–57–2079, dated July 21, 1998, or Revision 01, dated January 11, 1999) has been installed; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) 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 detect and correct fatigue cracking and eventual failure of the attachment fittings of the number 3 wing spoilers, which, if left undetected, could lead to fuel leaks and loss of various hydraulic and electrical systems, accomplish the following:

**Inspection**

(a) At the applicable compliance time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, perform a high frequency eddy current inspection to detect fatigue cracking at the hole in the lower web of the inner and outer attachment fittings of the number 3 wing spoilers, in accordance with Airbus Industrie Service Bulletin A310–57–2078, Revision 01, dated January 11, 1999. Repeat the inspection thereafter at intervals not to exceed 1,200 flight cycles.

(1) For airplanes that have accumulated 14,200 or fewer total flight cycles as of the effective date of this AD, accomplish the inspection required by paragraph (a) of this AD prior to the accumulation 10,800 total flight cycles or within 800 flight cycles after the effective date of this AD, whichever occurs later.

(2) For airplanes that have accumulated more than 14,200 total flight cycles but fewer than 15,400 total flight cycles as of the effective date of this AD, accomplish the inspection required by paragraph (a) of this AD within 400 flight cycles after the effective date of this AD.

(3) For airplanes that have accumulated 15,400 or more total flight cycles as of the effective date of this AD, accomplish the inspection required by paragraph (a) of this AD within 200 flight cycles after the effective date of this AD.

**Note 2:** Inspection of the attachment fittings of the number 3 wing spoilers accomplished prior to the effective date of this AD in accordance with the original issue of Airbus Industrie Service Bulletin A310–57–2078, dated July 21, 1998, is considered acceptable for compliance with the inspection required by paragraph (a) of this AD.

**Replacement**

(b) If any crack is found during any inspection required by paragraph (a) of this AD, at the applicable compliance time specified in paragraph (b)(1), (b)(2), or (b)(3) of this AD, perform a high frequency eddy current inspection for fatigue cracking of the holes in the wing structure; ream and cold work those holes; and replace the cracked aluminum wing spoiler number 3 actuator attachment fitting with a new steel fitting; in accordance with Airbus Industrie Service Bulletin A310–57–2079, Revision 01, dated January 11, 1999. Accomplishment of the replacement constitutes terminating action for the repetitive inspection requirements of paragraph (a) of this AD for the replaced fitting.

(1) If the crack is less than 0.078 inches (2.0 mm) in length, inspect, ream, cold work, and replace within 100 flight cycles after accomplishment of the inspection.

(2) If the crack is 0.078 inches (2.0 mm) in length or greater and less than 0.118 inches (5.0 mm) in length, inspect, ream, cold work, and replace within 50 flight cycles after accomplishment of the inspection.

(3) If the crack is greater than 0.118 inches (5.0 mm) in length, inspect, ream, cold work, and replace prior to further flight.

**Optional Terminating Modification**

(c) Accomplishment of the high frequency eddy current inspection for fatigue cracking of the holes in the wing structure; reaming and cold working of those holes; and replacement of all aluminum wing spoiler number 3 actuator attachment fittings with new steel fittings; in accordance with Airbus Industrie Service Bulletin A310–57–2079, Revision 01, dated January 11, 1999; constitutes terminating action for the repetitive inspection requirements of paragraph (a) of this AD.

**Note 3:** Replacement of aluminum attachment fittings of the number 3 wing spoilers with steel fittings accomplished prior to the effective date of this AD in accordance with the original issue of Airbus Industrie Service Bulletin A310–57–2079, dated July 21, 1998, is considered acceptable for compliance with the applicable fitting replacement specified in paragraphs (b) and (c) of this AD.

**Wing Repair**

(d) If any crack is found in the wing structure during any inspection required by paragraph (b) or specified in paragraph (c) of this AD, prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

**Note 4:** For paragraph (d) of this AD, the wing spoiler number 3 actuator attachment fittings are not considered part of the wing structure.

**Alternative Methods of Compliance**

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

**Note 5:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

**Special Flight Permits**

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

**Incorporation by Reference**

(g) Except as provided by paragraph (d) of this AD, the actions shall be done in accordance with Airbus Industrie Service Bulletin A310–57–2078, Revision 01, dated January 11, 1999; or Airbus Industrie Service Bulletin A310–57–2079, Revision 01, dated January 11, 1999; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 6:** The subject of this AD is addressed in French airworthiness directive 98–483–271(B) R1, dated June 2, 1999.

(h) This amendment becomes effective on October 27, 1999.

Issued in Renton, Washington, on September 10, 1999.

**D.L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 99–24199 Filed 9–21–99; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 98–NM–384–AD; Amendment 39–11324; AD 99–19–37]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier Model DHC–8–100 and –300 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model DHC–8–100 and –300 series airplanes, that requires replacement of the main landing gear (MLG) uplock actuator on both the left and right MLG with a new redesigned uplock assembly. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the MLG to extend when a ''gear down'' selection is made.

**DATES:** Effective October 27, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 27, 1999.

**ADDRESSES:** The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Paolo Farina, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7530; fax (516) 568–2716.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–8–100 and –300 series airplanes was published in the **Federal Register** on July 20, 1999 (64 FR 38850). That action proposed to require replacement of the main landing gear (MLG) uplock actuator on both the left and right MLG with a new redesigned uplock assembly.

**Comments**

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

**Conclusion**

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

**Cost Impact**

The FAA estimates that 148 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per airplane to accomplish the required replacement, and that the average labor rate is $60 per work hour. Required parts will cost between $4,030 and $5,016 per airplane. Based on these figures, the cost impact of the required AD on U.S. operators is estimated to be between $649,720 and $795,648, or between $4,390 and $5,376 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish

those actions in the future if this AD were not adopted.

### Regulatory Impact

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

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

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

**99–19–37 Bombardier, Inc. (Formerly de Havilland, Inc.):** Amendment 39–11324. Docket 98–NM–384–AD.

*Applicability:* Model DHC–8–100 and –300 series airplanes, serial numbers 3 through 339 inclusive, except those on which Modification 8/1828 has been incorporated; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of the main landing gear to extend when a ''gear down'' selection is made, accomplish the following:

(a) Within 12 months after the effective date of this AD: Replace the uplock actuator with a new, improved part in accordance with de Havilland Service Bulletin S.B. 8–32–98, Revision 'C,' dated July 31, 1998.

**Alternative Methods of Compliance**

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

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

**Special Flight Permits**

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

**Incorporation by Reference**

(d) The replacement shall be done in accordance with de Havilland Service Bulletin S.B. 8–32–98, Revision 'C,' dated July 31, 1998. 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 Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 3:** The subject of this AD is addressed in Canadian airworthiness directive CF–98–26, dated August 26, 1998.

(e) This amendment becomes effective on October 27, 1999.

Issued in Renton, Washington, on September 10, 1999.

**D.L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 99–24151 Filed 9–21–99; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 98–NM–366–AD; Amendment 39–11323; AD 99–19–36]**

**RIN 2120–AA64**

## Airworthiness Directives; Dornier Model 328–100 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Dornier Model 328–100 series airplanes, that requires a one-time inspection to measure the offset of the de-icing tubing adjacent to the refueling panel on the right-hand wing, and replacement with new improved tubing, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent a blockage in the de-icing tubing which could result in a malfunction of the de-icing boot. This malfunction would be unknown to the flight crew, and could lead to reduced controllability of the airplane during flight in icing conditions.

**DATES:** Effective October 27, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 27, 1999.

**ADDRESSES:** The service information referenced in this AD may be obtained from Fairchild Dornier, Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes was published in the **Federal Register** on July 16, 1999 (64 FR 38378). That action proposed to require a one-time inspection to measure the offset of the de-icing tubing adjacent to the refueling panel on the right-hand wing, and replacement with new improved tubing, if necessary.

## Comments

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

## Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

## Cost Impact

The FAA estimates that 27 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the required AD on U.S. operators is estimated to be $1,620, or $60 per airplane.

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

## Regulatory Impact

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

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

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

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

**99–19–36 Dornier Luftfahrt GMBH:** Amendment 39–11323. Docket 98–NM–366–AD.

*Applicability:* Model 328–100 series airplanes, serial numbers 3042 through 3105 inclusive, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent a blockage inside the de-icing tubing, which could result in a malfunction of the de-icing boot, and consequent reduced controllability of the airplane during flight in icing conditions, accomplish the following:

**Inspection and Corrective Action**

(a) Within two months after the effective date of this AD, perform a one-time detailed inspection to measure the offset of the de-icing tubing adjacent to the refueling panel on the right-hand wing in accordance with Dornier Service Bulletin SB–328–30–265, dated July 24, 1998.

(1) If the de-icing tubing offset measurement conforms to the dimension shown in the service bulletin, no further action is required by this AD.

(2) If the de-icing tubing does not conform to the dimension shown in the service bulletin, prior to further flight, replace it with new improved tubing in accordance with instructions provided in the service bulletin.

**Note 2:** For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required.''

**Alternative Methods of Compliance**

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

**Special Flight Permits**

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

**Incorporation by Reference**

(d) The actions shall be done in accordance with Dornier Service Bulletin SB–328–30–265, dated July 24, 1998. 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 Fairchild Dornier, Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 4:** The subject of this AD is addressed in German airworthiness directive 1998–423, dated November 5, 1998.

(e) This amendment becomes effective on October 27, 1999.

Issued in Renton, Washington, on September 10, 1999.

**D.L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 99–24150 Filed 9–21–99; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 98–NM–344–AD; Amendment 39–11322; AD 99–19–35]**

**RIN 2120–AA64**

## Airworthiness Directives; British Aerospace BAe Model ATP Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace BAe Model ATP airplanes, that requires repetitive tests for the serviceability of the nose landing gear compensator; and corrective action, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent a nose wheel shimmy, which could lead to the collapse of the nose landing gear during landing.

**DATES:** Effective October 27, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 27, 1999.

**ADDRESSES:** The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all British Aerospace BAe Model ATP airplanes was published in the **Federal Register** on July 15, 1999 (64 FR 38152). That action proposed to require repetitive tests for the serviceability of the nose landing gear compensator; and corrective action, if necessary.

### Comments

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

### Correction of Manufacturer's Title

One commenter, the manufacturer, informs the FAA that its title has changed and requests that the proposed AD be revised to provide the correct title of the manufacturer for obtaining service information. The FAA has made this change in the final rule.

### Conclusion

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

### Cost Impact

The FAA estimates that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required test, and that the average labor rate is $60 per work hour. Required parts will cost approximately $50 per airplane. Based on these figures, the cost impact of the required AD on U.S. operators is estimated to be $1,700, or $170 per airplane, per test.

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

### Regulatory Impact

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

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

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

**99–19–35 British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]:** Amendment 39–11322. Docket 98–NM–344–AD.

*Applicability:* All BAe Model ATP airplanes, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent a nose wheel shimmy, which could lead to the collapse of the nose landing gear during landing, accomplish the following:

**Serviceability Test**

(a) Within 250 flight cycles after the effective date of this AD, perform a test for the serviceability of the nose landing gear compensator in accordance with British Aerospace Alert Service Bulletin ATP–A32–94, dated October 3, 1998. Thereafter, repeat the test at intervals not to exceed 4,000 flight cycles. If the compensator does not pass the serviceability test, within 50 flight cycles after the accomplishment of the test, replace the compensator with a new or serviceable compensator in accordance with the service bulletin.

**Alternative Methods of Compliance**

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

**Special Flight Permits**

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

**Incorporation by Reference**

(d) The actions shall be done in accordance with British Aerospace Alert Service Bulletin ATP–A32–94, dated October 3, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Regional Aircraft, 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 3:** The subject of this AD is addressed in British airworthiness directive 016–10–98.

(e) This amendment becomes effective on October 27, 1999.

Issued in Renton, Washington, on September 10, 1999.

**D.L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 99–24149 Filed 9–21–99; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 97–NM–58–AD; Amendment 39–11321; AD 99–19–34]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier Model DHC–8–100 and –300 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model DHC–8–100 and –300 series airplanes, that requires modification of certain hydraulic systems that provide hydraulic pressure for the control of the rudder and for the main landing gear brakes. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent damage to certain hydraulic system components in the number 2 engine nacelle, which could result in loss of the number 1 and number 2 hydraulic systems, and consequent reduced controllability of the airplane.

**DATES:** Effective October 27, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 27, 1999.

**ADDRESSES:** The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Anthony Gallo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7510; fax (516) 568–2716.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–8–100 and –300 series airplanes was published in the **Federal Register** on July 7, 1999 (64 FR 36624). That action proposed to require modification of certain hydraulic systems that provide hydraulic pressure for the control of the rudder and for the main landing gear brakes.

**Comments**

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

**Conclusion**

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

**Cost Impact**

The FAA estimates that 148 airplanes of U.S. registry will be affected by this AD.

For airplanes identified in Bombardier Service Bulletin S.B. 8–32–128, Revision 'C,' it will take between 15 and 40 works hours per airplane to accomplish the required modification, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be between $133,200 and $355,200, or between $900 and $2,400 per airplane.

For airplanes identified in Bombardier Service Bulletin S.B. 8–29–23, it will take approximately 346 work hours per airplane to accomplish the required relocation, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $3,072,480, or $20,760 per airplane.

For airplanes identified in Bombardier Service Bulletin S.B. 8–29–29, it will take approximately 120 work hours per airplane to accomplish the required installation, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the installation required by this AD on U.S. operators is estimated to be $1,065,600, or $7,200 per airplane.

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

### Regulatory Impact

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

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

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

**99–19–34 Bombardier, Inc.** (Formerly de Havilland, Inc.): Amendment 39–11321. Docket 97–NM–58–AD.

*Applicability:* Model DHC–8–100 and –300 series airplanes having serial numbers 003 through 405; except those airplanes on which Bombardier Modifications 8/1152 and 8/1982 have been installed, and on which either Bombardier Modification 8/1983 or 8/2781 has been installed; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent damage to certain hydraulic system components in the number 2 engine nacelle, which could result in loss of the number 1 and number 2 hydraulic systems, and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 18 months after the effective date of this AD, modify certain hydraulic systems that provide hydraulic pressure for the control of the rudder and for the main landing gear brakes by accomplishing the requirements of paragraph (a)(1) or (a)(2), as applicable, in accordance with Bombardier Service Bulletin S.B. 8–32–128, Revision 'C,' dated March 27, 1998.

(1) For all airplanes on which Bombardier Modification 8/1152 has been installed: Accomplish Part A of the Accomplishment Instructions of the service bulletin.

(2) For all airplanes on which Bombardier Modification 8/1152 has not been installed: Accomplish Part B of the Accomplishment Instructions of the service bulletin.

(b) Within 18 months after the effective date of this AD, accomplish the actions specific in either paragraph (b)(1) or (b)(2) of this AD.

(1) Relocate the number 2 standby power unit (SPU) of the number 2 hydraulic system in accordance with Bombardier Service Bulletin S.B. 8–29–23, dated December 6, 1996; or

(2) Install a hydraulic rudder isolation system in the number 1 and number 2 hydraulic systems in accordance with Bombardier Service Bulletin S.B. 8–29–29, dated February 27, 1998.

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

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

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

**Incorporation by Reference**

(e) The actions shall be done in accordance with Bombardier Service Bulletin S.B. 8–32–128, Revision 'C,' dated March 27, 1998; Bombardier Service Bulletin S.B. 8–29–23, dated December 6, 1996; or Bombardier Service Bulletin S.B. 8–29–29, dated February 27, 1998; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 3:** The subject of this AD is addressed in Canadian airworthiness directives CF–96–25R1, dated January 16, 1997, and CF–96–25R2, dated September 10, 1998.

(f) This amendment becomes effective on October 27, 1999.

Issued in Renton, Washington, on September 10, 1999.

**D.L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 99–24148 Filed 9–21–99; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 99–SW–46–AD; Amendment 39–11331; AD 99–17–17]**

**RIN 2120–AA64**

## Airworthiness Directives; Robinson Helicopter Company Model R44 Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 99–17–17 which was sent previously to all known U.S. owners and operators of Robinson Helicopter Company (RHC) Model R44 helicopters by individual letters. This AD requires, prior to further

flight, replacing certain yoke assemblies with airworthy yoke assemblies. This amendment is prompted by an incident in which, during cruise flight, the pilot heard a loud bang and no tail rotor effectiveness due to a cracked yoke assembly. RHC has identified the manufacturing lots associated with the failed yoke assembly. The actions specified by this AD are intended to prevent failure of the yoke assembly, which could result in loss of main and tail rotor drive and subsequent loss of control of the helicopter.

**DATES:** Effective October 7, 1999, to all persons except those persons to whom it was made immediately effective by Emergency Priority Letter AD 99–17–17, issued on August 13, 1999, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 7, 1999.

Comments for inclusion in the Rules Docket must be received on or before November 22, 1999.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–46–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The applicable service information may be obtained from Robinson Helicopter Company, 2901 Airport Drive, Torrance, California 90505 telephone (310) 539–0508, fax (310) 539–5198. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Bumann, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, Propulsion Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5265, fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:** On August 13, 1999, the FAA issued Emergency Priority Letter AD 99–17–17, applicable to RHC Model R44 helicopters, which requires, prior to further flight, replacing certain yoke assemblies with airworthy yoke assemblies. That action was prompted by an incident in which, during cruise flight, the pilot heard a loud bang and noticed no tail rotor effectivity after entering autorotation. An investigation revealed that the yoke assembly, which connects the main rotor gearbox pinion shaft to the forward flexplate, had failed at a weld joint due to a crack. The cause of the crack is unknown but still under investigation. RHC has identified the manufacturing lots associated with the failed yoke. This condition, if not corrected, could result in failure of the yoke assembly, loss of main and tail rotor drive, and subsequent loss of control of the helicopter.

The FAA has reviewed RHC R44 Service Bulletin SB–35, dated July 26, 1999, which prescribes procedures for identifying the manufacturing lot for each yoke assembly, part number (P/N) C908–1C, and for removing and replacing the yoke assembly.

Since the unsafe condition described is likely to exist or develop on other RHC Model R44 helicopters of the same type design, the FAA issued Emergency Priority Letter AD 99–17–17 to prevent failure of the yoke assembly, which could result in loss of main and tail rotor drive and subsequent loss of control of the helicopter. The AD requires, prior to further flight, replacing the yoke assembly, P/N C908–1C, from Lot Nos. 36B, 37, and 38, with an airworthy yoke assembly from a lot other than 36B, 37, or 38. The actions must be accomplished in accordance with the service bulletin described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity of the helicopter. Therefore, replacing any yoke assembly, P/N C908–1C, from Lot Nos. 36B, 37, and 39, is required prior to further flight, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on August 13, 1999 to all known U.S. owners and operators of RHC Model R44 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

The FAA estimates that 75 helicopters of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per helicopter to accomplish the required actions, and the average labor rate is $60 per work hour. Required parts will cost approximately $840 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $72,000, assuming that the yoke assembly is replaced in each helicopter.

**Comments Invited**

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–SW–46–AD.'' The postcard will be date stamped and returned to the commenter.

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.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined

further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, 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 a new airworthiness directive to read as follows:

**AD 99–17–17 Robinson Helicopter Company:** Amendment 39–11331. Docket No. 99–SW–46–AD.

*Applicability:* Model R44 helicopters, certificated in any category.

**Note 1:** This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required prior to further flight, unless accomplished previously.

To prevent failure of the yoke assembly, which could result in loss of main and tail rotor drive and subsequent loss of control of the helicopter, accomplish the following:

(a) Determine, by inspection, if the yoke assembly, part number (P/N) C908–1C, from Lot No. 36B, 37, or 38 is installed.

**Note 2:** Yoke assemblies, P/N C908–1C, from Lot Nos. 36B, 37, and 38 were installed as original equipment in R44 helicopters, Serial Numbers (S/N) 0219 and 0535 through 0608 (except S/N's 0565, 0582, and 0592).

(b) Replace any yoke assembly, P/N C908–1C, from Lot No. 36B, 37, or 38, with an airworthy yoke assembly from a lot other than 36B, 37, or 38 in accordance with the compliance procedure, steps 2 through 12, of Robinson Helicopter Company R44 Service Bulletin SB–35, dated July 26, 1999.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(d) Special flight permits will not be issued.

(e) The replacement of the yoke assembly shall be done in accordance with the compliance procedure, steps 2 through 12, of Robinson Helicopter Company R44 Service Bulletin SB–35, dated July 26, 1999. 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 Robinson Helicopter Company, 2901 Airport Drive, Torrance, California 90505 telephone (310) 539–0508, fax (310) 539–5198. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on [insert date 15 days after date of publication in the **Federal Register**], to all persons except those persons to whom it was made immediately effective by Emergency Priority Letter AD 99–17–17, issued August 13, 1999, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on September 13, 1999.

**Eric Bries,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 99–24535 Filed 9–21–99; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 98–NM–328–AD; Amendment 39–11329; AD 99–20–01]**

**RIN 2120–AA64**

## Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all Fokker Model F.28 Mark 0070 and 0100 series airplanes, that requires modification of the electrical wiring of the flight warning computer (FWC), and installation of upgraded computer software into the FWC. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent certain nuisance alerts generated by the FWC and to ensure annunciation of certain flight alerts by the FWC during initial climb. Such nuisance alerts or failures to annunciate certain alerts could result in an improper response by the flight crew and consequent reduced controllability of the airplane.

**DATES:** Effective October 27, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 27, 1999.

**ADDRESSES:** The service information referenced in this AD may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, The Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD)

that is applicable to all Fokker Model F.28 Mark 0070 and 0100 series airplanes was published in the **Federal Register** on March 15, 1999 (64 FR 12772). That action proposed to require modification of the electrical wiring of the flight warning computer (FWC), and installation of upgraded computer software into the FWC.

**Comments Received**

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

**Request for Extension of Compliance Time**

Two commenters, both operators, raise a concern regarding the necessity to accomplish other modifications prior to or concurrent with accomplishment of the modification described in Fokker Service Bulletin SBF100–31–051, dated August 15, 1998, which is required by paragraph (b) of the proposed AD. One commenter states that the wiring modification described in Fokker Service Bulletin SBF100–78–014, Revision 2, dated May 1, 1999, is necessary prior to or concurrent with accomplishment of SBF100–31–051. Additionally, Service Bulletin SBF100–78–014 specifies that three other service bulletins must be accomplished either prior to or concurrent with SBF100–78–014, including SBF100–78–012 [which is also required by AD 96–26–03, amendment 39–9866 (62 FR 604, January 6, 1997)].

Both commenters state that the labor and costs associated with these additional modifications will require the actions proposed in this AD to be accomplished in conjunction with scheduled heavy maintenance visits, rather than during scheduled overnight maintenance. One commenter states that the compliance threshold should be extended to preclude the additional operational costs associated with removing an airplane from service out of the normally scheduled sequence. The two commenters request that the compliance threshold of 18 months for accomplishment of SBF100–31–051 be extended (to 24 months or 30 months after the effective date of the AD) to allow sufficient time for scheduling of the additionally required modifications.

The FAA does not concur. After further discussions with the Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, and the manufacturer, the FAA has determined that such extension of the compliance time would not provide an acceptable level of safety necessary to address the identified unsafe condition. Accomplishment of the modifications specified in the proposed AD, as well as the necessary prior modifications to support the final modification, was found to be necessary in the wake of thrust reverser problems related to a 1996 accident in Brazil.

In developing the proposed compliance time of 18 months, the FAA considered the safety implications, the RLD's and the manufacturer's recommendations, and the availability of required parts. The FAA also considered the fact that Fokker Service Bulletin SBF100–31–051 has been available to all affected operators since August 1998.

Therefore, U.S. operators have had time since then to consider initiating those actions, which this AD ultimately mandates. Under the provisions of paragraph (c) of the final rule, however, the FAA may consider requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

**Relation of Proposed AD to AD 96–26–03**

One commenter states that the proposed AD does not address the necessary modifications (as discussed previously) described in Fokker Service Bulletin SBF100–78–014, which specifies prior accomplishment of Fokker Service Bulletin SBF100–78–012. Since SBF100–78–012 is currently required by AD 96–26–03, the commenter notes that the proposed AD does not provide the necessary relief for the interim conditions when an airplane may not be in the configuration specified by AD 96–26–03 or in full compliance with the proposed new AD. If the required relief is not provided, the commenter states that each operator will be forced to petition the FAA for each variance encountered during the fleet modification program, which will add significant workload for both these operators and the FAA.

The FAA partially concurs. The FAA concurs that AD 96–26–03 currently specifies accomplishment of SBF100–78–012, which is indirectly necessary prior to accomplishment of SBF100–31–051 as required by this proposed AD. However, since issuance of the proposed AD, another proposed AD (reference Rules Docket No. 98–NM–329–AD) has been issued that would supersede AD 96–26–03. That proposed AD would continue to require accomplishment of SBF100–78–012 by March 21, 1997 (the compliance time specified in AD 96–26–03), and would add a requirement for accomplishment of SBF100–78–014 within 18 months after the effective date of that AD.

The FAA does not consider that accomplishment of the requirements of these AD's will pose any configuration problems for operators provided the AD's are issued simultaneously, since the compliance times of 18 months would be identical. The FAA will ensure that the AD's are issued simultaneously to avoid the concern expressed by the commenter.

The FAA has added NOTE 4 to the final rule to provide clarification regarding the accomplishment of other modifications prior to accomplishment of SBF100–31–051, as well as related FAA rulemaking actions specified in AD 96–26–03 and Rules Docket No. 98–NM–329–AD.

**Request To Remove Spares Paragraph**

One commenter states that paragraph (c) of the proposed AD, which specifies that ''As of the effective date of this AD, no person shall install on any airplane a flight warning computer (FWC), unless it has been modified in accordance with this AD'', is an impossible stipulation. The commenter states that there will be a transition period during which the wiring of some airplanes will not be modified as described in SBF100–78–014. An upgraded FWC cannot be installed in an unmodified airplane, therefore, provisions must be made to allow the installation of an unmodified FWC in an unmodified airplane.

The FAA concurs. The necessary airplane wiring modifications will be accomplished over a period of time and are necessary prior to accomplishment of the FWC modifications required by this AD. Since the modified FWC's cannot be installed in an unmodified airplane, the FAA has deleted the requirement regarding installation of an unmodified FWC by removing this paragraph from the final rule.

**Request To Revise Cost Information**

One commenter states that the proposed AD does not address the labor and material costs associated with accomplishment of SBF100–78–014. Therefore, the commenter states that an additional 44 work hours and material costs of $7,663 must be added to the projected cost estimates provided in the proposed AD. The FAA does not concur. As stated previously, accomplishment of SBF100–78–014 is proposed as a direct requirement in a separate rulemaking action (reference Rules Docket No. 98–NM–329–AD). Cost estimates associated with that action are provided in that NPRM and therefore are not restated in this AD.

## Other Changes Made to the Proposed AD

The FAA has been informed that the manufacturer's address has changed and has revised the AD to provide the correct address for obtaining service information. The FAA also has revised its estimate of the number of affected airplanes from 129 in the proposed AD to 126, and the cost impact information, below, has been revised accordingly.

## Conclusion

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

## Cost Impact

The FAA estimates that 126 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per airplane to accomplish the required modification, and that the average labor rate is $60 per work hour. Required parts will cost approximately $93 per airplane. Based on these figures, the cost impact of the modification on U.S. operators is estimated to be $57,078, or $453 per airplane.

It will take approximately 1 work hour per airplane to accomplish the required installation, at an average labor rate of $60 per work hour. Required parts will cost approximately $1,500 per airplane. Based on these figures, the cost impact of the installation on U.S. operators is estimated to be $196,560, or $1,560 per airplane.

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

## Regulatory Impact

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

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

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

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

**99–20–01 Fokker Services B.V.:** Amendment 39–11329. Docket 98–NM–328–AD.

*Applicability:* All Model F.28 Mark 0070 and 0100 series airplanes, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent certain nuisance alerts generated by the flight warning computer (FWC) and to ensure annunciation of certain flight alerts by the FWC during initial climb, which could result in an improper response by the flight crew and consequent reduced controllability of the airplane, accomplish the following:

**Modifications**

(a) Within 18 months after the effective date of this AD, modify the electrical wiring of the FWC in accordance with Part 1 or 2, as applicable, of the Accomplishment Instructions of Fokker Service Bulletin SBF100–31–047, Revision 1, dated March 21, 1997.

**Note 2:** It is not necessary to install computer software version V10.40 into the FWC, since a later version is available and is required to be installed by this AD.

(b) Concurrent with the accomplishment of the requirements of paragraph (a) of this AD, install upgraded computer software version V11.45 into the FWC in accordance with Fokker Service Bulletin SBF100–31–051, dated August 15, 1998.

**Note 3:** AlliedSignal Grimes Aerospace has issued Service Bulletin 80–0610–31–0031, dated May 14, 1998, as an additional source of service information for installation of the upgraded computer software version into the FWC.

**Note 4:** Operators should note that Fokker Service Bulletin SBF100–31–051, dated August 15, 1998, specifies prior or concurrent accomplishment of Fokker Service Bulletin SBF100–78–014 [which specifies concurrent accomplishment of Fokker Component Service Bulletin (CSB) P41440–78–04, and prior or concurrent accomplishment of Fokker Service Bulletin SBF100–78–012 and CSB P41440–78–05]. Related FAA Rules Docket No. 98–NM–329–AD requires accomplishment of these four other service bulletins.

**Alternative Methods of Compliance**

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

**Note 5:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

**Special Flight Permits**

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

**Incorporation by Reference**

(e) The actions shall be done in accordance with Fokker Service Bulletin SBF100–31–047, Revision 1, dated March 21, 1997, and Fokker Service Bulletin SBF100–31–051, dated August 15, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, The

Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 6:** The subject of this AD is addressed in Dutch airworthiness directive BLA 1998–110, dated August 31, 1998.

(f) This amendment becomes effective on October 27, 1999.

Issued in Renton, Washington, on September 13, 1999.

**D. L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 99–24278 Filed 9–21–99; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 98–NM–329–AD; Amendment 39–11330; AD 99–20–02]**

**RIN 2120–AA64**

## Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to all Fokker Model F.28 Mark 0070 and 0100 series airplanes, that currently requires Airplane Flight Manual (AFM) and maintenance program revisions, modifications, and repetitive checks associated with ensuring the integrity of the thrust reverser system. This amendment continues to require the modifications and repetitive checks, and adds an AFM revision, repetitive operational tests, and other modifications related to the thrust reverser system. The new modifications terminate the repetitive operational checks and tests. This amendment is prompted by results of a review, which indicated that a potential latent failure of the secondary lock actuator switch 1 of the thrust reverser system in the open position may occur, in addition to the potential failure of the secondary lock relay 1 in the energized position. The actions specified by this AD are intended to ensure protection against inadvertent deployment of the thrust reversers during flight, which could result in reduced controllability of the airplane.

**DATES:** Effective October 27, 1999.

The incorporation by reference of Fokker Service Bulletin SBF100–78–014, Revision 2, dated May 1, 1999, including Attachment 1 (undated); Fokker Component Service Bulletin P41440–78–04, dated August 15, 1998; and Fokker Component Service Bulletin P41440–78–05, dated August 15, 1998; as listed in the regulations; is approved by the Director of the Federal Register as of October 27, 1999.

The incorporation by reference of Fokker Service Bulletin SBF100–78–012, dated November 22, 1996; Fokker Service Bulletin SBF100–24–034, Revision 1, dated September 12, 1996; and Fokker Service Bulletin SBF100–78–013, dated November 22, 1996; was approved previously by the Director of the Federal Register as of January 21, 1997 (62 FR 604, January 6, 1997).

**ADDRESSES:** The service information referenced in this AD may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, The Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 96–26–03, amendment 39–9866 (62 FR 604, January 6, 1997), which is applicable to all Fokker Model F.28 Mark 0070 and 0100 series airplanes, was published in the **Federal Register** on May 20, 1999 (64 FR 27480). The action proposed to continue to require Airplane Flight Manual (AFM) and maintenance program revisions, modifications, and repetitive checks associated with ensuring the integrity of the thrust reverser system, and to add an AFM revision, repetitive operational tests, and other modifications related to the thrust reverser system. The new modifications would terminate the repetitive operational checks and tests.

### Comments Received

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

### Request To Withdraw Proposed AD

One commenter requests that this proposed AD and another related proposed AD (reference Rules Docket No. 98–NM–328–AD) be withdrawn, reviewed, coordinated, and reissued as a single proposal, to allow each of the requirements to be clearly stated and coordinated. The commenter states that this proposed AD adds a new repair requirement and also duplicates changes indirectly mandated by the previously issued and still active notice of proposed rulemaking (NPRM). The wiring modification described in Fokker Service Bulletin SBF100–78–014, as required by paragraph (f)(1) of this proposed AD, is necessary prior to or concurrent with accomplishment of SBF100–31–051, which is required by the other proposed AD. Additionally, paragraph (f)(2) of this proposed AD requires accomplishment of Fokker Component Service Bulletins (CSB) P41440–78–04 and CSB P41440–78–05, and SBF100–78–014 specifies that such accomplishment is also necessary. The commenter states that the other NPRM (by requiring accomplishment of SBF100–31–051) therefore includes, by a roundabout means, everything contained in this proposed AD.

The FAA does not concur with the request to withdraw the proposed AD. The FAA does not consider that withdrawing both proposals and combining the requirement into a single rulemaking action is necessary in order to provide a clear statement of these requirements. Additionally, the FAA does not consider it appropriate to delay issuance of this final rule by such action, which would necessitate (under the provisions of the Administrative Procedure Act) reissuing the notice, reopening the period for public comment, considering additional comments received, and eventually issuing a final rule.

The FAA also notes that this AD requires various corrective actions intended to ensure protection against inadvertent deployment of the thrust reversers in flight. However, the requirements of the other proposed AD were separately issued to allow specific information to be provided regarding the unsafe condition of certain alerts generated by the flight warning computer (FWC), and the required modifications of the FWC intended to prevent that unsafe condition.

While the FAA acknowledges the relationship between the requirements of the AD's, the FAA does not consider that accomplishment of the requirements of these AD's will pose any difficulty for operators provided the

AD's are issued simultaneously, since the compliance times of 18 months would be identical. The FAA will ensure that these AD's are issued simultaneously. The FAA has also added a NOTE 2 to the final rule to provide additional information regarding the related FAA rulemaking action specified in Rules Docket No. 98–NM–328–AD.

**Request for Extension of Compliance Time**

Two commenters request that additional time be provided for accomplishment of the requirements of paragraph (f) of the proposed AD, which specifies a compliance time of ''18 months after the effective date of this AD''. One commenter requests a minimum of 30 months, and states that, due to the work scope of all related modifications (discussed previously), the work must be accomplished during heavy ''C-check'' and modification line visits, which are 10-day visits. Another commenter requests a minimum of 24 months, and states that the hours required to accomplish the actions are too large to be completed in an overnight or drop-in maintenance period, and the out-of-service time will be even greater due to the close correlation with related modifications required by the other proposed AD.

The FAA does not concur. After further discussions with the Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, and the manufacturer, the FAA has determined that such extension of the compliance time would not provide an acceptable level of safety necessary to address the identified unsafe condition. Accomplishment of the modifications specified in the proposed AD, as well as the necessary prior modifications to support the final modification, was found to be necessary in the wake of thrust reverser problems related to a 1996 accident in Brazil.

In developing the proposed compliance time of 18 months, the FAA considered the safety implications, the RLD's and the manufacturer's recommendations, and the availability of required parts. The FAA also considered the fact that Fokker Service Bulletin SBF100–78–014 was originally issued in August 1998. Therefore, U.S. operators have had time since then to consider initiating those actions, which this AD ultimately mandates. Under the provisions of paragraph (g)(1) of the final rule, however, the FAA may consider requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

**Modification of Spare Parts**

Two commenters request that the proposed AD be revised to accommodate concurrent installation of aft engine cowlings modified in accordance with Fokker Component Service Bulletin P41440–78–04 on airplanes modified in accordance with Fokker Service Bulletin SBF100–78–014. Paragraph (g) of the proposed AD states that ''as of the effective date of this AD, no person shall install on any airplane an aft engine cowling having part number 1159P41440, unless it has been modified in accordance with paragraph (f)(2) of this AD''. One commenter notes that, due to there being no interchangeability between these modification standards, the compliance time for paragraph (g) must coincide with the compliance time for paragraph (f) of the AD.

The FAA partially concurs. The FAA concurs that aft engine cowlings modified in accordance with P41440–78–04 cannot be installed on an airplane not modified in accordance with SBF100–78–014. However, instead of revising the compliance time for paragraph (g) of the AD, the FAA has deleted the requirement regarding installation of an unmodified aft engine cowling by removing paragraph (g) from the final rule.

**Request to Cite Later Revision of Service Bulletin**

Two commenters request that the proposed AD be revised to reference Revision 2 of Fokker Service Bulletin SBF100–78–014, dated May 1, 1999, including Attachment 1 (undated). [Revision 1 of the service bulletin, dated December 15, 1998; as revised by Change Notice 1, dated December 18, 1998, and Change Notices 2 and 3, both dated January 29, 1999; is referenced in the proposed AD as the appropriate source of service information for accomplishment of the requirements of paragraph (f)(1) of the proposed AD]. One commenter requests compliance in accordance with the latest revision released. Another commenter, the manufacturer, states that Revision 2 of the service bulletin incorporates all prior change notices, corrects typing errors, and revises certain cost information and drawings, but does not change the technical content.

The FAA concurs with these requests. The FAA has determined that Revision 2 of the service bulletin is substantially equivalent to Revision 1 as revised by the change notices cited previously. Therefore, the FAA has revised paragraph (f)(1) of the final rule to require its accomplishment in accordance with Revision 2, dated May 1, 1999. A Note 3 also has been added to the final rule to provide credit for operators who may have accomplished required actions in accordance with the previously cited service bulletin revision and change notices prior to the effective date of this AD.

Additionally, since Revision 2 of the service bulletin provided an increased estimate of labor costs for its accomplishment, the cost impact information, below, has been revised to include these additional work hours. The FAA also has revised its estimate of the number of affected airplanes from 131 in the proposed AD to 126, and the cost impact information has been revised accordingly.

**Correction of Manufacturer's Address**

One commenter, the manufacturer, informs the FAA that its address has changed and requests that the proposed AD be revised to provide the correct address for obtaining service information. The FAA has made this change in the final rule.

**Conclusion**

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

**Cost Impact**

There are approximately 126 airplanes of U.S. registry that will be affected by this AD.

The actions that are currently required by AD 96–26–03 take approximately 20 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $1,200 per airplane. Based on these figures, the cost impact of the previously required actions on U.S. operators is estimated to be $302,400, or $2,400 per airplane.

The new AFM revision that is required in this AD action will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AFM revision required by this AD on U.S. operators is estimated to be $7,560, or $60 per airplane.

The new operational tests that are required in this AD action will take

approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the operational tests required by this AD on U.S. operators is estimated to be $7,560, or $60 per airplane, per test cycle.

The new modifications that are required in this AD action will take approximately 57 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $7,737 per airplane. Based on these figures, the cost impact of the modifications required by this AD on U.S. operators is estimated to be $1,405,782, or $11,157 per airplane.

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

## Regulatory Impact

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

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

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9866 (62 FR 604, January 6, 1997), and by adding a new airworthiness directive (AD), amendment 39–11330, to read as follows:

**99–20–02 Fokker Services B.V.:** Amendment 39–11330. Docket 98–NM–329–AD. Supersedes AD 96–26–03, Amendment 39–9866.

*Applicability:* All Model F.28 Mark 0070 and 0100 series airplanes, certificated in any category.

**Note** 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g)(1) 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 ensure protection against inadvertent deployment of the thrust reversers during flight, which could result in reduced controllability of the airplane, accomplish the following:

**Restatement of Certain Requirements of AD 96–26–03, Amendment 39–9866**

(a) Within 60 days after January 21, 1997 (the effective date of AD 96–26–03, amendment 39–9866), modify the wiring of the electrical control, and indication and warning systems of the thrust reversers, in accordance with Fokker Service Bulletin SBF100–78–012, dated November 22, 1996.

(b) For Model F.28 Mark 0070 series airplanes: Prior to or in conjunction with the accomplishment of paragraph (a) of this AD, modify the wiring of the priority switching of the emergency inverter power supply in accordance with Fokker Service Bulletin SBF100–24–034, Revision 1, dated September 12, 1996.

(c) Within 500 flight cycles following accomplishment of paragraph (a) of this AD, perform operational checks to detect failures of the secondary lock actuator, primary lock switch, indication and warning system, and feedback cable mechanism of the thrust reversers in accordance with Fokker Service Bulletin SBF100–78–013, dated November 22, 1996. If any failure is detected, prior to further flight, repair the thrust reverser system in accordance with Chapter 78–30–00 of the Fokker Airplane Maintenance Manual. Repeat the operational checks thereafter at intervals not to exceed 500 flight cycles.

**New Requirements of This AD**

**Airplane Flight Manual (AFM) Revision**

(d) Within 3 months after the effective date of this AD, revise the Abnormal Procedures Section, Sub-section Engine, of the FAA-approved AFM to include the following information. This may be accomplished by inserting a copy of this AD in the AFM.

**''REVERSER UNLOCKED PROCEDURE**

**ON GROUND (except during engine start)**

| | |
|---|---|
| REVERSER SYSTEM..... | MAINTENANCE ACTION REQUIRED |

**Note:** If alert occurs during engine start, recycle affected reverser after engine start.

**IN FLIGHT**

**Note:** If thrust lever is not blocked at idle and no pronounced buffet is present, normal operation of the aircraft may be continued, although alert may persist. After landing, maintenance action is required.

| | |
|---|---|
| ATS ..... | (Check) Disconnect |
| Affected Thrust Lever. | (Check) Idle |
| Speed ..... | Max 200 kts |
| Affected Fuel Lever | Shut |
| Single Engine Procedure. | Apply |

**Note:** Descent below 1,000 feet AGL requires that the landing be completed.''

**Repetitive Tests**

(e) Perform an operational test of the pilot valve and piston seal for leakage of the selector valve of the thrust reversers, in accordance with Fokker 70/100 Airplane Maintenance Manual 78–32–01, dated June 1, 1998, at the latest of the times specified in paragraphs (e)(1), (e)(2), and (e)(3) of this AD. If any discrepancy is detected, prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the RLD (or its delegated agent). Repeat the operational test thereafter at intervals not to exceed 12,000 flight hours.

(1) For airplanes on which Fokker Service Bulletin SBF100–78–004, Revision 1, dated November 22, 1996, has been accomplished prior to the effective date of this AD: Within 12,000 flight hours after accomplishment of Fokker Service Bulletin SBF100–78–004, Revision 1, dated November 22, 1996.

(2) Within 6,000 flight hours after accomplishment of Fokker Service Bulletin SBF100–78–012, dated November 22, 1996.

(3) Within 500 flight hours after the effective date of this AD.

**Terminating Modifications**

(f) Within 18 months after the effective date of this AD, concurrently accomplish the requirements of paragraphs (f)(1) and (f)(2) of this AD. Accomplishment of these modifications constitutes terminating action for the repetitive operational checks and operational tests required by paragraphs (c) and (e) of this AD.

(1) Modify the thrust reverser electrical control system and thrust reverser indication and warning system, in accordance with Fokker Service Bulletin SBF100–78–014, Revision 2, dated May 1, 1999, including Attachment 1 (undated).

(2) Modify the aft engine cowlings in accordance with Fokker Component Service Bulletins P41440–78–04 and P41440–78–05, both dated August 15, 1998.

**Note 2:** Operators should note that related FAA Rules Docket No. 98–NM–328–AD requires accomplishment of Fokker Service Bulletin SBF100–31–051. That service bulletin specifies prior or concurrent accomplishment of SBF100–78–014 which specifies concurrent accomplishment of Fokker Component Service Bulletin (CSB) P41440–78–04, and prior or concurrent accomplishment of Fokker Service Bulletin SBF–100–78–012 and Fokker CSB P41440–78–05].

**Note 3:** Accomplishment of the actions required by paragraph (f)(1) of this AD prior to the effective date of this AD in accordance with Fokker Service Bulletin SBF100–78–014, Revision 1, dated December 15, 1998; as revised by Change Notice 1, dated December 18, 1998, and Change Notices 2 and 3, both dated January 29, 1999; is acceptable for compliance with the actions required by that paragraph.

**Alternative Methods of Compliance**

(g)(1) 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, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

(g)(2) Alternative methods of compliance, approved previously in accordance with AD 96–26–03, amendment 39–9866 for accomplishment of paragraph (c) of that AD, are approved as alternative methods of compliance with paragraph (a) of this AD.

**Note** 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

**Special Flight Permits**

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

**Incorporation by Reference**

(i) Except as provided by paragraphs (c), (d), and (e), the actions shall be done in accordance with Fokker Service Bulletin SBF100–78–012, dated November 22, 1996; Fokker Service Bulletin SBF100–24–034, Revision 1, dated September 12, 1996; Fokker Service Bulletin SBF100–78–013, dated November 22, 1996; Fokker Service Bulletin SBF100–78–014, Revision 2, dated May 1, 1999, including Attachment 1 (undated); Fokker Component Service Bulletin P41440–78–04, dated August 15, 1998; and Fokker Component Service Bulletin P41440–78–05, dated August 15, 1998; as applicable.

(i)(1) The incorporation by reference of Fokker Service Bulletin SBF100–78–014, Revision 2, dated May 1, 1999, including Attachment 1 (undated); Fokker Component Service Bulletin P41440–78–04, dated August 15, 1998; and Fokker Component Service Bulletin P41440–78–05, dated August 15, 1998; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Fokker Service Bulletin SBF100–78–014, Revision 2, dated May 1, 1999, including Attachment 1 (undated), contains the following list of effective pages:

| Page number | Revision level shown on page | Date shown on page |
|---|---|---|
| 1–62 ..... | 2 | May 1, 1999. |
| ATTACHMENT 1 | | |
| 1–53 ..... | ..... | Not Dated. |

(i)(2) The incorporation by reference of Fokker Service Bulletin SBF100–78–012, dated November 22, 1996; Fokker Service Bulletin SBF100–24–034, Revision 1, dated September 12, 1996; and Fokker Service Bulletin SBF100–78–013, dated November 22, 1996; was approved previously by the Director of the Federal Register as of January 21, 1997 (62 FR 604, January 6, 1997).

(i)(3) Copies may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, The Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 5:** The subject of this AD is addressed in Dutch airworthiness directive BLA 1996–140/2, dated August 31, 1998.

(j) This amendment becomes effective on October 27, 1999.

Issued in Renton, Washington, on September 13, 1999.

**D. L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 99–24279 Filed 9–21–99; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 99–ASW–01]**

## Establishment of Class D Airspace; Sugar Land, TX

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action establishes Class D airspace extending upward from the surface to and including 2,600 feet mean sea level (MSL), within a 4.2-mile radius of the Sugar Land Municipal/Hull Field, Sugar Land, TX. This action is prompted by a non-federal air traffic control tower that currently operates during specified hours at this airport. The intended effect of this rule is to provide adequate controlled airspace for aircraft operating in the vicinity of Sugar Land Municipal/Hull Field, Sugar Land, TX.

**EFFECTIVE DATE:** 0901 UTC, November 4, 1999.

**FOR FURTHER INFORMATION CONTACT:** Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593.

**SUPPLEMENTARY INFORMATION:**

### History

On March 4, 1999, a proposal to amend 14 CFR part 71 to establish Class D and Class E airspace at Sugar Land, TX, was published in the **Federal Register** (64 FR 10410). The proposal was to establish Class D and Class E airspace extending upward from the surface to and including 2,600 feet MSL, within a 4.2-mile radius of the Sugar Land Municipal/Hull Airport, Sugar Land, TX. This action is prompted by a non-federal air traffic control tower that currently operates during specified hours at this airport. The published notice proposed to establish Class E airspace to protect aircraft operations while the control tower was not operating. However, the necessary weather equipment is not available, therefore, the Class D airspace will revert to Class G airspace when the control tower is not in operation. The intended effect of this rule is to provide adequate controlled airspace for aircraft operating in the vicinity of Sugar Land Municipal/Hull Field, Sugar Land, TX.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed with the exception of inserting ''Municipal'' after Sugar Land in the description of the airport and changing Hull ''Airport'' to Hull ''Field''.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class D airspace areas are published in Paragraph 5000 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by

reference in 14 CFR 71.1. The Class D airspace designations listed in this document will be published subsequently in the order.

## The Rule

This amendment to 14 CFR Part 71 establishes Class D airspace, at Sugar Land, TX, extending upward from the surface to and including 2,600 feet MSL, within a 4.2-mile radius of the Sugar Land Municipal/Hull Field, Sugar Land, TX.

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

## List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

## Adoption of the Amendment

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

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, *Airspace Designations and Reporting Points,* dated September 10, 1998, and effective September 16, 1998, is amended as follows:

*Paragraph 5000 Class D airspace areas.*

* * * * *

**ASW TX D Houston Sugar Land Municipal/ Hull Field, TX [New]**

Sugar Land, Sugar Land Municipal/Hull Field, TX
(Lat. 29°37′20″ N., long. 095°39′24″ W.)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.2-mile radius of Sugar Land Municipal/Hull Field. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Fort Worth, TX, on September 14, 1999.

**Robert N. Stevens,**

*Acting Manager, Air Traffic Division, Southwest Region.*

[FR Doc. 99–24653 Filed 9–21–99; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## 18 CFR Parts 153, 157 and 375

**[Docket No. RM98–16–000; Order No. 608]**

## Collaborative Procedures for Energy Facility Applications

Issued September 15, 1999.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule.

**SUMMARY:** The Federal Energy Regulatory Commission, (Commission) is issuing a final rule to expand its procedural regulations governing the authorization of natural gas facilities and services. The regulations offer prospective applicants seeking to construct, operate or abandon natural gas facilities or services the option, in appropriate circumstances and prior to filing an application, of designing a collaborative process that includes environmental analysis and issue resolution. This pre-filing collaborative process is comparable to the process the Commission adopted two years ago with respect to applications for hydroelectric licenses, amendments and exemptions and, like those regulations, is optional and is designed to be adaptable to the facts and circumstances of the particular case. The regulations do not delete or replace any existing regulations.

**EFFECTIVE DATE:** This rule is effective October 22, 1999.

**FOR FURTHER INFORMATION CONTACT:**

Richard Hoffman, Office of Pipeline Regulation, 888 First Street, NE, Washington, DC 20426, (202) 208–0066

Gordon Wagner, Office of the General Counsel, 888 First Street, NE, Washington, DC 20426, (202) 219–0122.

**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, NE, Room 2A, Washington, DC 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission from November 14, 1994, to the present. CIPS can be accessed via Internet through FERC's Home page (http://www.ferc.fed.us) using the CIPS Link or the Energy Information Online icon, or by going directly to the following address: http// cips.ferc.fed.us/cips/default.htm. Documents will be available on CIPS in ASCII and WordPerfect 8.0. User assistance is available at 202–208–2474 or by E-mail to cipsmaster@ferc.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Home Page using the RIMS link or the Energy Information Online icon, or by going directly to the following address: http://rimsweb1.ferc.fed.us/rims. User assistance is available at 202–208–2222, or by E-mail to rimsmaster@ferc.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc. is located in the Public Reference Room at 888 First Street, NE, Washington, DC 20426.

## I. Introduction

The Federal Energy Regulatory Commission (Commission) is expanding its procedural regulations governing the authorization of natural gas facilities and services to offer prospective applicants seeking to construct, operate or abandon natural gas facilities or services the option, in appropriate circumstances and prior to filing an application, of using a collaborative process to identify and resolve significant issues. In addition, a

significant portion of the environmental review process can be completed as part of the pre-filing collaborative process. This process is comparable to the process the Commission adopted two years ago with respect to preparing applications for hydroelectric licenses, amendments and exemptions and, like those regulations, is optional and voluntary and is designed to be flexible and adaptable to the facts and circumstances of the particular case.

A prospective gas facility applicant may continue to use the standard authorization procedures (which do not require any pre-filing consultation process). After a pre-filing collaboration has begun, an applicant may switch to the standard procedures and file its application if it believes that the pre-filing collaborative process is not productive. The regulations do not delete or replace any existing regulations.

## II. Background

On September 30, 1998, the Commission issued a Notice of Proposed Rulemaking (NOPR)[1] to expand its procedural regulations governing the authorization of natural gas facilities and services, and to consider certain revisions in its procedural regulations governing applications for licenses, amendments and exemptions for hydroelectric projects. In response to the comments received[2] and discussions by staff with potential participants in technical workshops,[3] the Commission is adopting a final rule that offers an optional, pre-filing collaborative process to gas facility applicants and is not modifying any of the existing regulations for hydropower applicants.

Regardless of the process path the applicant selects, once the application is filed the Commission will review it for adequacy, publish a notice of it in the **Federal Register**, and invite comments and interventions. The Commission will then either complete or begin the NEPA process depending on the procedures that were employed in the pre-filing stage. In a standard process, the NEPA process will begin only after the filing of the application. In the pre-filing collaborative process promulgated herein, the NEPA process can begin prior to the filing of the application, and the Commission will complete the NEPA process after the application is filed.

## III. Discussion

### *A. Should the Pre-filing Collaborative Process be Authorized for Gas Applicants?*

In the NOPR, the Commission proposed a new § 157.22 of the regulations to allow potential applicants for gas facilities under sections 3 and 7 of the Natural Gas Act (NGA)[4] to choose a pre-filing collaborative process in preparing an application for filing with the Commission. As proposed, and as adopted herein, the potential applicant can obtain the assistance of Commission staff in preparing its application and begin the NEPA process in the pre-filing stage. Before undertaking a collaboration, the applicant must show that it has contacted entities interested in its proposal, a consensus exists to support the collaborative process, and a communications protocol among the entities has been negotiated. A successful collaborative process might conclude with the filing of a complete application with the Commission that includes a preliminary draft NEPA document (a preliminary draft EA or EIS). Depending upon the willingness of the participants, including the applicant and resource agencies, the process could also result in the filing of an agreement or an offer of settlement with the Commission that addresses issues raised by the application, and to the extent possible resolves within the pre-filing collaborative process related legal processes mandated by other agencies.

Many commenters representing pipelines supported adoption of the proposed pre-filing collaborative process for the gas industry as long as the final rule incorporates certain provisions to maximize its chances for success. In particular, these commenters believe that use of the collaborative process should be optional and voluntary for the applicant, the process should be limited to environmental issues, and the applicant should be able to terminate the process and file its application at any time.[5] One commenter took the same approach but wanted assurances that the collaborative process would not have as objectives the narrowing of areas of disagreement and the promotion of settlements, on the grounds that such efforts would distract from the NEPA process and lead to unnecessary delays. Another commenter was concerned that adoption of the proposed rule would have an adverse effect on existing and proposed practices aimed at streamlining the processing of gas applications by the Commission and would encumber pipelines in red tape, including restrictions and reporting requirements.[6]

Another commenter requested that the Commission clarify in the final rule that the process will not abridge the legal rights of any party to the subsequent Commission proceeding, and in particular, that all parties retain the right to protest all issues, including those addressed in the pre-filing process.[7] One gas industry commenter was opposed to the proposed rule, suggesting that it would not help to certificate needed pipeline construction under the NGA and is subject to a number of legal infirmities.[8]

State agencies expressed support for extending the opportunity to engage in a pre-filing collaborative process to potential applicants for gas facilities, citing their favorable experience with such procedures used by potential applicants for hydropower facilities.[9] Federal resource agencies that filed comments were generally supportive of pre-filing consultation processes, stating that such efforts have been helpful in addressing resource issues presented by hydropower applications.[10]

Environmental groups favor the proposed rule. One commenter asked the Commission to explain in more detail how it would work for the gas industry and what its benefits would be.[11] Landowners' comments generally favored improving Commission procedures in order to give landowners additional notice of pipeline proposals and the opportunity to express their views about them.[12]

We believe that the final rule adopted herein addresses and responds to the main concerns expressed by the gas industry and others in this rulemaking. As recommended by the commenters and discussed in the following sections, in the final rule we adopt a pre-filing collaborative process for potential applicants for gas facilities that is strictly voluntary, and the applicant may terminate the process at any time. We are neither prohibiting the

[1] FERC Stats. & Regs. (Proposed Regulations 1988–1998) ¶ 32,536 (Sept. 30, 1998), 63 FR 59916 (Nov. 6, 1998).

[2] The commenters (and abbreviations to identify them) are listed in Appendix A.

[3] Staff conducted technical workshops on the NOPR in Washington, D.C., Houston, Texas, and Chicago, Illinois, on November 5, 10 and 18, 1999, respectively.

[4] 15 U.S.C. 717b and 717f(c).

[5] *E.g.*, INGAA at 1–2, Williams at 2–3, Williston at 2–3.

[6] Enron at 2–4.

[7] AGA at 2–8.

[8] Indicated Shippers at 2–3 and 7–15.

[9] *See, e.g.*, Wisconsin DNR at 1–2. State agencies also made recommendations for improvements in the proposed rule, which are discussed in the following sections.

[10] *E.g.*, Commerce at 14, Interior at 1–2, EPA at 1, and Forest Service at 1,3.

[11] Trout Unlimited at 5–6.

[12] Ferguson & Tavares at 1–2, Smith at 4–5, and Southern Landowners at 2–3.

discussion of non-environmental issues in the process, nor requiring that such issues be addressed. It will be up to the applicants and the other participants in the process to decide which issues will be covered in each collaboration. We emphasize the flexibility of the pre-filing process and are open to working cooperatively with potential applicants and participants to design pre-filing processes that are helpful to all concerned and lay the foundation for expeditious proceedings on gas applications and full compliance with the NGA, NEPA and other applicable statutes.

We hope that the positive and open dialogue established by a pre-filing collaborative process may help other state and federal agencies to coordinate the exercise of their regulatory mandates with the Commission's and will foster the resolution of disputed issues and the submission of offers of settlement. But a successful pre-filing collaborative process does not require such results. We stress that adoption of the new, optional pre-filing process will neither prejudice the processing of any applications that are prepared by standard means (*i.e.,* absent pre-filing consultation), nor will use of the process curtail the legal rights of any party to intervene and participate fully in the Commission's post-filing proceedings. If a pre-filing process produces an agreement between the applicant and some or all of the participants, the applicant and participants may elect to treat the agreement as an offer of settlement and submit it in conjunction with an application. The offer of settlement will be treated like any other such offer, and be evaluated under the same legal standards that the Commission customarily applies.[13]

While we recognize that nothing in the NGA or the Natural Gas Policy Act (NGPA)[14] specifically authorizes the adoption of pre-filing collaborative procedures for gas applicants, we perceive no prohibition of such procedures in either act. We also believe that affording this procedural option furthers a number of important legal and policy objectives dedicated to streamlining and coordinating the regulatory process and makes it more flexible and responsive to citizens' concerns, including those expressed by business, consumer, and environmental interests.[15]

Many commenters mentioned that they thought that the time required to complete a pre-filing collaborative process would not shorten the time from initial proposal to Commission action and questioned why an applicant for gas facilities or services would undertake the process. In the technical workshops, the Commission's staff specifically asked about the time frames used by applicants to prepare gas applications. Since only one commenter filed a response to the staff's question,[16] the Commission is not in a position to determine whether the overall application preparation time of an applicant using a pre-filing collaborative process would be less, the same or longer than the preparation time of an applicant using the standard process (which does not require as much pre-filing consultation).[17]

*B. Should the Collaborative Process be Mandatory?*

Although the regulatory text in the NOPR proposed a pre-filing collaborative process for gas applicants that would be voluntary, the preamble to the NOPR asked whether the process should be made mandatory, not only for gas but also for hydropower applicants. The latter are currently using alternative pre-filing procedures that are similar to the collaborative procedures proposed in the NOPR for gas applicants; hydropower applicants may also use standard pre-filing consultation procedures that do not require the formation of a collaborative group.[18] The Commission invited commenters to describe the advantages and disadvantages of making the pre-filing collaborative process mandatory for all applicants (gas and hydropower) and to describe how the proposal might work, especially if there were no consensus among the participants that such a process would be useful. The Commission also asked whether applicants should at least be required to make a good faith effort to undertake such a collaborative process and what should be done if an applicant could not document that it had made such an effort.

Almost without exception,[19] commenters rejected the suggestion of mandating pre-filing collaboration for applicants for either gas or hydropower facilities. Commenters familiar with the alternative pre-filing process for hydropower applicants who use collaborative procedures stressed that the successful use of the process requires a strong consensus to support it. They contended that the Commission cannot mandate the cooperative attitude among the participants and applicant that is necessary for a productive collaboration; the willingness of participants and applicant to voluntarily support the process is critical.[20] Representatives of the hydropower industry also emphasized how helpful it is, when planning for the licensing of a hydropower project, to have current regulations that afford applicants a range of pre-filing options from which they may choose the process best suited to the preparation of their applications in each case.[21] Gas industry commenters agreed, favoring flexibility in preparing their applications but stressing that timely approval of gas projects is often crucial to their viability. Many were concerned that requiring the use of pre-filing collaborative procedures in all cases might add significantly to the time and expense needed to obtain authorization for a proposal, which could preclude or end some time-sensitive project proposals.[22] Gas commenters further stated that the proposed requirement that all applicants demonstrate at least a good faith attempt to initiate a pre-filing collaborative process would place an additional administrative burden on the applicant and would not serve any useful purpose.[23]

Commenters favoring voluntary collaboration[24] noted that gas certificates and abandonments cover a

[13] *See* 18 CFR 385.602 of the Commission's rules of practice and procedure.

[14] 15 U.S.C. 3301–3432.

[15] *See* 40 U.S.C. 101.

[16] El Paso at 8–9.

[17] INGAA is concerned that the new collaborative process could curtail existing pre-filing procedural rights. We clarify that nothing in the new regulations will displace or replace present pre-filing options. The new regulations provide prospective applicants an additional means to engage in discussion with interested persons prior to filing.

Trout Unlimited observes that not all proposed gas projects make promising candidates for a collaboration and thus requests that the Commission consider other forms of early public involvement. We note the existing procedural rights alluded to above constitute one such alternative; another is contemplated in the NOPR on Landowner Notification, Residential Area Designation, and Environmental Filing Requirements, 64 FR 27717 (May 21, 1999), IV FERC Stats. & Regs. ¶ 32,540 (Apr. 28, 1999).

[18] 18 CFR 4.38 and 16.8.

[19] EDF at 2. EDF advocated requiring all applicants for natural gas facilities and services to demonstrate that they have made a good-faith effort to undertake a pre-filing collaboration.

[20] NHA at 2–6; Northwest at 3–6; EEI at 9–12; CRITFC at 1–2; HRC at 4–6; EPA; Commerce at 2; Interior at 7–8; NY DEC at 2.

[21] SoCal Ed at 3–5; Sacramento at 2–3; California Water at 3–6; PG&E at 9.

[22] AGA at 6–7; ANR at 3; El Paso at 14–17; Great Lakes at 6; Tejas at 5–6; Williams at 7; Williston at 4.

[23] AGA at 4; PG&E at 14–15.

[24] Among those favoring a voluntary process are California Water at 1; Great Lakes at 2–4; INGAA at 2; Nicor at 3–4; PG&E at 7–9, 16; Industrials at 4–8; Sempra at 2; Williams at 6–7; Wisconsin DNR at 1–2; and Williston at 3–4.

broad range of different types of projects, and asserted that pre-filing collaboration will be ineffective for at least some of these projects. Commenters pointed out that prospective project sponsors are in the best position to judge whether a collaborative process is likely to be fruitful and should therefore have the flexibility either to request a pre-filing collaboration or to file an application without using such a process.

In view of the comments, the Commission will not mandate that all project applicants engage in a pre-filing collaboration or explain why efforts to do so were unavailing. The final rule adopts regulations similar to those proposed in the NOPR in order to offer applicants for gas facilities or services the option of undertaking a pre-filing collaboration. Those applicants may continue to use the standard certification procedures (which, for gas applicants, do not require any pre-filing consultation process). After a pre-filing collaboration has begun, the applicant may switch to the standard procedures and file its application if it believes that the pre-filing collaborative process is not productive.

*C. Should the Collaborative Process be Extended to Include a Draft EIS or Draft FEIS?*

In the preamble to the NOPR, the Commission asked whether it would be appropriate to extend the pre-filing collaborative process beyond the stage of preparing a preliminary draft NEPA document, as provided under current regulations for hydropower applicants and proposed in the NOPR for gas applicants. The Commission asked whether it would be appropriate for Commission staff, in the pre-filing stage, to issue a draft EIS and for participants in a pre-filing collaborative process to review the comments on the draft EIS and prepare either a final EIS or a preliminary draft of a final EIS. The Commission asked whether such a process should be permitted prior to the filing of the application, without first issuing a notice inviting interested persons to intervene as parties to a formal proceeding.

While a few commenters thought that the Commission should consider extending the NEPA process (prior to the filing of an application) beyond the point allowed by current regulations for hydropower applicants (*i.e.*, the preparation of a preliminary draft EA or EIS),[25] most commenters thought that such a proposal was ill-advised and may be illegal.[26] Commenters stated that the proposal would complicate the pre-filing collaborative process and could undercut one of its central purposes, allowing the applicant to craft a proposal in its application that would respond to the resource concerns raised by the participants in the pre-filing process. An attempt to carry NEPA further in the pre-filing stage may entangle the pre-filing collaboration with the Commission's post-filing review and decision-making process, which should not commence until after the application is filed and a legal proceeding begins, with all its attendant protections for parties.

We agree with the majority of commenters on this issue. The rulemaking establishing the alternative pre-filing procedures for hydropower applications carefully balanced the interests of accelerating the NEPA process by beginning it, with staff's assistance, in the pre-filing stage, against the interests of preserving the Commission's responsibilities—under the Federal Power Act (FPA),[27] NEPA, and other applicable statutes—to conduct its own independent review of the application after it has been filed. That balance is best accomplished as the current hydropower regulations provide, by ending the pre-filing process with the preparation of an application and a preliminary draft EA or EIS. Only after the filing of these documents in conjunction with an application will the Commission complete the NEPA process by issuing a draft EA or EIS. Then, in light of the comments received, and any additional analysis and review deemed necessary, the Commission issues the final EA or EIS, followed by a decision on the application.[28] To try to carry the NEPA process further in the pre-filing stage would upset this balance, raise the risks outlined by the commenters, and call into question the integrity of the Commission's review and decision-making processes.

*D. Should there be Deadlines on the Collaborative Process?*

The proposed rule required the submission of certain reports by the applicant in the course of the pre-filing collaborative process, allowed the participants in the process to set reasonable deadlines for requests for scientific studies or alternative route analyses, and provided that the Commission may set deadlines for preliminary resource agency recommendations, conditions, and comments, to be submitted in final form after the filing of the application with the Commission.[29]

The Commission invited comment on whether any limitations of time should be placed on the pre-filing collaborative process and, if so, what time limits might be appropriate. Comment was sought on how best to ensure that all participants in the process have a full and fair opportunity to participate in a manner that facilitates cooperative progress within a reasonable time frame.

Some commenters wanted the Commission to set deadlines for pre-filing processes and participants in order to avoid delaying the filing of certificate applications.[30] One commenter suggested the potential applicant propose time limits for a collaboration in its initial request to employ the pre-filing process.[31] Another commenter argued that participants and Commission staff should follow through to establish a post-filing schedule for submitting comments, data, and documents.[32]

Other commenters observed that establishing deadlines can be effective in moving hydropower alternative pre-filing processes along, but concluded that given the relatively short period that this process has been in effect for hydropower applicants, it would be premature for the Commission to set time limits on the pre-filing process.[33]

Many commenters wanted to avoid any Commission-imposed deadlines on the pre-filing process, preferring that the collaborative participants concur on deadlines.[34] Concerns were expressed that any fixed time limit applied across the board to the wide variety of possible processes would be arbitrary and burdensome[35] and that such constraints might pressure participants into making unwanted concessions.[36] One commenter observed that any imposition of time limits in the pre-filing process must not conflict with the time frames provided under the regulations of the affected agencies.[37]

In light of the commenters' concerns, we see no reason to establish in the final rule any general deadlines for

[25] *E.g.*, EEI at 12 and Northwest at 7.

[26] *E.g.*, California Water at 7–9, Interior at 5, Commerce at 3–4, PG&E at 10–11, and HRC at 3.

[27] 16 U.S.C. 791a *et seq.*

[28] Although not required by NEPA, the Commission in its hydropower licensing program issues draft EA's for comment.

[29] Proposed 18 CFR 157.22(f)(2), (7) and (8).

[30] Industrials at 8; SoCal Ed at 7–8; NY DEC at 4, citing proposed 18 CFR 157.22(f)(8).

[31] PG&E at 17.

[32] Forest Service at 2.

[33] California Water at 10.

[34] Wisconsin DNR at 2; Interior at 6–7; Forest Service at 2; Commerce at 2–3; and AGA at 8.

[35] PG&E at 11, 17; Forest Service at 2; Interior at 7; AGA at 8.

[36] Wisconsin DNR at 2.

[37] Advisory Council at 2, citing 36 CFR part 800.

completion of stages in the pre-filing collaborative process; this issue is best left to the potential applicant and the participants in each process to decide. A collaborative process must be flexible.

We do not anticipate that any deadlines agreed upon in the pre-filing collaborative process, or any set by the Commission in the proceeding on the filed application, would conflict with those set by other agencies with related authorities. Should such a conflict arise, we believe it can be resolved on a case-by-case basis.

It would not be appropriate to add specific provisions for the Commission to confer with a collaborative group to establish deadlines after an application is filed. Once an application has been filed, existing Commission practices and regulatory deadlines come into effect in the context of an administrative proceeding, and all deadlines will be set in reference to established Commission regulations, practices and procedures applicable to such proceedings. As appropriate, the Commission will consult with parties in setting such deadlines.

*E. Should the Collaborative Process be Limited to Environmental Issues?*

The NOPR noted that there are sometimes contentious non-environmental issues that may undermine successful collaboration in a pre-filing consultation process and sought comment on whether the process for gas applicants should address only the environmental issues associated with the potential application. While the main focus of the NOPR was to propose regulations that would allow for resolution of environmental issues prior to the filing of applications, the NOPR asked whether the collaborative process should be extended to non-environmental issues such as the need for the project, a comparison with competing projects, capacity allocation, rates, and the effects of abandonments on existing customers.

Some commenters believed that both environmental and non-environmental issues should be considered in the pre-filing process, at least in its initial phases, with the participants ultimately deciding the scope of issues to be addressed.[38] The majority of the commenters, however, stated that the pre-filing process should deal exclusively with environmental issues.[39]

The competitive nature of many NGA applications was most frequently cited as the reason why non-environmental issues should not be made part of the pre-filing process. Some of the commenters expressed concern that certain entities might try to use the pre-filing collaborative process as a means to delay the preparation and filing of applications of competitors, which would be contrary to the Commission's policy of promoting competition in the industry.[40] Several commenters asserted that allowing the pre-filing collaborative process to address non-environmental issues would cause unnecessary delay, emphasizing that the Commission's existing procedures are sufficient to address such topics as the need for a project, rate design, and other market-based issues.[41]

Commenters had varied opinions as to what constitutes environmental issues, with one commenter requesting that the Commission clarify what is an environmental issue.[42] While there was general agreement that issues such as need, capacity allocation and rates should not be included within the review of environmental issues, some commenters considered such issues as alternatives to a certificate proposal, landowner matters, terms of service, and related market and competitive matters to be non-environmental issues.[43] Other commenters expressed the view that it would be difficult, if not impossible, to differentiate between environmental and non-environmental issues.[44] Many commenters stated that the stakeholders involved in a collaborative team should be the ones to decide what issues will be addressed in the pre-filing process.[45]

We agree with the commenters that propose that the potential gas applicant and participants in any pre-filing process should determine the range of issues to be addressed in a collaboration. While the final rule adopted herein sets forth procedures for establishing a pre-filing collaborative process and the preparation of a preliminary draft NEPA document, nothing in it precludes the applicant and the participants from voluntarily deciding to use the process to address non-environmental issues which are not required to be a part of the NEPA process.

*F. Procedural Questions*

(1) Notice

As proposed in the NOPR, § 157.22(c)(1) of the rule required an applicant contemplating a pre-filing collaboration to make a ''reasonable effort'' to contact all ''resource agencies, Indian tribes, citizens'' groups, landowners, customers, and others affected by the applicant's proposal.'' Proposed § 157.22(c)(3) would require such an applicant to send a copy of its request to use the pre-filing collaborative process to the same entities. Under § 157.22(d)(1), the applicant's request must include provisions to distribute a description of its proposed project (including its intended purpose, location and scope, and the estimated dates of construction) at an initial information meeting (or meetings) open to the public. Pursuant to § 157.22(e), the Commission will publish in the **Federal Register** a notice of the request to initiate a pre-filing collaborative process and invite comments on the request. The Director of the Office of Pipeline Regulation (OPR) will review the comments submitted on the applicant's request and decide whether to approve the proposed process.

If a request to use the process is approved, under § 157.22(f)(1), the Commission will give notice in the **Federal Register**; the applicant will give notice in local newspaper(s) in the county or counties in which the project is proposed to be located, of the initial public meeting(s) and, subsequently, the scoping of environmental issues.[46] Under § 157.22(f)(5), the applicant must maintain a public file of all the relevant documents generated during the process, and the Commission will maintain a public file of the initial description of the proposed project, each scoping document, the periodic reports on the process and the preliminary draft EA or EIS. Under § 157.22(f)(4), the applicant must send copies of all these filings to each participant in the pre-filing collaborative process that requests a copy.

Some commenters contended that these procedures are inadequate to ensure that all interested parties: (1) Receive actual notice of the intent to

[38] Interior at 5; NY DEC at 2; Nicor at 5; NHA at 5.

[39] INGAA at 5; Williston at 5; Great Lakes at 7; Sempra at 2; Williams at 3; Industrials at 7; Duke at 11–12; AGA at 2.

[40] Industrials at 8; AGA at 6; and Great Lakes at 6.

[41] Williston at 5–6; Great Lakes at 6; Sempra at 2; Williams at 5; and Duke at 19.

[42] Duke at 20.

[43] Sempra at 2; Williams at 3; Industrials at 7; Duke at 12.

[44] Interior at 4; Nicor at 5.

[45] NHA at 7; Nicor at 5; Interior at 4; NY DEC at 2.

[46] In the interest of simplifying the process, we have deleted proposed 18 CFR 157.22(f)(2), which would have required the potential applicant to file periodic progress reports with the Commission. We have also deleted proposed 18 CFR 157.22(b), describing the goals of the process, because those goals are adequately described in the preamble herein and do not need to be articulated again in the regulatory text.

initiate a collaboration; (2) are informed that a collaboration has been initiated; and (3) have a meaningful opportunity to participate and be heard in a collaboration.[47]

Some commenters proposed that notice of the request to use the collaborative process be sent by certified mail to all landowners directly impacted by a proposed project.[48] One commenter expressed concern that without confirmed notification trespassing[49] may occur.[50] This commenter also asked: (1) Whether the Commission will verify that the list of contacted landowners is accurate and complete; (2) how participants will be informed of relevant Commission filings; and (3) how participants can obtain information about scientific studies and alternative route analyses and deadlines therefore.[51]

One commenter was concerned that once underway, a pre-filing collaborative process may so change the parameters of a proposed project that it may affect persons whom the applicant did not initially inform. That commenter urged us to adopt some means to inform and bring such persons into an ongoing collaboration.[52]

One commenter requested that the Commission clearly state how the universe of potentially interested entities is to be defined and urged that the Commission require the applicant to include the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) in any pre-filing collaborative process.[53]

One commenter requested that the Commission describe in greater specificity the minimum required contents of the project description included in the applicant's initial notice.[54] To ensure that participants have a full understanding of the collaborative process, that commenter proposed that the Commission publish an explanation with guidelines covering the process and require that the applicant distribute these guidelines to potentially interested entities with its initial notice of its request to undertake a pre-filing collaboration.

We believe that with the changes discussed herein, the notice procedures proposed in the NOPR should be adopted. In the final rule, § 157.22(c)(1) requires an applicant to make a reasonable effort to contact ''all entities affected by the applicant's proposal.'' As revised herein, § 157.22(c)(3) requires the applicant, within five days, to send a copy of the request to use the pre-filing collaborative process on ''all affected resource agencies and Indian tribes and on all entities that have expressed an interest in the collaborative process.''[55] The Commission will publish notice of the request in the **Federal Register**. If the use of the pre-filing process is approved, the applicant must conduct a public meeting or meetings at which a description of its proposed project will be distributed. The Commission will give notice in the **Federal Register** and the applicant will give notice in local newspapers of the initial public meeting(s) and of the scoping of environmental issues.[56] As the pre-filing process unfolds, the applicant must keep a complete file, open to the public, of the process; essential information about the process must be submitted to the Commission for insertion into its public file, and copies of these filings must be sent to each participant in the process that requests a copy. In addition, the regulations require the negotiation of a communications protocol, governing the flow of information between the participants in the process.

The notice procedures for the pre-filing collaborative process for potential gas applicants are similar to the comparable procedures now in effect for hydropower applicants. We are not aware of any significant noticing problems under the hydropower procedures. We do not think it is useful to try to describe further in the final rule the universe of potentially interested entities. We note the Commission will have the opportunity to review the adequacy of the applicant's notification efforts when deciding whether to permit a potential applicant to use the pre-filing collaborative process. Further, the Commission's staff will work closely with the applicant and participants during the process to ensure appropriate efforts are made to inform interested persons of the proposed project and of any subsequent changes to the initial proposal.[57]

We note that the regulations require that notice of the request be sent to resource agencies and Indian tribes. We believe that this notice, along with the required **Federal Register** notice, is sufficient to alert the SHPO or THPO that a pre-filing collaborative process is being considered. In response to the concerns raised in the comments and to clarify these noticing requirements, we are adding in the final rule, at new § 157.1, definitions of ''Indian tribe'' and ''resource agency.'' These definitions are based on similar definitions in the Commission's hydropower regulations, which apply to potential hydropower applicants using the standard or alternative pre-filing consultation processes.[58]

We believe that the concerns about notification to landowners are adequately addressed by the provisions in the final rule, along with the regulations proposed in Docket No. RM98–17–000,[59] which include prompt notification to landowners by mail once an application for gas facilities is filed with the Commission. We are not persuaded that there is any need in the pre-filing process for the applicant and the Commission to provide landowners' notice by certified mail.

How all types of information, including studies and analyses that are part of the NEPA process, are distributed and made available to the public is an issue we expect that the applicant and participants will take up, resolve, and make part of the communications protocol to be filed with each request for a collaborative process.

We do not believe it is appropriate to specify further in the regulations what description of the proposed project the potential applicant must make in its notices and what procedures may be used for participating in the pre-filing collaborative process. We believe the project description required by the final rule is both broad and particular enough to alert entities to proposals that they may want to monitor or participate in. As far as the procedural steps in a collaborative process and the

[47] Advisory Council at 1–2; Indicated Shippers at 8–12; Trout Unlimited at 3–4.

[48] Ferguson & Tavares at 1; Southern Landowners at 2–3.

[49] Trespass is governed by state law, and is not affected by the final rule because the rule adopts procedures that apply prior to the issuance of a certificate. Specific allegations of trespass may be referred to the Commission's Enforcement Task Force Hotline at (202) 208–1390 or (877) 303–4340 or by E-mail to hotline@ferc.fed.us.

[50] Ferguson & Tavares at 1.

[51] Id.

[52] Indicated Shippers at 12.

[53] Advisory Council at 2.

[54] NY DEC at 3.

[55] The regulatory language adopted herein is based on 18 CFR 4.43(i), which is applicable to hydropower applicants using the alternative pre-filing consultation process.

[56] The timing and sequencing of notices of environmental scoping may vary considerably among different projects and collaborative processes.

[57] The Commission encourages applicants and participants, to the extent practical on a case-by-case basis, to consider making use of the Internet to supplement the notification procedures mandated herein.

[58] See 18 CFR 4.30, 4.34(i), 4.38 and 16.8.

[59] Landowner Notification, Expanded Categorical Exclusions, and Other Environmental Filing Requirements, Notice of Proposed Rulemaking, 64 FR 27717 (May 21, 1999), IV FERC Stats. & Regs. ¶ 32,540 (Apr. 28, 1999).

participants' roles are concerned, we will leave that up to the applicant and the collaborative participants to decide in each case. To assist interested entities in developing an understanding of these types of processes and their role in the Commission's regulation of gas projects, we are incorporating into § 157.22(c)(3) of the final rule a requirement that a potential applicant requesting to use a pre-filing collaborative process must include a copy of the regulations adopted herein when it is sending notice of its request to all affected resource agencies, Indian tribes, and entities that have expressed an interest in the process.[60]

(2) Involvement of Commission Staff

Some commenters asked why Commission approval should be required for an applicant to use a pre-filing collaborative process.[61] It is not necessary for applicants to seek Commission approval for activities which take place without substantial involvement by Commission staff and without the preparation of a draft NEPA document.

One commenter urged the Commission to describe in greater detail the benefits available through use of the process and to clarify the role and purpose of Commission staff involvement.[62] The role of Commission staff is to guide and support the pre-filing process but not to lead or direct it. Participants in the process may choose a ''neutral,'' such as a facilitator or mediator, to coordinate the collaborative group's efforts, and this role may be filled by any person that the group selects.[63]

(3) Consensus

As proposed in the NOPR, and as adopted herein in § 157.22(b)(1), a potential applicant requesting to use a pre-filing collaborative process must contact entities affected by its proposal and demonstrate that a ''consensus exists that the use of the collaborative process is appropriate under the circumstances.'' Under § 157.22(f), a participant that has cooperated in the pre-filing process can petition the Commission for an order to terminate the process if a consensus to support it no longer exists and if continued use of the process would not be productive.[64] In the NOPR, we explained that the requirement for a consensus means that ''the weight of opinions expressed makes it reasonable to conclude that under the circumstances the use of the collaborative process will be productive.'' The applicant's consent to use of this process would be required, but the agreement of everyone interested in the proposal would not be required for the Commission's approval of the process. The term ''consensus'' is also used in § 157.22(f), providing that if a consensus supporting use of the process no longer exists, a participant can petition the Commission for an order directing the applicant to use appropriate procedures to complete its application.

A number of commenters requested clarification regarding the criteria the Commission will use in determining whether to approve or deny an applicant's request to initiate a pre-filing collaborative process.[65] One commenter argued that ''consensus'' should be defined as ''unanimous agreement by the various stakeholders,''[66] while other commenters urged that the Commission not approve a request to use a pre-filing collaborative process unless ''critical constituencies'' or a majority of the ''customers/shippers'' that may use the proposed facilities endorsed the process.[67]

One commenter was unclear if the Commission, in considering comments in response to a request to initiate a collaboration will, pursuant to proposed § 157.22(e), accept comments only from entities previously notified by the applicant or will also accept comments from entities not so notified. That commenter recommended revising proposed §§ 157.22(c) and (e)[68] to specify whether the Commission may compel an applicant to admit a late-arriving interested entity to an ongoing collaboration.[69]

The Commission addressed similar concerns in the rulemaking adopting the regulations governing the alternative pre-filing process for hydropower applicants.[70] Our subsequent experience with those regulations does not lead us to change the conclusion we reached at that time. For the purposes of determining whether the Commission should grant an applicant's request to use the pre-filing collaborative process and determining whether such a process should be allowed to continue, ''consensus'' means ''general agreement'' or ''collective opinion: The judgment arrived at by most of those concerned.'' While unanimity among the participants in a collaborative process reflects consensus, it is not essential to support a consensual approach. In its request to use the pre-filing collaborative process, the applicant need only show that the weight of opinions expressed by the entities interested in the process makes it reasonable to conclude that under the circumstances use of the process will be productive. No signed agreement or use of a particular voting procedure is required to memorialize the consensus on use of the process. The Commission will apply similar standards in evaluating any petition alleging that the consensus for the process has collapsed and asking for an order to bring it to a conclusion.

As stated in Order No. 596, the Commission expects the potential applicant, prior to filing its request to use the pre-filing collaborative process, to engage in a series of interactions with those who may be interested in its proposal, going beyond an exchange of letters. Such interactions could include teleconferences and meetings involving Commission staff to explore the use of the process. In some cases the applicant's showing in support of its request to use the process may rely on a lack of objections raised in such meetings, in order to allow the applicant and the participants an opportunity to try the process. Where the position of potentially key players in a collaborative process is not clear, the Commission's staff may reach out to solicit their position before reaching any decision on a request to use the process. If entities that appear to be key players oppose the use of a collaborative process, we will carefully weigh whether the process should be allowed to proceed under these circumstances, and staff may hold discussions with those concerned to try to find ways to reconcile different views on the use of the process.

[60] As a means to inform potentially interested persons of procedures generally applicable to pipeline projects, the Commission has made available to the public, in pamphlet form, answers to questions frequently asked concerning gas certificate applications. In the event the need arises for a similar procedural summary or a set of guidelines with respect to the pre-filing collaborative process for gas facilities, the Commission will make it available in the same manner.

[61] Martin at 1, Enron at 3.

[62] Trout Unlimited at 5–6.

[63] In the interest of simplifying the process, we have deleted proposed § 157.22(f)(9), which would have authorized participants to request dispute resolution by the Commission.

[64] The petitioner must also serve a copy of the petition on all participants and recommend specific procedures for completing the pre-filing process.

[65] *E.g.*, NY DEC at 3–4.

[66] Interior at 3.

[67] Industrials at 8–10; EDF at 2.

[68] Because of our deletion of several subsections of the regulations that were proposed in the NOPR, as mentioned above, proposed §§ 157.22(c) and (e), as well as other subsections, have been renumbered in the final rule.

[69] NY DEC at 3.

[70] Order No. 596, 62 FR 59802 (Nov. 5, 1997), III FERC Stats. & Regs. ¶ 31,057 at 30,638–39 (1997).

We are therefore not making any changes in the final rule regarding ''consensus'' as it applies to requests to use or to discontinue the pre-filing collaborative process. Likewise, we do not believe that it would be appropriate to specify criteria that the Commission will use in making decisions on such requests, beyond the general considerations outlined above.

We clarify that in deciding whether to approve an applicant's request to use the pre-filing collaborative process, under § 157.22(d) (as it is numbered in the final rule), all timely submitted comments will be considered, whether in response to actual notice by the applicant or not.

Because the procedures for the pre-filing collaborative process in the final rule provide for abundant notice to potentially interested persons and entities, as discussed above, latecomers may enter as participants provided they do not delay or disrupt the process, *i.e.*, latecomers must deal with the applicant and the collaborative group that has formed and with any ground rules that have already been established. For these reasons we strongly encourage those interested in an applicant's proposal to participate from the outset in any pre-filing collaborative process that is authorized, if not directly then indirectly through others with similar interests. At the very least, we expect interested entities to monitor the progress of a collaboration through the many sources of public information that the rule requires.

(4) *Concluding the Pre-Filing Process*

As noted above, under proposed § 157.22(g)[71] a participant that has cooperated in the pre-filing process can petition the Commission for an order to terminate the process if a consensus to support it no longer exists and if continued use of the process would not be productive. The request must recommend specific procedures that are appropriate to use to complete the process, and the petition must be served on all the other participants in the process.

One commenter requested that proposed § 157.22(g) be modified to state that when a participant submits a petition to the Commission claiming that a consensus no longer exists to support the process, other participants may submit comments in response to that petition.[72] The commenter also asked whether a collaboration might continue without the participation of the applicant and proposed that the Commission describe the circumstances under which it would intervene to end a pre-filing collaborative process.

Several commenters were concerned that proposed § 157.22(g) would impede a prospective applicant's right to file an application with the Commission at any time and, by so filing, end a pre-filing collaborative process at the applicant's discretion.[73] Another commenter suggested that if a pre-filing collaboration stagnates, the Commission might require the applicant to show cause why pre-filing efforts should not end and an application be filed.[74]

When a participant in a pre-filing collaborative process believes that the consensus supporting the use of the process has collapsed and petitions the Commission for an order terminating it, other participants may submit a response to the Commission. Any such response should be served on all other participants and submitted to the Commission as soon as possible. In seeking to determine whether a consensus still exists to support continuation of the process, the Commission will consider both the petition and timely responses to it. With this clarification, we see no need to revise proposed § 157.22(g) in the final rule.

The proposed regulations were not intended to preclude an applicant from withdrawing from and ending an ongoing pre-filing collaborative process by filing an application, which an applicant may do under current practice and procedures. As stated in the preamble to the NOPR: ''Entering into a pre-filing collaboration will not bar an applicant from interrupting pre-filing efforts by exercising its existing option to file an application.'' In response to the concerns expressed in the comments, and in order to ensure that the new regulations in no way intrude on a project sponsor's existing rights, in the final rule we are adding a new § 157.22(h) to clarify that these rights are not affected by the rule.

We are also changing the first sentence of proposed § 157.22(g) to make it clear that any order issued in response to a petition will only end the pre-filing process and will not affect the applicant's existing right to file an application for the proposed facilities.[75]

(5) Offer of Settlement

The NOPR anticipated that one outcome of a pre-filing collaborative process could be a settlement or agreement on issues by the participants. The results could be submitted to the Commission with the application and the preliminary draft NEPA document as an offer of settlement covering all or certain issues raised in the process, as a stipulation of facts, or in conjunction with certain documentation (such as studies that have been conducted pursuant to the process).

Commenters requested that the Commission clarify in the regulations whether an agreement or offer of settlement resulting from a pre-filing process is binding on all the participants in the process and pointed out that in some cases such settlements may not satisfy criteria established in applicable statutes and regulations.[76]

One commenter was concerned that entities opposing a collaboration are left no option but to refuse to participate, risking exclusion from ''a settlement that would effectively moot the formal proceeding before the Commission.''[77]

The manner in which a settlement is binding on signatories is a matter properly described in the language of the settlement. The terms of a settlement may bar signatories from protesting certain aspects of an application. We note, however, that no provision in the Commission's regulations restricts a collaborative participant or non-participant from intervening, commenting on, and protesting any aspect of an application or settlement. Collaborative participants that are non-signatories to a settlement or agreement are obviously not committed to the terms of that settlement or agreement.[78]

In any proceeding on an application in which an offer of settlement is filed, the Commission will carefully review the offer, including all comments supporting or opposing it, to determine whether the settlement proposed complies with all applicable legal standards and Commission policy. The Commission will not approve any offer unless it is supported by substantial evidence such as documents and studies. When evidence is developed in

[71] Proposed § 157.22(g) appears as § 157.22(f) in the final rule.

[72] NY DEC at 3–4.

[73] El Paso at 19–20; Enron at 3; Great Lakes at 4–5; INGAA at 4; PG&E at 18; Tejas at 14–15; Williston at 6–7.

[74] Commerce at 2–3.

[75] Hydropower applicants using the alternative pre-filing procedures may be subject to different requirements in such a case, as they must fulfil detailed pre-filing consultation requirements under the standard process. *See* 18 CFR 4.38 and 16.8.

[76] NY DEC at 3, Advisory Council at 2.

[77] Indicated Shippers at 10.

[78] *See, e.g.,* Kern River Gas Transmission Company, 87 FERC ¶ 61,128 at 61,506 (1999), in which the Commission found that a party had not been afforded the opportunity to participate in discussions leading to a rate settlement, and ''in the spirit of the effort already expended,'' withheld ruling on the pending settlement while the Director of the Commission's Dispute Resolution Service convened ''a meeting of the parties to arrange a process that will foster negotiation and agreement.''

the course of a pre-filing collaboration, the applicant should include such information in the administrative record in the proceeding on the application.

(6) Post-Filing Changes in Proposed Facilities

The NOPR did not address the impact of an applicant's participation in a pre-filing process on its rights to revise its proposal after filing an application with the Commission.

One commenter stated that, in the past, changed circumstances have compelled it to modify the terms of a requested authorization after the application was initially filed and expressed concern that pre-filing discussions cannot anticipate or address such changes to a proposal that may become necessary after filing.[79] This commenter claimed that the existing certificate process is flexible enough to accommodate such post-filing changes and was concerned that understandings reached in a pre-filing collaboration could inhibit or delay the submission of amendments (incorporating such changes) to an application that has been filed.

The final rule does not restrict an applicant's ability to make changes to the parameters of a proposed project after the application is filed. Depending on the extent of the changes, the application may need to be amended or refiled. An applicant may make a post-filing change in a project that raises issues that go beyond those addressed in the pre-filing process. Such post-filing changes may well reflect the applicant's reasoned response to recommendations received in the pre-filing process or in the post-filing review, including the NEPA process. The new regulations will not in any way inhibit or delay an applicant from making changes to a proposed project.

The pre-filing process is not designed to compel an applicant to bind itself to build or abandon a project as initially proposed. In the context of a collaboration, a project sponsor may, but need not, make commitments that vary in their rigidity and enforceability as a means to firm up support for or satisfy critics of a project. Such efforts are no different from the precedent agreements gas pipelines have secured under existing procedures to show demand for proposed new capacity. Similarly, in order to address concerns raised by landowners or resource agencies, pipelines have often committed to routing a proposed line along a particular right of way prior to filing an application. An applicant may feel bound to honor such commitments made prior to filing, whether as part of a pre-filing collaborative process or not.

Of course parties to a proceeding on an application for gas facilities, including parties that did not participate in the pre-filing process, may oppose the application as initially filed or as revised or amended. The Commission will consider any such opposition prior to issuing a decision on the application.

*G. Miscellaneous*

(1) Study Requests Made during the Pre-filing Process

The section proposed in the NOPR as § 57.22(f)(7) and adopted herein as § 157.22(e)(6) states in part: ''Additional requests for studies may be made to the Commission after the filing of the application only for good cause shown.''

One commenter noted that an applicant may not conduct all the studies requested by participants in the pre-filing process, and sought assurances that the regulations do not preclude a participant in the process from renewing its request for a study that had been made by the participant and had been rejected by the applicant in the pre-filing stage. Specifically, the commenter requested that the language in proposed § 157.22(f)(7) be changed to substitute ''study requests'' for ''additional requests for studies.''[80]

We do not believe it is necessary to change the language in § 157.22(f)(7). We confirm that participants (including resource agencies) in a pre-filing process (either gas or hydropower), after an application has been filed, are free to renew requests for studies that were made but rejected by the applicant in the pre-filing process. In such cases, however, we encourage the participants to make every effort to resolve their differences with the applicant as part of the pre-filing process and to consider the filing of a request for dispute resolution with the Commission in the pre-filing stage if such efforts are not successful.

(2) Communications Protocol

Section 157.22(c)(2) as proposed in the NOPR, adopted herein as § 157.22(b)(2), states that an applicant seeking to undertake a pre-filing collaboration must submit with its request ''a communications protocol, supported by interested entities, governing how the applicant and other participants in the pre-filing collaborative process, including the Commission staff, may communicate with each other regarding the merits of the applicant's proposal and recommendations of interested entities.'' The NOPR stated that this protocol would designate how communications in the pre-filing process would be documented and made available to the participants and the public.

One commenter asked the Commission to provide more guidance regarding the required communications protocol, including what such a protocol must include or may exclude, how it may be implemented, and the consequences for violating it.[81] Another commenter was concerned that the applicant may exert undue influence over a group's development of the communications protocol and therefore urged the Commission to impose its own protocol on all collaborative groups.[82]

The communications protocol governs how the applicant, Commission staff, and participants in the pre-filing collaborative process may communicate with each other during the process. The protocol should specify how such communications will be documented and made available to the participants and the public.[83] Because we want to leave the applicant and participants room to tailor the protocol to suit the particular circumstances of each collaborative process, we will not add requirements to the final rule specifying the content or manner of implementation of a protocol. When an applicant files its request to use the pre-filing collaborative process, the Commission will have the opportunity to review the proposed communications protocol and prospective participants' comments regarding it before deciding whether to authorize the requested pre-filing collaboration. We can reject the protocol or require revision of its terms if they are inadequate, inappropriate, or prejudicial in any way.

(3) Record in Certificate Proceedings

Section 157.22(e)(5) as adopted herein (§ 157.22(f)(6) in the NOPR) states: ''An applicant authorized to use the pre-filing collaborative process may substitute a preliminary draft environmental review document and additional material specified by the Commission instead of an environmental report with its application as required by § 380.3 of this chapter and need not supply additional

[79] Tejas at 11–12.

[80] *Id.*

[81] Industrials at 10.

[82] Smith at 3.

[83] The Commission staff can provide examples of communications protocols that have worked on hydropower projects and can assist the applicant and participants in defining the necessary elements.

documentation of the pre-filing collaborative process with its application. The applicant will file with the Commission the results of any studies conducted or other documentation as directed by the Commission, either on its own motion or in response to a motion by a party to the proceeding.''

One commenter asked the Commission to clarify whether ''additional material'' is to include documentation sufficient to satisfy the identification and evaluation requirements of section 106 of National Historic Preservation Act.[84] Other commenters asked whether any portion of pre-filing discussions would become part of the record after the application is filed with the Commission[85] and, if the post-filing record rests on the pre-filing discussions, whether dissenting points of view would appear in the record.[86]

We expect that the information submitted with the application after a pre-filing process would be equivalent to that normally submitted pursuant to § 380.3, for purposes of evaluating the consistency of the application with the National Historic Preservation Act and other relevant statutes.

We expect that only pertinent parts of the information gathered in the pre-filing process will become part of the record of the proceeding once an application has been filed.[87] At the conclusion of the pre-filing process, the applicant and the collaborative group should decide what information they wish to become part of the administrative record in the proceeding on the application, and that information should be submitted to the Commission with the application.

Any party to the proceeding, regardless of whether it participated in the pre-filing process or whether it supports the application, may seek to enter additional information into the record to support the party's position, and if necessary or appropriate, the Commission may direct such information to be submitted.

(4) Rights of Parties

Currently, once an application is filed, interested persons can intervene, comment, and/or protest. Several commenters emphasized that it would be inappropriate if this existing process were curtailed in any way with respect to applications filed following a collaboration.[88] One commenter sought assurances that participants in a pre-filing process can withdraw from it without prejudicing their right to later intervene after an application has been filed and participate in the proceeding before the Commission.[89] One commenter insisted the Commission must accord the same treatment to all applications, whether filed after a collaboration or without any pre-filing consultation.[90]

All entities, including those that do not participate in or withdraw from a pre-filing process, retain their existing rights to intervene in the proceeding concerning the proposed project once an application is actually filed and to comment on, support or protest the application. The time the Commission needs to reach a decision is in part a function of the complexity of the issues raised, the degree to which issues are contested, and the thoroughness with which the application explores the issues. In particular, when an application is filed in which the environmental impacts of a proposed project have been adequately addressed and the applicant has agreed to take actions to provide appropriate mitigation for such impacts and enhancement, the time required for Commission review may be significantly shorter than for an application that does not discuss such issues.

(5) Relation to Ex Parte Regulations

One commenter[91] questioned the Commission's legal authority to provide for pre-filing collaboration for gas applicants, contending this could be construed to be a form of alternative dispute resolution (ADR) that could run afoul of *ex parte* prohibitions.[92] Commenters sought clarification on how *ex parte* rules will affect the collaborative process.[93] One commenter suggested that, if not the letter, then the spirit of the *ex parte* prohibitions would be compromised were the same Commission staff to participate in pre-filing collaboration and to later serve in an advisory role in the decision-making proceeding on any resulting application that was filed.

The Commission's *ex parte* rules[94] are intended to avoid any prejudice, real or apparent, that might result to a party in a contested, on-the-record proceeding before the Commission, were a party or ''interceder'' to communicate information regarding the merits to decision-making (advisory) staff without the knowledge of other parties. Since the pre-filing collaborative process established by the final rule is not a proceeding before the Commission (which commences only after the filing of an application), the Commission's regulations precluding *ex parte* communications do not apply to communications with staff during the course of such a pre-filing process. The communications protocol, however, typically addresses concerns about private communications with Commission staff during the pre-filing process. Collaborative participants have the flexibility in negotiating the protocol to set the level of scrutiny that they feel is appropriate to apply to exchanges of information among participants and with the Commission staff. Consequently, we do not believe that the involvement of the project sponsor, interested persons, or Commission staff in pre-filing, pre-decisional activities conflicts with the Commission's *ex parte* rules.

We are not persuaded that a staff member's participation in a pre-filing discussion should disqualify that individual from serving in an advisory role in any proceeding on an application that is subsequently filed. We note that staff representations in the pre-filing forum can not in any way bind the Commission, because the Commission alone is responsible for making all final decisions on the application.

## IV. Environmental Analysis

Commission regulations describe the circumstances where preparation of an EA or an EIS will be required.[95] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[96] No environmental consideration is necessary for the promulgation of a rule

[84] Advisory Council, attachment at 2–3.

[85] Industrials at 10.

[86] Sempra at 3.

[87] Examples of information gathered in the pre-filing process that would not normally become part of the administrative record of the proceeding on the application would include drafts of studies or reports, routine correspondence, and privileged settlement discussions. Information that would normally be submitted to the Commission for inclusion in the record would include the results of relevant scientific studies or other investigations of resource concerns conducted during the pre-filing process.

[88] AGA at 7–8; Industrials at 9; Sempra at 3.

[89] EDF at 2.

[90] INGAA at 3–4.

[91] Indicated Shippers at 4 and 14.

[92] *See* 5 USC 551–557 and 18 CFR 385.604 and 385.2201.

[93] Advisory Council, attachment at 3; Martin at 2.

[94] *See* 5 U.S.C. 557; 18 CFR 385.2201; *see also* Regulations Governing Off-the-Record Communications, Notice of Proposed Rulemaking, 63 FR 51312 (Sept. 25, 1998), FERC Stats. & Regs. (Regulations Preambles 1988–1998) ¶ 32,534 (Sept. 16, 1998).

[95] Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), codified at 18 CFR part 380.

[96] 18 CFR 380.4(a)(2)(ii).

that is clarifying, corrective, or procedural, or that does not substantially change the effect of legislation or regulations being amended.[97]

The final rule adopted herein is procedural in nature. It implements an optional pre-filing collaborative process that a prospective applicant for a natural gas authorization may wish to use. Thus, no environmental assessment or environmental impact statement is necessary for the requirements adopted in the rule.

## V. Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980 (RFA)[98] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. Pursuant to section 605(b) of the RFA, the Commission hereby certifies that the final rule adopted herein will not have a significant economic impact on a substantial number of small entities.

The procedural regulations adopted in this final rule are purely voluntary in nature, and are designed to reduce burdens on small entities (as well as large entities) rather than to increase them. The pre-filing collaborative process adopted herein is optional, will not alter or replace the procedures currently prescribed in our regulations, and will not be available unless it is the consensus of the persons interested in the proposed project to use that process. Under this approach, each small entity will be able to evaluate for itself whether the pre-filing process would be beneficial or burdensome, and could decline to participate in the proposed process if it appeared to be more burdensome than beneficial. Under these circumstances, the economic impact of the final rule will be either neutral or beneficial to the small entities affected by it.

## VI. Information Collection Statement

The regulations adopted in this final rule will impose reporting burdens only on those applicants that voluntarily choose to use the pre-filing collaborative process, and will only require minor additional filing requirements, as most of the reporting burdens associated with preparing and filing an application for natural gas facilities or services are imposed by existing regulations. The other additional burdens of the process do not involve filings with the Commission, but consist of various outreach efforts of the potential applicant and related interactions with entities interested in its proposal. An applicant would presumably only incur such additional burdens if it believed that, in the long run, it would reduce the time required to obtain Commission authorization or save on litigation and other costs incurred to pursue its application using only the standard procedures.

The Commission has made approximate estimates of the additional time that may be required of an applicant to comply with the pre-filing collaborative process. It is difficult to be precise about such estimates, because the time required for one applicant could vary considerably from the time required for other applicants, depending upon the circumstances involved, including the complexity of the issues raised, the total number of participants in the pre-filing process, and how cooperatively those participants worked together. If the pre-filing collaborative process were successful and resulted, for example, in the filing of an agreement or an offer of settlement with the Commission, the applicant might be able to save substantially more time by avoiding rehearing and litigation than was invested in the use of that process. If an applicant requested and was allowed to use the pre-filing collaborative process for an average project requiring a significant EA or an EIS, the main additional burden areas, with the estimated hours to comply with each, are:

| Process | Burden (hours of effort) |
|---|---|
| (1) contact interested entities; ..... | 80 |
| (2) prepare and submit request, including communications protocol; ..... | 80 |
| (3) prepare and distribute scoping and hold related meetings; ..... | 32 |
| (4) develop agenda and other documents, including minutes, for all meetings and prepare and distribute them (only additional time as compared to presently required meetings; .... | 802 |
| (5) prepare and publish public notices; ..... | 88 |
| (6) prepare and submit required Commission filings; ..... | 64 |
| (7) maintain a complete record of the pre-filing consultation proceedings that would be open to the public. ..... | 208 |
| Total ..... | 1,354 |

We estimate that to prepare and distribute the preliminary draft environmental review document would not take any more time than to prepare an environmental report under the standard process. Therefore, the estimated additional burden of the tasks required of an applicant if it voluntarily undertakes the alternative process totals 1,354 hours.

SoCal Ed expects that an effective collaboration will involve frequent meetings with multiple participants and on this basis believes the Commission underestimates the hours such meetings will require.[99] We clarify that the specified number of additional hours reflects our judgment of the additional time needed to conclude an average pre-filing collaboration. As previously explained, the time devoted to a collaboration will vary considerably depending on the complexity and contentiousness of the proposed project. A potential applicant may expend less than 1,354 hours to complete a collaboration for relatively minor modifications to existing facilities, whereas a collaboration for a large and controversial project can be expected to take longer. Given the inevitable variability in types of applicant proposals, we have endeavored to strike a balance and gauge the additional time needed to undertake a collaboration for a moderately scaled project. For such a project, we affirm our estimate that an additional 1,354 hours will be needed.

Office of Management and Budget (OMB)[100] approval is required for certain information collection requirements imposed by agency rules. Accordingly, pursuant to OMB regulations, the Commission is providing notice of its information collections to OMB for review under section 3507(d) of the Paperwork Reduction Act of 1995.[101] The Commission identifies the information provided under parts 153 and 157 of its regulations as FERC–539 and FERC–537, respectively.

*Title:* FERC–537, Gas Pipeline Certificates: Construction, Acquisition, and Abandonment, and, FERC–539, Gas Pipeline Certificate: Import/Export.

*Action:* Proposed Data Collection.

*OMB Control No.:* 1902–0060 and 1902–0062.

An applicant shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

*Respondents:* Businesses or other for profit, including small businesses.

*Frequency of Responses:* On occasion.

*Necessity of Information:* The rule will revise the Commission's regulations contained in 18 CFR parts 153 and 157.

[97] 18 CFR 380.4.

[98] 5 U.S.C. 601–612.

[99] SoCal Ed at 5–6.

[100] 5 CFR 1320.11.

[101] 44 U.S.C. 3507(d).

Implementation of the rule will offer prospective applicants seeking to construct, operate, or abandon natural gas facilities or services the option, in appropriate circumstances and prior to filing an application, of using a collaborative process.

*Internal Review:* The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements. The Commission's Office of Pipeline Regulation (OPR) will use the data included in applications to determine whether proposed facilities, services, or abandonments are in the public interest as well as for general industry oversight. This determination involves, among other things, an examination of adequacy of design, costs, reliability, redundancy, safety, and environmental acceptability of the proposal. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the natural gas industry.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 (Attention: Michael Miller, Office of the Chief Information Officer, Phone: (202) 208–1415, fax: (202) 273–0873, E-mail: michael.miller@ferc.fed.us).

For submitting comments concerning the collection of information and the associated burden estimates, please send comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs (Attention: Desk Officer for Federal Energy Regulatory Commission).

## VII. Effective Date

These regulations become effective October 22, 1999. The Commission has concluded, with the concurrence of the Administrator of the Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.

## List of Subjects

*18 CFR Part 153*

Exports, Imports, Natural gas, Reporting and recordkeeping requirements.

*18 CFR Part 157*

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements

*18 CFR Part 375*

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

By the Commission. Commissioner Bailey concurred with a separate statement attached.

**David P. Boergers,**

*Secretary.*

### Appendix A—List of Commenters

Advisory Council on Historic Preservation (Advisory Council)
Alabama Historical Commission (Alabama)
Alabama Power Company (Alabama Power)
American Gas Association (AGA)
ANR Pipeline Company (ANR)
California Department of Water Resources (California Water)
Columbia River Inter-Tribal Fish Commission (CRITFC)
Duke Energy Companies (Duke)
Edison Electric Institute (EEI)
El Paso Energy Interstate Pipelines (El Paso)
Enron Interstate Pipelines (Enron)
Environmental Defense Fund (EDF)
FPL Energy Inc. (FPL)
Frederick W. Martin (Martin)
Great Lakes Gas Transmission Limited Partnership (Great Lakes)
Hydropower Reform Coalition (HRC)
Idaho Power Company (Idaho Power)
Interstate Natural Gas Association of America (INGAA)
Indicated Shippers
J. Ferguson & J. Tavares (Ferguson & Tavares)
Laurie G. Smith (Smith)
National Hydropower Association (NHA)
New York State Department of Environmental Conservation (NY DEC)
Nicor Gas (Nicor)
Northwest Hydroelectric Association (Northwest)
Oregon Departments of Fish and Wildlife and Environmental Quality (Oregon)
PG&E Corporation (PG&E)
Process Gas Consumers Group, The American Iron and Steel Institute, and The Georgia Industrial Group (Industrials)
Sacramento Municipal Utility District (Sacramento)
Sempra Energy Companies (Sempra)
Southern California Edison Company (SoCal Ed)
Southern Tier Landowners Association (Southern Landowners)
Tejas Offshore Pipeline, LLC (Tejas)
Travis K. Bynum
Tri-Dam Project of the South San Joaquin and Oakdale Irrigation Districts (Tri-Dam)
Trout Unlimited
U.S. Department of Agriculture, Forest Service (Forest Service)
U.S. Department of Commerce, National Marine Fisheries Service (Commerce)
U.S. Department of the Interior (Interior)
U.S. Environmental Protection Agency (EPA)
Williams Gas Pipeline Company (Williams)
Williston Basin Interstate Pipeline Company (Williston)
Wisconsin Department of Natural Resources (Wisconsin DNR)

(Issued September 15, 1999)

BAILEY, Commissioner, *concurring.*

I support the *voluntary* use of the collaborative process adopted in this document. I write separately only to question the need for engrafting a voluntary process into the Code of Federal Regulations as a rule. Putting aside a semantic discussion about whether a rule is a rule or just an option, my concern derives from the simultaneous issuance today of a certificate policy statement that has as a goal the filing of complete applications that can be processed expeditiously by minimizing adverse effects and working out contentious issues in advance. I am concerned that these two documents not be read in tandem so as to suggest the collaborative process is anything other than voluntary. I want to make it perfectly clear that from my perspective, this is the case.

**Vicky A. Bailey,**

*Commissioner.*

In consideration of the foregoing, the Commission amends Parts 153, 157 and 375 of Chapter I, Title 18, Code of Federal Regulations, as follows:

## PART 153—APPLICATIONS FOR AUTHORIZATION TO CONSTRUCT, OPERATE OR MODIFY FACILITIES USED FOR THE EXPORT OR IMPORT OF NATURAL GAS

1. The authority citation for part 153 continues to read as follows:

**Authority:** 15 U.S.C. 717b, 717o; E.O. 10485, 3 CFR, 1949–1953 Comp., p. 970, as amended by E.O. 12038, 3 CFR, 1978 Comp., p. 136, DOE Delegation Order No. 0204–112, 49 FR 6684 (February 22, 1984).

2. Section 153.12 is added, to read as follows:

### § 153.12 Collaborative procedures for applications for authorization to site, construct, maintain, connect, or modify facilities to be used for the export or import of natural gas.

The definitions and pre-filing collaborative procedures for certificate applications in §§ 157.1 and 157.22 of this chapter are applicable to applications under section 3 of the Natural Gas Act filed pursuant to subpart B of this part.

## PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

3. The authority citation for part 157 continues to read as follows:

**Authority:** 15 U.S.C. 717–717w; 3301–3432; 42 U.S.C. 7101–7352.

4. Section 157.1 is added, to read as follows:

### § 157.1 Definitions

For the purposes of this part—

*Indian tribe* means, in reference to a proposal or application for a certificate or abandonment, an Indian tribe which is recognized by treaty with the United States, by federal statute, or by the U.S. Department of the Interior in its periodic listing of tribal governments in the **Federal Register** in accordance with 25 CFR 83.6(b), and whose legal rights as a tribe may be affected by the proposed construction, operation or abandonment of facilities or services (as where the construction or operation of the proposed facilities could interfere with the tribe's hunting or fishing rights or where the proposed facilities would be located within the tribe's reservation).

*Resource agency* means a Federal, state, or interstate agency exercising administration over the areas of recreation, fish and wildlife, water resource management, or cultural or other relevant resources of the state or states in which the facilities or services for which a certificate or abandonment is proposed are or will be located.

5. Section 157.22 is added, to read as follows:

**§ 157.22 Collaborative procedures for applications for certificates of public convenience and necessity and for orders permitting and approving abandonment.**

(a) A potential applicant may submit to the Commission a request to approve the use of collaborative procedures for pre-filing consultation and the filing and processing of an application for certificate or abandonment authorization that is subject to part 157 of this chapter.

(b) A potential applicant requesting to use the pre-filing collaborative procedures must provide a list of potentially interested entities invited to participate in a pre-filing collaborative process and:

(1) Demonstrate that a reasonable effort has been made to contact all entities affected by the applicant's proposal, such as resource agencies, local governments, Indian tribes, citizens' groups, landowners, customers, and others, and that a consensus exists that the use of the collaborative process is appropriate under the circumstances;

(2) Submit a communications protocol, supported by interested entities, governing how the applicant and other participants in the pre-filing collaborative process, including the Commission staff, may communicate with each other regarding the merits of the applicant's proposal and recommendations of interested entities; and

(3) Submit a request to use the pre-filing collaborative process and, within five days, send a copy of the request, along with the docket number of the request, instructions on how to submit comments to the Commission, and a copy of §§ 157.1 and 157.22, to all affected resource agencies and Indian tribes, and all entities contacted by the applicant that have expressed an interest in the pre-filing collaborative process.

(c) As appropriate under the circumstances of the case, the request to use the pre-filing collaborative procedures must include provisions for:

(1) Distribution of a description of the proposed project (including its intended purpose, location and scope, and the estimated dates of its construction), and scheduling of an initial information meeting (or meetings, if more than one such meeting is appropriate) open to the public;

(2) The cooperative scoping of environmental issues (including necessary scientific studies), the analysis of completed studies and any further scoping; and

(3) The preparation of a preliminary draft environmental assessment or preliminary draft environmental impact statement and related application.

(d) The Commission will give public notice in the **Federal Register** and the prospective applicant will inform potentially interested entities of a request to use the pre-filing collaborative procedures and will invite comments on the request within 30 days. The Commission will consider the submitted comments in determining whether to grant or deny the applicant's request to use the pre-filing collaborative procedures. Such a decision will not be subject to interlocutory rehearing or appeal.

(e) If the Commission accepts the use of a pre-filing collaborative process, the following provisions will apply:

(1) To the extent feasible under the circumstances of the process, the Commission will give notice in the **Federal Register**, and the applicant will give notice in a local newspaper of general circulation in the county or counties in which the facility is proposed to be located, of the initial information meeting or meetings and the scoping of environmental issues. The applicant shall also send notice of these events to a mailing list approved by the Commission. To the extent feasible under the circumstances of the process, the mailing list should contain the names and addresses of landowners affected by the project.

(2) The applicant must also file with the Commission a copy of the initial description of its proposed project, each scoping document, and the preliminary draft environmental review document.

(3) All filings submitted to the Commission under this section shall consist of an original and seven copies. The applicant shall send a copy of each filing to each participant that requests a copy.

(4) At a suitable location (or at more than one location if appropriate), the applicant will maintain a public file of all relevant documents, including scientific studies, correspondence, and minutes or summaries of meetings, compiled during the pre-filing collaborative process. The Commission will maintain a public file of the applicant's initial description of its proposed project, scoping documents, periodic reports on the pre-filing collaborative process, and the preliminary draft environmental review document.

(5) An applicant authorized to use the pre-filing collaborative process may substitute a preliminary draft environmental review document and additional material specified by the Commission instead of an environmental report with its application as required by § 380.3 of this chapter and need not supply additional documentation of the pre-filing collaborative process with its application. The applicant will file with the Commission the results of any studies conducted or other documentation as directed by the Commission, either on its own motion or in response to a motion by a party to the proceeding.

(6) Pursuant to the procedures approved, the participants will set reasonable deadlines requiring all resource agencies, Indian tribes, citizens' groups, and interested entities to submit to the applicant requests for scientific studies or alternative route analyses during the pre-filing collaborative process. Additional requests for studies may be made to the Commission after the filing of the application only for good cause shown.

(7) During the pre-filing collaborative process the Commission may require deadlines for the filing of preliminary resource agency recommendations, conditions, and comments, to be submitted in final form after the filing of the application.

(f) If the potential applicant or any resource agency, Indian tribe, citizens' group, or other entity participating in the pre-filing collaborative process can show that it has cooperated in the process but that a consensus supporting the use of the pre-filing collaborative process no longer exists and that continued use of that process would not

be productive, the participant may petition the Commission for an order directing the use by the potential applicant of appropriate procedures to complete its pre-filing process. No such request will be accepted for filing unless the participant submitting it certifies that the request has been served on all other participants. The request must recommend specific procedures that are appropriate under the circumstances.

(g) The Commission staff may participate in the pre-filing collaborative process (and in discussions contemplating initiating a collaboration) and assist in the integration of this process and the environmental review process in any case. Commission staff positions are not binding on the Commission.

(h) A potential applicant for gas facilities is not precluded by these regulations from filing an application with the Commission at any time, even if the pre-filing collaborative process for the proposed facilities has not been completed.

## PART 375—THE COMMISSION

6. The authority citation for part 375 continues to read as follows:

**Authority:** 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 42 U.S.C. 7101–7352.

7. In § 375.307, a new paragraph (h) is added, to read as follows:

### § 375.307 Delegations to the Director of the Office of Pipeline Regulation.

* * * * *

(h) Approve, on a case-specific basis, and make such decisions as may be necessary in connection with the use of pre-filing collaborative procedures, for the development of an application for certificate or abandonment authorization under section 7 of the Natural Gas Act, or the development of an application for facilities under section 3 of the Natural Gas Act, and assist in the pre-filing collaborative and related processes.

[FR Doc. 99–24615 Filed 9–21–99; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## 18 CFR Part 385

**[Docket No. RM98–1–000; Order No. 607]**

## Regulations Governing Off-the-Record Communications

Issued September 15, 1999.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final Rule.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is revising its rules concerning communications between persons outside the Commission and the Commission and its employees. The revised regulations are designed to clarify ambiguities in the existing *ex parte* rules and to provide better guidance on what communications to and from the Commission are permissible and what communications are prohibited.

**EFFECTIVE DATE:** This rule is effective on October 22, 1999.

**FOR FURTHER INFORMATION CONTACT:** David R. Dickey, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–2140.

**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, NE, Room 2A, Washington, DC 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission from November 14, 1994, to the present. CIPS can be accessed via Internet through FERC's Homepage (http://www.ferc.fed.us) using the CIPS Link or the Energy Information Online icon. Documents will be available on CIPS in ASCII and WordPerfect 8.0. User assistance is available at (202) 208–2474 or by E-Mail to CipsMaster@FERC.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Home Page using the RIMS link or the Energy Information Online icon. User assistance is available at (202) 208–2222, or by E-Mail to *RimsMaster@FERC.fed.us*.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc. is located in the Public Reference Room at 888 First Street, NE, Washington, DC 20426.

### I. Introduction

The Federal Energy Regulatory Commission is revising its regulations governing communications between the Commission's decisional employees and persons outside the Commission. The revisions clarify the ground rules for communication, consistent with the Commission's outreach goals. The final rule is intended to permit fully informed decision making while at the same time ensuring the continued integrity of the Commission's decisionmaking process.

### II. Background

The amendments added to the Administrative Procedure Act (APA) in 1976 by the Government in the Sunshine Act provided a general statement as to the limitations and procedures governing *ex parte* communications in matters that statutorily require an on the record hearing.[1] Except as otherwise authorized by law, the APA prohibits *ex parte* communications relevant to the merits of a proceeding between employees involved in the decisional process of a proceeding and interested persons outside the agency.[2] The 1976

[1] 5 U.S.C. 551–557. Section 557 applies ''according to the provisions thereof, when a hearing is required to be conducted in accordance with section 556 of this title.'' Section 556 applies to hearings required by sections 553 and 554.

[2] 5 U.S.C. 557(d) provides that:

(1) In any agency proceeding which is subject to subsection (a) of this section, except to the extent required for the disposition of ex parte matters as authorized by law—

(A) No interested person outside the agency shall make or knowingly cause to be made to any member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, an ex parte communication relevant to the merits of the proceeding;

(B) No member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, shall make or knowingly cause to be made to any interested person outside the agency an ex parte communication relevant to the merits of the proceeding;

Act instructed agencies to issue regulations necessary to implement the APA's requirements.[3] Shortly thereafter, the Federal Power Commission implemented ex parte regulations based on the APA's guidance.[4] Existing Rule 2201[5] applies to all covered proceedings before the Commission except those involving oil pipelines. The Commission currently has a separate *ex parte* regulation, Rule 1415,[6] originally developed by the Interstate Commerce Commission (ICC), which applies only to oil pipeline proceedings.[7] Although directed to the same end—both prohibit certain *ex parte* communications and both describe methods for public disclosure of such communications—they differ in significant details. The manner in which the existing *ex parte* regulations have been interpreted and applied within and outside of the Commission has led to a great deal of confusion.

In October 1992, upon determining that a proposed negotiated rulemaking effort would be cumbersome and ineffective,[8] the Commission noticed a Public Conference for the purpose of examining the Commission's *ex parte* regulations and providing, *inter alia*, that the Commission wanted to provide clearer guidance on whether the *ex parte* prohibitions should apply to all Commission employees or be more limited, *e.g.*, to Commissioners, their personal staff, and other decisional employees.[9] The notice further recited the need for clearer standards governing informal consultations between the Commission's environmental staff and other federal agencies that have environmental responsibilities or interests impacting our decisions, as well as contacts between the Commission and applicants and other persons for the purpose of obtaining information necessary for environmental analyses.[10]

As a result of the March 1992 public conference, participants developed a general consensus favoring a revised rule that would provide the Commission, the industry, and the public with a clearer statement of what communications are prohibited and when the prohibitions apply.[11] It is evident from comments on the March 1992 Notice of Public Conference, and from the ongoing experiences of staff and persons outside the agency, that the language and application of our existing *ex parte* rule should be revised for the sake of clarity.

Moreover, the Commission has recognized the benefits of enhancing its access to information from federal and state agencies and other interested persons to the extent consistent with law and fair process. More recently, discussions undertaken as part of the Commission staff's ongoing reengineering effort indicated that many people believe that changes to the current *ex parte* rule could enhance the Commission's operations.

On September 16, 1998, the Commission issued a Notice of Proposed Rulemaking (NOPR) to revise its procedural rules concerning communications between the Commission and its employees and persons outside the Commission.[12] The NOPR requested comments on the proposed changes to the Commission's procedural rules governing communications between the Commission and its employees and persons outside the Commission.[13] Thirty-two commenters, representing the hydropower, electric power, and natural gas pipeline industries, as well as state and federal resource agencies filed comments generally supporting adoption of the rule as proposed in the NOPR.[14] Their comments offer a number of recommendations and suggestions for improving the proposed rule, some of which are adopted in the final rule, and some which are not, as discussed more thoroughly below.

## III. Discussion

The final rule is based on the fundamental APA principles that are the foundation for the *ex parte* prohibition, and furthers the basic tenets of fairness: (1) A hearing is not fair when one party has private access to the decision maker and can present evidence or argument that other parties have no opportunity to rebut;[15] and (2) reliance on ''secret'' evidence may foreclose meaningful judicial review.[16] The final rule sets out when communications between the Commission and Commission staff and persons outside the Commission may take place off-the-record, and when such communications must take place on the record. The final rule also contains directions on how both prohibited and exempted off-the-record communications will be handled by the Secretary's office and how public notice of such communications will be made.

### *A. Overview*

The final rule generally follows the direction of the proposed rule. The final rule applies to off-the-record communications made in a ''contested on-the-record proceeding,'' defined as ''any proceeding before the Commission to which there is a right to intervene and in which an intervenor disputes any material issue, or any proceeding initiated by the Commission on its own motion or in response to a filing.'' Proceedings not covered by this rule include informal (*i.e.*, notice and comment) rulemaking proceedings under 5 U.S.C. 553; investigations under part 1b; public technical, policy, and other conferences intended to inform

(C) A member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of such proceeding who receives, or who makes or knowingly causes to be made, a communication prohibited by this subsection shall place on the public record of the proceeding:

(i) All such written communications;

(ii) Memoranda stating the substance of all such oral communications; and

(iii) All written responses, and memoranda stating the substance of all oral responses, to the materials described in clauses (i) and (ii) of this subparagraph;

(D) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this subsection, the agency, administrative law judge, or other employee presiding at the hearing may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation; and

(E) The prohibitions of this subsection shall apply beginning at such time as the agency may designate, but in no case shall they begin to apply later than the time at which a proceeding is noticed for hearing unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply beginning at the time of his acquisition of such knowledge.

(2) This subsection does not constitute authority to withhold information from Congress.

[3] 5 U.S.C. 559.

[4] FPC Order No. 562, 42 FR 14701 (Mar. 16, 1977).

[5] 18 CFR 385.2201.

[6] 18 CFR 385.1415.

[7] 18 CFR 385.1415.

[8] *See* Determination Not to Establish a Negotiated Rulemaking Committee, Docket No. RM 91–10–000, 57 FR 10621 (Mar. 27, 1992), IV FERC Stats. & Regs. ¶ 35,023 (Mar. 20, 1992).

[9] Notice of Public Conference, Regulations Governing Ex Parte Communications, Docket No. RM91–10–000, 58 FERC ¶ 61,320 (Mar. 20, 1991).

[10] *Id.*

[11] *See, e.g.*, the comments filed by Interstate Natural Gas Association, the Industrial Groups, Pacific Gas Transmission Company, and Environmental Action in Docket No. RM91–10–000. Notice of Public Conference, 57 FR 10622 (Mar. 27, 1992); IV FERC Stat. & Regs. ¶ 35,023 (Mar. 20, 1992).

[12] Regulations Governing Off-the-Record Communications, 63 FR 51312 (Sept. 25, 1998); FERC Stats. & Regs. (Proposed Regulations 1988–1998) ¶ 32,534 (Sept. 16, 1998).

[13] The Commission sought comments notwithstanding that, because this is a procedural rule, no opportunity for comment is required by the APA.

[14] The commenters are identified in Appendix A.

[15] *WKAT, Inc. v. FCC*, 296 F.2d 375 (D.C. Cir.), *cert. denied*, 360 U.S. 841 (1961).

[16] *Home Box Office, Inc. v. FCC*, 567 F.2d 9, 54 (D.C. Cir.), cert. *denied*, 434 U.S. 829 (1977); *U.S. Lines v. Federal Maritime Commission*, 584 F.2d 519, 541–542 (D.C. Cir. 1978).

the public or solicit comments on general issues of interest to the Commission and the public; any other proceeding not having a ''party or parties,'' as defined in Rule 102 of the Commission rules of practice and procedure [17]; and any proceeding in which no party disputes any material issues. Although the APA permits off-the-record communications concerning general background or policy discussions about an industry or segment of an industry, discussions of how such background or policy information might apply to the specific merits of a pending proceeding are not permitted.[18]

The NOPR proposed 10 exemptions to the general prohibition against off-the-record communications in contested, on-the-record proceedings at the Commission. Seven of the proposed exemptions are adopted in the final rule largely as proposed in the NOPR—(1) off-the-record communications expressly permitted by rule or order, (2) off-the-record communications related to emergencies, (3) off-the-record communications agreed to by the parties, (4) off-the-record written communications with non-party elected officials, (5) off-the-record communications with other Federal, state, local and Tribal agencies, (6) off-the-record communications related to National Environmental Policy Act (NEPA) documentation, and (7) off-the-record communications with individual non-party landowners. These are discussed below. As a clarification, the final rule refers to ''exempted'' rather than ''permitted'' off-the-record communications in the regulatory text.

Three proposed exemptions are dropped in this final rule because they are unnecessary. The NOPR proposed an exemption for communications taking place prior to the filing of an application for Commission action (generally referred to as a ''pre-filing'' meeting or conference). As more thoroughly discussed below, this exemption is eliminated as unnecessary in the final rule, because pre-filing communications are outside the purview of this rule because they take place prior to the filing of an application, and therefore prior to any ''proceeding'' at the Commission.

The NOPR proposed an exemption for published or broadly disseminated public information. We subsequently have concluded that, where staff obtains such information of its own volition, no exemption is required to permit Commission staff to access and consider widely available public information. Thus, that exemption has been deleted in the final rule although information relied on by the Commission must be put into the public record.

Finally, the NOPR also proposed an exemption for communications related to compliance matters where compliance was not the subject of a pending proceeding. The final rule addresses this concern by defining such communications as not relevant to the merits, rather than by providing a separate exemption.

The final rule establishes notice and disclosure requirements for both prohibited and exempted communications. These provisions are similar to those proposed in the NOPR.

*B. General Comments*

The comments received from the 32 commenters generally were supportive of the Commission's efforts to clarify and reform the current rules. Several general comments are addressed in this section; comments on specific elements of the NOPR are discussed below.

Several commenters expressed concern that the revised rules could operate to the detriment of small entities.[19] It is not our intent to create rules or regulations having a discriminatory effect on any segment of the Commission's constituency, particularly smaller entities that may not have a regular presence in Washington, DC, or may lack the resources of larger entities. Everybody doing business with the Commission should be assured that the purpose of the final rule on communications is to enhance the ability of *all* entities involved in a particular proceeding to communicate with the Commission on an equal footing.

One weakness in the prior rule is that it did not expressly apply to off-the-record communications initiated by the Commission and its staff. This deficiency appears to be inconsistent with the approach of the APA that, in general, *ex parte* proscriptions should apply when one party has private off-the-record communications with a decisional authority, regardless of who initiated the contact, so that other parties are not deprived of fundamental fairness and due process. Therefore, the final rule applies to off-the-record communications from decisional Commission employees to persons outside the Commission as well as off-the-record communications from persons outside the Commission to Commission decisional employees. The prohibitions apply both to oral and written off-the-record communications.

One commenter opines that, while most of the reforms set out in the proposed rule are generally desirable and will give the Commission more flexibility in communicating with other entities, the rule, if strictly applied, would seem to reduce some of the flexibility commonly practiced under the existing rule.[20] This commenter believes that exposing staff to possible recriminations for such off-the-record communications might have a chilling effect on staff and forecloses the type of meaningful dialogue that might otherwise lead to informed decision making, and suggests more extensive use of notice and disclosure procedures to further enhance communications.

The final rule is not intended to reduce communications. Rather, by clarifying some of the confusion that existed with the prior rule, the net result should be to improve meaningful dialogue that is necessary to informed and fair decision making. The final rule defines when a communication is considered off-the-record, and sets forth certain exemptions for when off-the-record communications may be permitted.

*C. Definitions in the Final Rule*

The final rule provides relevant definitions. These are discussed *seriatim*.

(1) Off-the-Record Communication

As proposed in the NOPR, an ''off-the-record communication'' was defined as ''any communication which, if written, is not served on the parties, and, if oral, is made without prior notice to the parties.'' Several commenters believe that the definition of an oral off-the-record communication should be amended so that even if prior notice is provided for the off-the-record oral communication, it should nonetheless be categorized as prohibited unless there was an opportunity for all parties to be present when the communication was made.[21] One commenter argues that such an amendment gives context to the nature of prohibited oral communications and tracks the language of the Federal Communication Commission's (FCC's) *ex parte* rule.[22]

The Commission agrees that the proposed definition should be modified along the lines suggested. Accordingly, in the final rule, ''off-the-record communication'' is defined as ''any

[17] 18 CFR 385.102.

[18] *See* H.R. Rep. No. 94–880 (Part I), at 20 (1976), *reprinted in* 1976 U.S.C.C.A.N. at 2202.

[19] *See* EPSA at 4; Joint Commenters at 3–4.

[20] Sempra at 3–4.

[21] INGAA at 2 (INGAA's comments are endorsed by Southern Natural Gas Company, Natural Gas Supply Association, and the Williams Companies).

[22] *Id.* at 2–3.

communication relevant to the merits of a contested on-the-record proceeding which, if written, is not filed with the Secretary and not served on the parties to the proceeding pursuant to Rule 2010,[23] and if oral, is made without reasonable prior notice to the parties to the proceeding, and without the opportunity for such parties to be present when the communication is made.'' Many oral communications are made by telephone conference calls during which all parties may not be physically ''present.'' We will interpret the definition of ''present'' to include presence by telephone or similar means. The definition of ''written communications'' includes communications transmitted by electronic means such as ''e-mail.''

(2) Contested On-the-Record Proceeding

The APA *ex parte* prohibitions apply to adjudications and similar cases required by statute to be decided on the record after an opportunity for hearing.[24] Courts generally have treated rules barring private communications as a basic element of a fair hearing—whether an APA-type oral evidentiary hearing or one involving ''paper'' exhibits and pleadings—in any case involving competing private claims to a valuable privilege or benefit.[25] Consequently, the final rule extends the prohibitions to all ''contested on-the-record proceedings.'' The NOPR defined a ''contested on-the-record proceeding'' as ''any complaint, action initiated by the Commission, or other proceeding involving a party or parties in which an intervenor opposes a proposed action.''

One commenter believes the definition is too narrow because it would attach only in a proceeding in which a party has filed in opposition to an application. The commenter believes that the Commission should deem as contested a proceeding where parties contest legal or factual issues, such as the proper scope of mitigation for environmental harm, even if they do not necessarily contest the propriety of the application, and expresses uncertainty over whether the rule would apply in circumstances where the posture of an intervention is unclear and the Commission has not yet issued a formal determination that the proceeding is contested.[26] The commenter thus believes that the proposed definition could motivate a party to take a position in opposition to an application merely to prevent off-the-record communications from taking place, a proposition it notes as contrary to the new policy of encouraging collaboration in licensing proceedings.[27] As a solution, the commenter suggests amending the proposed definition to include the possibility that the prohibition on off-the-record communications could be invoked by an intervenor's mere request that the rule apply, even in the absence of dispute over a material issue.

The Commission will not rely on intervenor requests to trigger the rule's application. One purpose of the final rule is to permit and encourage more open communications between the Commission and the public, and, therefore, an overbroad definition of when this rule would be triggered would be counter to this goal. The Commission will not treat an intervention as triggering the requirements of this rule when it appears to have been made solely for the purpose of causing the intervenor to be placed on the service list or solely for the purpose of seeking permission to participate in a hearing, should the Commission order that a hearing be held.

To clarify, however, the Commission will amend the definition in the final rule so that a ''contested on-the-record proceeding'' is ''any proceeding before the Commission to which there is a right to intervene and in which an intervenor disputes any material issue, or any proceeding initiated by the Commission on its own motion or in response to a filing.'' Consistent with current practice, a dispute of ''any material issue'' may include a dispute of fact, law or policy. This amendment to the NOPR's definition of a contested on-the-record proceeding is more consistent with the APA and its legislative history. The explicit requirement that the proceeding be ''contested'' before *ex parte* rules attach reflects the notion that procedural requirements and constraints originally developed to preserve the rights of parties in an adjudication have no place in an administrative proceeding in which there is no ''contest'' comparable to the controversy in a judicial case. For purposes of this definition, an ''on-the-record'' proceeding includes both proceedings set for oral hearings and so-called ''paper hearings'' where the matter is disposed of on evidence taken only by written submissions.

The definition expressly excludes ''notice-and-comment rulemaking under 5 U.S.C. 553, investigations under part 1b of this chapter, proceedings not having a party or parties, or any proceeding in which no party disputes any material issue.'' With this change, the NOPR's separate definition of ''proceeding involving a party or parties'' is unnecessary and is omitted.

(3) Decisional Employee, Contractor, and Person

The NOPR proposed to define a ''decisional employee'' as ''a Commissioner or member of his or her personal staff, an administrative law judge, or any other employee or contractor of the Commission who is or may reasonably be expected to be involved in the decisional process of a particular proceeding, but does not include an employee designated as a part of the Commission's trial staff in a proceeding, a settlement judge appointed under Rule 603 (settlement of negotiations before a settlement judge), a neutral (other than an arbitrator) in an alternative dispute resolution proceeding subject to Rule 604, or an employee designated as non-decisional in a particular proceeding subject to the separation of functions requirements applicable to trial staff under Rule 2202 (separation of functions of staff).''

One resource agency asks whether the definition of ''decisional employee'' includes the Commission's environmental staff and directors of the program offices.[28] It does. As a general rule, we view these employees as involved in the analysis and decisionmaking process so that, to the extent they are assigned to a particular proceeding with the goal of making recommendations for the Commission's consideration, they must be considered as decisional employees. However, specified communications between persons outside the Commission and the Commission's environmental staff and directors of the program offices may take place off-the-record pursuant to one of the exemptions to the prohibition of the general rule discussed below. Another commenter notes that, as proposed, the rule would not apply to staff who are non-decisional employees, focuses on prohibited communications to and from persons outside the Commission, and does not address communications between decisional and non-decisional FERC staff.[29] The commenter apparently reads the rule as eroding or modifying the Commission separation of functions rule (18 CFR 385.2202) and requests the Commission to reaffirm Rule 2202 and specify that decisional and non-decisional staff

[23] 18 CFR 385.2010

[24] 5 U.S.C. 557(d)(1).

[25] *Sangamon Valley Television Corp.* v. *United States*, 269 F.2d 221 (D.C. Cir. 1959); and *Sierra Club* v. *Costle*, 657 F.2d 298, 400 (D.C. Cir. 1981).

[26] HRC at 2.

[27] *Id.* at 2–3.

[28] ACHP at 1.

[29] INGAA at 3.

would not be permitted to engage in prohibited communications in contested proceedings.[30] Other commenters specifically request that the definition be amended to include Commission trial staff and other non-decisional employees.[31] One commenter suggests that these Commission employees be considered as outside of the Commission, and subject to the rule.[32]

We find that these proposed modifications are not necessary or practicable. Rule 102(b) of the Commission's rules of practice and procedure sets forth the definition of a ''participant'' in Commission proceedings as ''(1) Any party; or (2) any employee of the Commission assigned to present the position of the Commission staff in a proceeding before the Commission,'' thus distinguishing between Commission trial staff and a party participant to a proceeding.[33] Furthermore, Rule 2202 remains in place and as such adequately regulates the conduct of intra-agency communications that concerns these commenters.[34] The Commission reaffirms its commitment to the tenets of the separation of functions rule. This commitment is recognized in the current Commission organizational design, with the new Office of Administrative Litigation encompassing all Commission employees engaged in trial work.

As set forth in the NOPR and reflected in the final rule, the Commission may designate any member of the Commission staff as ''non-decisional in a proceeding.'' As a non-decisional employee, he or she would be subject to the requirements of Rule 2202. This gives the Commission the necessary flexibility to make appropriate allocations of its human resources.

The Commission's administrative law judges fall into a unique category. Consequently, with the addition of a clause to the exemptions provisions discussed below, the final rule prohibits the making of any off-the-record communications to or by a presiding officer in any proceeding set for hearing under subpart E of the Commission's rules of practice and procedure.[35] For subpart E proceedings, *none* of the exemptions for off-the-record communications applies to presiding officers.

In contrast, when an administrative law judge is appointed by the Chief Administrative Law Judge as a settlement judge under rule 603,[36] or when an administrative law judge is selected as a neutral under rule 604[37] the administrative law judge is not a decisional employee in that proceeding.

Pursuit of alternative dispute resolution by the Commission's Dispute Resolution Service (DRS) is not part of the decisional process and is not subject to these *ex parte* rules. Alternative dispute resolution procedures are set out in Commission Rule 604.[38] Communications undertaken in the context of alternative dispute resolution are confidential. Moreover, DRS employees are not decisional employees themselves, nor do they advise decisional employees on matters relevant to the merits of a particular matter.

One commenter opposes including third-party contractors in the definition of decisional employees, asserting that applicants need to have confidential discussions with those preparing their NEPA evaluations.[39] To be sure, third-party contracting reflects a scheme by which an applicant is responsible for directly paying and cooperating with a contractor selected to perform environmental analyses. However, the selection of the contractor is subject to Commission approval and Commission staff is responsible for directing the work of the contractor.[40] Thus, in the same manner as direct Commission contractors, a third-party contractor plays the role of a Commission decisional employee, subject to the proscriptions of the rules against prohibited off-the-record communications. Accordingly, merits-related communications between an applicant and a contractor are governed by these rules.

Finally, one resource agency commented that pre-decisional technical involvement by Commission staff should be outside the purview of the rule, so that Federal, state, local or tribal agencies may freely communicate with Commission staff on technical issues.[41] To the extent that the technical issues are not related to the merits of the underlying proceeding, such communications would be permitted. Such communications may also be permitted under the exemptions for communications between Federal agencies having common jurisdictional interests in a particular matter or for NEPA document preparation.[42]

(4) Relevant to the Merits

The final rule applies to off-the-record communications relevant to the merits of a Commission proceeding in covered proceedings. The term ''relevant to the merits'' is taken directly from the APA and its definition is drawn from the legislative history of those provisions.[43] The term is defined to mean ''capable of affecting the outcome of a proceeding, or of influencing a decision, or providing an opportunity to influence a decision, on any issue in the proceeding.'' The regulatory text states that purely procedural inquiries or status requests that will not have an effect on the outcome of a case or on the decision on any issue are not ''relevant to the merits.'' Communications relating to purely procedural inquiries, such as how to intervene in a proceeding, the number of days before a responsive filing is due, or the number of copies that must be provided for a required filing are permitted at any time. Where a communication states or implies a preference for a particular party or position, it would be considered as being relevant to the merits. Although simple requests for action by a specific date or for expedited action may be viewed as not relevant to the merits, the Commission strongly encourages that any such requests be made in writing and on the record.

As discussed further below, the definition also excludes communications related to compliance matters if compliance is not the subject of an ongoing proceeding.

[30] *Id.*

[31] WPPI at 4; SCSI at 2–3

[32] SCSI at 2–3.

[33] 18 CFR 385.102(b).

[34] 18 CFR 385.2202. The Separation of Functions Rule precludes employees performing investigative or trial functions in a particular case from participating as ''decisional employees'' in the same matter or in a related matter.

[35] 18 CFR 385.501 *et seq.*

[36] 18 CFR 385.603.

[37] 18 CFR 385.604.

[38] *Id.*

[39] NHA at 2.

[40] 40 CFR 1506.5.

[41] *See* Interior at 11–12.

[42] 18 CFR 385.2201(e)(1)(v), 385.2201(e)(1)(vi).

[43] *See* H.R. Rep. No. 94–880 (Part I), at 20, *reprinted in* 1976 U.S.C.C.A.N. at 2202:

The (statute) prohibits an ex parte communication only when it is ''relative to the merits of the proceeding.'' This phrase is intended to be construed broadly and to include more than the phrase ''fact in issue'' currently used in the Administrative Procedure Act. The phrase excludes procedural inquiries, such as requests for status reports, which will not have an effect on the way the case is decided. It excludes general background discussions about an entire industry which do not directly relate to specific agency adjudication involving a member of that industry, or to formal rulemaking involving the industry as a whole. It is not the intent of this provision to cut an agency off from general information about an industry that an agency needs to exercise its regulatory responsibilities. So long as the communication containing such data does not discuss the specific merits of a pending adjudication it is not affected by this section.

*D. Exempt Off-the-Record Communications*

The final rule sets out seven exemptions from the general prohibitions against off-the-record communications. These exemptions are independent of one another. Accordingly, if any exemption applies to the circumstances of a particular proceeding, off-the-record communications will be permitted subject to any disclosure requirements. For example, Rule 2201(e)(1)(iii),[44] provides that the proscriptions of this rule do not apply where all parties to a proceeding have agreed in writing that off-the-record communications may take place. However, even in the absence of such unanimity, off-the-record communications relating to development of an environmental impact statement would be permitted in accordance with the exemption contained in Rule 2201(e)(1)(vi).[45]

We note that while the final rule exempts certain off-the-record communications from the prohibitions of the rule, the Commission and Commission staff retain the discretion not to engage in permitted communications if, in their judgment, such communications would create the appearance of an impropriety or otherwise seem inconsistent with the best interests of the Commission.[46]

(1) Off-the-Record Communications Expressly Permitted by Rule or Order

To the extent permitted by law, Rule 2201(a) allows the Commission, by rule or order, to modify any of the *ex parte* provisions as they apply to all or part of a proceeding. Resource agencies commented that statutes such as the Endangered Species Act require interagency consultations, within and outside of the context of preparing an environmental document.[47] These commenters ask if the rule should consider whether statutes mandating such consultations properly fit within this exemption.

As discussed in the NOPR,[48] only where there is specific statutory authority permitting or directing interagency consultations to take place on an *ex parte* basis, would such off-the-record communications be construed as ''authorized by law.'' We do not believe that statutes requiring interagency consultations should be viewed as authorizing such communications to take place off-the-record.[49] Under other exemptions of the final rule, however, the types of communications addressed by resource agencies may often be permissible, subject to a disclosure requirement.[50]

(2) Off-the-Record Communications Related to Emergencies

The final rule provides an exemption, subject to a notice and disclosure provision, for communications relating to emergencies. The NOPR proposed such an exemption for communications related to emergencies, and specifically requested comments on whether last year's Midwest price spike might qualify as an emergency under such an exemption. Some commenters suggest that an ''act of God'' emergency would not likely occur in the context of a contested proceeding.[51] Because of the high stakes that might be involved in a contested proceeding, however, it was suggested that, if adopted, the proposed exemption be triggered only after a decision by the Commission or a senior staff official.

Other comments suggest that the final rule better define covered emergencies, and that generic fact-finding would be a better mechanism for handling communications concerning emergencies.[52] Commenters also noted that, because resource agencies might have specific statutory responsibilities relating to natural disasters, the Commission should promptly disclose off-the-record communications related to such emergencies.[53]

We agree with the commenters' suggestions that it is unlikely that communications relating to emergencies would take place in the context of a pending contested proceeding, and we also find some merit in the argument that permitting off-the-record communications during ''economic'' emergencies could have an adverse effect on regulated energy markets in the context of a contested proceeding.[54] We believe that the Commission's investigative powers under its enabling statutes and part 1b (''Rules Relating to Investigations'' under subchapter A ''General Rules'') of its regulations appear to be sufficiently broad to allow informal investigations into ''significant market anomalies,'' and such investigations are outside the scope of this rule.

However, especially with regard to emergencies affecting a regulated entity's ability to deliver energy, it is imperative that the regulated community be assured that, in the face of an emergency, it may initiate communications with the Commission without fear of violating the prohibitions on off-the-record communications, even in the context of a contested proceeding. By their very nature, emergencies do not allow prior opportunity for public participation in meetings addressing issues relating to the emergency. Concomitantly, Commission staff must be able to receive an emergency communication without fear of violating *ex parte* considerations or other provisions of the Commission's standards of conduct for employees. Therefore, the final rule adopts this exemption. Because we believe that the Commission can proceed to investigate emergencies, once identified, under its part 1b procedures, the final rule makes clear that this exemption is limited to communications from persons outside the Commission, and requires prompt notice and disclosure of the communication. The prompt disclosure required under this exemption should alleviate any possible detriment occasioned by allowing such communications.

(3) Off-the-Record Communications Agreed to by the Parties

The NOPR proposed to retain prior Rule 2201(b)(6) permitting communications which all the parties to a proceeding agree may be made without regard to communication constraints. We conclude that agreements to waive this rule must be in writing and subject to Commission approval.[55]

The NOPR sought comments on whether pre-filing communications protocols permitted under our collaborative procedures initiatives[56]

[44] 18 CFR 385.2201(e)(1)(iii).

[45] 18 CFR 385.2201(e)(1)(vi).

[46] *See* 18 CFR 385.2201(j)(2).

[47] *E.g.,* Interior at p. 6.

[48] Notice of Proposed Rulemaking, *Regulations Governing Off-the-Record Communications,* 63 FR 51312, 51316 (Sept. 25, 1998).

[49] In fact, pursuant to NEPA, prior to issuing a detailed environmental statement, an agency must make available, pursuant to the Freedom of Information Act (FOIA), the comments and views of cooperating agencies. *See* 42 U.S.C. 4233(C.)

[50] *See* 18 CFR 385.2201(e)(1)(v) or (vi). We note however that the disclosure requirement in this rule does not permit the Commission or any resource agency to publicly disclose statutorily protected information. There are statutory prohibitions against disclosing the location of certain historically, culturally, or environmentally sensitive resources, but there is no such prohibition on setting conditions to protect such resources. *See, e.g.,* Section 304 of the National Historic Preservation Act, as amended, 16 U.S.C. 470w–3.

[51] *E.g.,* Joint Commenters at 9–10.

[52] EEI at 8–9.

[53] Interior at 7.

[54] Joint Commenters at 9–10.

[55] *See WKAT, Inc.,* v. *FCC,* 296 F.2d 375 at 383 (D.C. Cir. 1961).

[56] *See* Order No. 596, Regulations for the Licensing of Hydroelectric Projects, 62 FR 59802

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should be allowed to remain in effect after a filing is made. The general consensus of commenters is that pre-filing communications protocols agreements should be renewed or otherwise approved by all parties to a proceeding once a filing is made and the time for filing interventions has passed.[57]

We agree with the commenters. In order to qualify for this exemption, pre-filing protocols must be renewed by all parties and approved by the Commission after an application is filed with the Commission and the time for filing interventions has expired. At that time, the identities of all parties participating in the proceeding have been determined.

(4) Off-the-Record Written Communications from Non-Party Elected Officials

The Commission receives numerous letters from Federal and state elected officials requesting expedition and forwarding correspondence from constituents. The NOPR proposed treating such written communications as permitted communications, subject to a notice and disclosure requirement under which the communications would be placed in the public record.[58] Various commenters urge that the exemption include any communications from Commission officials to the non-party elected official,[59] be limited to Congress,[60] restrict covered officials from forwarding to the Commission the comments of constituents who are parties to a particular proceeding,[61] and extend to Tribal officials.[62]

The final rule generally adopts the proposed exemption. The exemption covers only written communications. Because such communications may be relevant to the merits, this exemption contains a notice and disclosure requirement.

We agree with commenters that communications from elected, non-party Tribal officials should be included among those communications permitted by this exemption. Indian tribes frequently have interests that may be substantially affected by Commission proceedings.

Any communications from Commission officials to elected officials are not covered by this exemption. Consistent with current practice, Commission responses to correspondence from elected officials do not address the merits. Nevertheless, such responses will be placed in the record.

(5) Off-the-Record Communications with Other Federal, State, Local, and Tribal Agencies

Prior Rule 2201(b)(1)[63] permitted off-the-record communications from interceders who are Federal, state or local agencies that have no official interest in, and whose official duties are not affected by, the outcome of a covered proceeding to which the communication relates. What was meant by ''official duties'' or having ''no official interest in'' a covered proceeding was unclear, at best.

Because many of the agencies with which the Commission works have an interest in Commission proceedings, the NOPR proposed an exemption to permit off-the-record communications, subject to a disclosure requirement, with Federal, state, or local agencies that are not parties in a specific contested proceeding. As proposed, there would be an exemption for off-the-record communications involving: (1) A request for information by the Commission or Commission staff; or (2) a matter over which the other Federal, state, or local agency and the Commission share regulatory jurisdiction, including authority to impose or recommend licensing conditions.

One commenter strongly objects to this exemption and suggests that agencies use memoranda of understanding to define their respective roles.[64] Three other commenters suggest that government agencies are no different from other parties with specific interests in the outcome of a proceeding and, thus, should not be accorded special treatment, particularly when the Commission may grant late intervention to agencies.[65] On the other hand, most resource agencies believe the exemption should be expanded to include party, as well as non-party, agencies.[66]

One commenter argues that, because some agencies have authority to make mandatory licensing conditions, interagency off-the-record communications should be prohibited unless applicants have similar access to the Commission.[67] NARUC urges the Commission to consider its statutory obligations for consultations with its member state utility commissions, and clarify when communications with state commissions are necessary.[68] At least one state agency believes that excluding party agencies from this exemption would chill their ability to participate fully in some proceedings.[69] Finally, it was suggested that communications with non-party Indian Tribes be covered by this exemption.[70]

The exemption, modeled on similar *ex parte* exemptions adopted by the Federal Communications Commission (FCC), is adopted as proposed.[71] The intent is to recognize that, except when the other Federal, state, or local agency is directly involved in a Commission case as a party, the public interest favors a free flow of information between government agencies with shared jurisdiction. Where agencies are charged with shared jurisdiction and regulatory responsibilities, a cohesive government policy can best be developed and implemented through communication, cooperation and collaboration between agencies and their staff that sometimes can take place most effectively off-the-record.[72] To ensure that such communications do not compromise the procedural rights of the parties or the integrity of the Commission's decisional record, the exemption as proposed and adopted includes a disclosure provision, requiring that information obtained through off-the-record communications with Federal, state or local agencies, and relied upon by the Commission in reaching its decision, be placed in the public record to allow the public to discern the basis of the Commission's decision.

We do not believe it appropriate to require disclosure of communications between the Commission and non-party cooperating agencies that exchange views and information in the development of an environmental impact statement or environmental assessment under NEPA. Such cooperation typically involves an interagency sharing of the staff work necessary to prepare an environmental document. This collaboration is most

(Nov. 5, 1997), III FERC Stats. & Regs. ¶ 31,057 (Oct. 29, 1997).

[57] *See, e.g.,* ACHP at 2; EEI at 9; Williston at 5–6; SMUD; at 5.

[58] The legislative history of the APA makes clear that members of Congress are ''interested persons'' subject to the APA restrictions on communications. It also indicates, however, that this prohibition is not intended to prohibit routine inquiries or referrals of constituent correspondence. *See* H.R. Rep. No. 94–880 (Part 1), (at 21–22), *reprinted in* 1976 U.S.C.C.A.N at 2203.

[59] INGAA at 4, SoCalEd at 8–9.

[60] *Id.*

[61] BPA at 3–4.

[62] Interior at 10.

[63] 18 CFR 385.2201(b)(1).

[64] HRC at 5–6.

[65] *See,* EEI at 3; Joint Commenters at 10–11; NHA at 2–3.

[66] Interior at 11–12; NMFS at 2; EPA at 1–2.

[67] NHA at 2–3.

[68] NARUC at 2–4.

[69] California Oversight at 2.

[70] Interior at 11–12.

[71] *See, e.g.,* 47 CFR 1.1204(a)(5).

[72] Similar exclusions appear in the Federal Communications Commission's *ex parte* regulations. *See* 47 CFR 1.1204(b)(5), (7) and (8).

effective when not burdened by notice and disclosure requirements. Where the involved agencies are not parties before the Commission, we believe this collaboration can occur off-the-record without prejudice to the parties. Thus, the final rule excludes such communications from the disclosure requirements.

(6) Off-the-Record Communications Relating to NEPA Documentation

The NOPR proposed to exclude from the general prohibitions of this rule all off-the-record communications relating to the preparation of either an environmental impact statement (EIS) or an environmental assessment (EA) where the Commission has determined to solicit public comment on the EA. Under the proposed exemption, off-the-record communications would be permitted by the rule if they are made prior to the issuance of a final NEPA document. The proposed exemption provided for notice and disclosure of off-the-record communications.

Several commenters would limit application of the exemption to off-the-record communications leading up to the issuance of a draft environmental impact statement (DEIS) and require all communications occurring after issuance of the DEIS to take place on the record.[73] One commenter expresses concern that if the Commission adopts the rule as proposed, permitting off-the-record communications during the period between issuance of a DEIS and final environmental impact statement (FEIS), an applicant might learn of post-DEIS comments only upon issuance of the final environmental document, thus denying it an opportunity to respond. Accordingly, this commenter asks that, should the Commission permit off-the-record communications until issuance of the FEIS, such communications should be immediately disclosed and parties should be allowed to comment on the substance of the communication prior to the Commission addressing such communication in the FEIS.[74]

Federal agency commenters enthusiastically support this exemption and would broaden it to allow communications related to areas within their jurisdictional expertise even after a FEIS issues.[75] They cite statutory obligations such as, but not limited to, the Clean Water Act,[76] Endangered Species Act,[77] and National Historic Preservation Act of 1966,[78] as requiring input from their respective agencies even after the Commission issues its decisions. Furthermore, CEQ regulations require that Federal agencies integrate related surveys, required by other relevant environmental review laws, into an EIS.[79]

Another commenter responds that government agencies that are also parties to a proceeding should not have access to materials under circumstances where other parties lack such access, but that a disclosure requirement would alleviate such concerns.[80] One commenter responds that there is no need to share confidential trade secret information with agencies in order to prepare an environmental document.[81]

The Commission basically adopts the exemption in the final rule as proposed in the NOPR. The Commission appreciates the concerns raised by the commenters, both those supporting narrowing the scope of the exemption, and those supporting broadening its scope, but we do not believe that they require us to make changes to the rule as proposed. While the Commission prefers that all NEPA-related communications take place on the record, we acknowledge that there will be times when off-the-record contacts may assist in the development of sound environmental analysis.

The public NEPA process provides sufficient opportunity for interested persons to fully participate in the development of the environmental document that will be part of the Commission's record of decision. In proceedings where the preparation of an EIS is necessary, CEQ rules describe a public scoping requirement that may include noticed, public, on-the-record meetings, and require that all substantive comments (whether written or oral) received on the DEIS, or summaries thereof, where the response has been especially voluminous, should be addressed in the final environmental document, whether or not they are relied upon by the agency.[82] Just as with the development of an EIS, CEQ regulations provide that, to the extent practicable, environmental agencies, the applicant, environmental interest groups, and the public should be involved in the process of crafting an EA.[83] Thus, the process of NEPA document preparation is an open one, with ample opportunities for public participation.

The final rule adopts a notice and disclosure requirement. The disclosure requirement provides that any written communication, and a summary of any oral communication obtained through an exempted off-the-record communication to or from Commission staff, will be promptly placed in the decisional record of the proceeding, and noticed by the Secretary.[84] Thus, interested persons will have notice of comments received on a NEPA document and be given the opportunity to respond. Such a practice will enhance the openness of the NEPA process and allow the Commission to make the most informed decisions practicable.

Finally, there were two comments related to the timing of this exemption. One commenter asks the Commission to clarify when this exemption would be in effect: from the time an application is received, or from the time of notice that the application is ready for environmental analysis?[85] The CEQ regulations suggest that the environmental analysis process start at the earliest possible time, including the possibility that such preparation start before an application is filed with an agency.[86] This exemption will be triggered by the filing of an application, and remain in effect no later than the date on which the final environmental document (either FEIS or Finding of No Significant Impact) is issued.

The second commenter suggests that the exemption provide for disclosure of an off-the-record communication within ten days of the communication.[87] We believe that the general provision requiring disclosure promptly after receipt is appropriate, and is included in the final rule. While the final rule adopts the exemption for off-the-record communications relating to contested proceedings that require the preparation of environmental documents, any off-the-record communications relevant to the merits taking place after the Commission's issuance of the final environmental document will be considered prohibited *ex parte* communications under the final rule, unless covered by another exemption.

[73] *E.g.* INGAA at 4–5, NHA at 3–4, SMUD at 8.

[74] INGAA at 4–5.

[75] Interior at 12, NMFS at 4–5, ACHP at 1–2, BPA at 4–10, CEQ at 1.

[76] 33 U.S.C. 1251, *et seq.*

[77] 16 U.S.C. 1632, *et seq.*

[78] 16 U.S.C. 470, *et seq.*

[79] Such statutes include, but are not limited to, the Coastal Zone Management Act of 1972, 16 U.S.C. 1451 *et seq.*; National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*; Endangered Species Act, 16 U.S.C. 1532 *et seq.*; and section 401, the Clean Water Act, 33 U.S.C. 1341.

[80] Williston at 6.

[81] SoCalEd at 2.

[82] 40 CFR 1503.4(b).

[83] 40 CFR 1501.4.

[84] As discussed above, the notice and disclosure requirements do not apply to communications with non-party cooperating agencies. *See* 18 CFR 385.2201(g)(1).

[85] Interior at 12.

[86] *See, e.g.*, 40 CFR 1501.2.

[87] SMUD at 8.

(7) Off-the Record Communications With Individual Non-Party Landowners

Subject to a disclosure requirement, the NOPR proposed, and the final rule permits, off-the-record communications with non-party landowners whose property may be affected by a pending proceeding.

Several commenters oppose this exemption and suggest that all landowner communications should be filed and served on all parties.[88] Other commenters suggest that while some exemption for landowner communications is appropriate, such communications should be limited in number or restricted to those owners whose property is or will be affected by an action over which the Commission has statutory authority.[89] Another commenter notes that the Commission's Landowner Notification proposal[90] was intended to make it easier for landowners to participate in proceedings that directly affect them. This commenter asks the Commission to clarify, in this proceeding, when an individual landowner is or is not a party, who may comment without intervening, and whether these landowners need to be served filings by parties to the proceeding.[91]

This non-party landowner exemption does not apply to landowners who have intervened as a party to a proceeding. Such a party will be treated as any other party to a contested Commission proceeding. Landowners desiring to become parties may do so in the same manner as any other person desiring to do so: By filing an application or timely intervention or opposition to the proceeding, or at such time the Commission accepts a request to file out of time. Once a landowner becomes a party to a proceeding, all communications between the landowner and the Commission must be made on-the-record and served on all parties to the proceeding. As an intervenor, the landowner will be placed on the service list and will receive copies of all documents of record. Also as an intervenor, the landowner has the right to seek rehearing of any Commission order, and to appeal any final Commission action.

During the NEPA process, landowner comments (as well as comments by others) are placed in the record and, to the extent required by CEQ regulations, responded to in any final environmental document. For purposes of preparing an environmental impact statement or an environmental assessment, such commenters are not deemed to be intervenors, absent their having formally intervened as a party pursuant to the Commission's procedural rules. Thus, they do not receive documents of record, nor do they have the right to seek rehearing or appeal of Commission orders. On the other hand, they do not have the burden of serving copies of their comments on all parties on the service list.

The exemption provides an opportunity for individuals who may not have the knowledge of Commission practice and procedure to obtain information from the Commission. The Commission is concerned that in spite of its efforts and those of applicants, many landowners may remain unaware that a project directly affects their property until the time for intervention in a proceeding has passed. A non-party landowner should be able to contact the Commission to determine what is going on and how to participate in the proceeding if he or she so chooses. Further, if a landowner decides not to intervene, that landowner should be permitted to comment without the need to incur the expense of formally intervening in a proceeding. Any possible bias to the parties is mitigated by the notice and disclosure requirement that off-the-record communications with affected landowners be placed in the record of the proceeding and made available for review and comment. While the Commission agrees that an individual non-party landowner should not have an unlimited number of contacts, we believe that it is preferable to rely on the sound judgment of the Commission and its staff to prevent abuse rather than setting ''bright line'' restrictions on the number of such contacts.

In addition, only those non-party landowners whose property would be used by or whose property abuts property that would be used by the proposed project would qualify for the exemption. This exemption applies throughout the course of the proceeding, even after the NEPA process has been completed, but does not apply to landowner organizations, or to individual landowners who are parties to the proceeding.

*E. Proposed Exemptions Not Adopted in the Final Rule*

As indicated above, three of the ten exemptions proposed in the NOPR are not included as exemptions in the final rule.

(1) Pre-filing Communications Outside the Scope of the Final Rule

The NOPR proposed an exemption that would have permitted off-the-record communications relating to ''pre-filing communications, including communications under §§ 4.34(i), 4.38 and 16.8 of this chapter, to take place before the filing of an application for an original, new, nonpower, or subsequent hydropower license or exemption or a license amendment.'' A clarifying note added that application of this exemption is not limited to the referenced hydropower regulations, but would also include the submission of draft rate schedules for the purpose of receiving suggestions under § 35.6 of the Commission's rules, and certain informal pipeline certificate consultations pursuant to § 157.14(a). Further, the Commission has always encouraged pre-filings by oil pipeline companies. In our work on streamlining the oil regulations in Order No. 561,[92] we specifically included § 341.12, ''Informal Submissions,'' to allow for this. In addition, the NOPR anticipated additional initiatives permitting pre-filing collaborative procedures designed to expedite the process of reviewing applications subsequently filed with the Commission.

There is general support for this exemption; however, several commenters argue in favor of setting conditions on allowing pre-filing communications to take place off-the-record.[93] As noted by other commenters, however, pre-filing communications generally fall outside the scope of the APA's definition of *ex parte*.[94] Except for mandating that *ex parte* provisions take effect no later than the date a matter is noticed for hearing, the APA leaves to the individual agency the decision as to whether *ex parte* proscriptions should attach at an earlier date.[95] The Commission views pre-filing

[88] *E.g.,* HRC at 7, NGSA at 11.

[89] Joint Commenters at 12, BPA at 7.

[90] *See* ''Landowner Notification, Expanded Categorical Exclusions and Other Environmental Filing Requirements,'' Docket No. RM98–17–000 64 FR 27717 (May 21, 1999), IV FERC Stats & Regs. ] 32,540 (Apr. 28, 1999).

[91] Williston at 5.

[92] 58 FR 58753 (Nov. 4, 1993), FERC Stats. & Regs. (Regulations Preambles 1991–1996) ¶ 30,985 (Oct. 22, 1993).

[93] *E.g.,* SCSI at 4 (supports as long as pre-filing consultations do not address merits of the proceeding to be filed); WPPI at 6–7 (if adopted, permitted communications should be limited to procedure and precedent, and be disclosed); NGSA at 10 (favors exemption but reminds Commission that its decision must be based on record evidence, not pre-filing communications).

[94] HRC at 4, Interior at 5 (requests that the rule reference need for certain interagency communications).

[95] *See,* 5 U.S.C. 557(d)(1)(E). It should be noted, however, that the APA requires that, when the agency knows that the matter will be set for hearing, *ex parte* prohibitions should be enforced at that point.

communications as harmonious with the APA and, consistent with our past practice, does not believe that any bar to communications should exist prior to the time a matter is formally contested, let alone prior to the time a matter is filed for its consideration.

We agree with the commenters' assertion that there is no need to provide an exemption for pre-filing communications, as such communications fall outside this rule's applicability. Accordingly, this exemption is deleted from the final rule.[96]

(2) Consideration of Published or Widely Disseminated Public Information

As articulated in the NOPR, the Commission proposed this exemption to allow the Commission to consider publicly available information such as speeches, articles, and other published or widely disseminated information that may have a bearing on the issues involved in a contested proceeding. For example, Commission staff should be able to consult various regulated companies' electronic bulletin boards such as OASIS sites in order to obtain market information. The Commission can take official notice of that information in making its determination in the contested case. Independent research such as this does not qualify as an *ex parte* communication. This policy is not intended to encourage parties to forward for Commission consideration any published or otherwise broadly disseminated information in any manner other than on-the-record.

Commenters acknowledge that the Commission may take notice of public domain information but urge that parties not be permitted to provide such information to a decisional employee without formal notice.[97] It was also argued that exercising judicial notice is appropriate as long as the Commission identifies and allows parties a chance to rebut any such information it relies upon, and that the Commission clarify that the exemption applies to the document and not to direct communications with its makers.[98]

We agree with the commenters' assertions. However, we do not believe that a specific exemption is necessary to allow the Commission to access and consider in its decision making process any publicly available, widely disseminated materials. Independent research or fact gathering where no oral or written communication is exchanged does not qualify as a communication. Nor do we believe that a specific exemption is warranted to permit parties the opportunity to forward such information for Commission consideration off-the-record. Accordingly, we do not believe that a specific exemption is required for off-the-record communications of published or widely disseminated public information, and this exemption is deleted from the final rule. To the extent persons outside the Commission wish to communicate publicly available information in contexts not otherwise exempt under the rule, those communications must take place on-the-record.

(3) Off-the-Record Communications Concerning Non-Contested Compliance Matters

The NOPR proposed an exemption for certain staff communications concerning compliance matters where the compliance issue is not a subject of the rehearing. We note that several commenters supporting this exemption suggested that it be subject to a disclosure requirement.[99] Two commenters opposed lifting any restrictions on off-the-record communications relating to compliance, preferring that all such communications take place on the record. [100] It also was suggested that the exemption be limited to matters concerning environmental and safety concerns as well as to routine audits, and would require that the communication be disclosed with an opportunity for comment.[101]

The Commission does not believe that a specific exemption is needed to allow the sort of off-the-record communications we envisioned as being permitted by this proposed exemption. If a compliance matter is unrelated to a pending rehearing, it is no longer subject to an on-going Commission proceeding, and communications related to such matters are not relevant to the merits and, therefore, are not subject to the rule in any case. In order to clarify our intent, the definition of ''relevant to the merits'' has been modified to expressly exclude ''communications relating to compliance matters not the subject of an ongoing proceeding.'' With this definitional change, the proposed exemption is not included in the final rule.

Under the final rule, if a hydropower licensee or certificate holder is having difficulty complying with a particular condition imposed by the Commission in its order authorizing the subject facility, and the licensing or certification order is pending rehearing on issues unrelated to compliance issues, the licensee or certificate holder and the Commission may engage in off-the-record communications necessary solely to resolve issues related to the mechanics of compliance. However, communications relating to the need for the particular condition would be considered as relevant to the merits and would have to take place on the record.[102]

*F. Application of the Prohibitions on Off-The-Record Communications*

The final rule generally follows the proposed rule, stating that the prohibitions on off-the-record communications do not apply prior to the initiation of a proceeding at the Commission. The rule's proscriptions apply: For proceedings initiated by the Commission—from the time an order initiating the proceeding is issued; for proceedings returned to the Commission on judicial remand—from the date the court issues its mandate; for complaints initiated pursuant to Rule 206 [103]—from the date of the filing of the complaint with the Commission, or the date the Commission initiates an investigation, on its own motion; and for all other proceedings—from the time of the filing of an intervention disputing any material issue that is the subject of a proceeding.

As discussed above, pre-filing communications are not governed by this rule. With respect to licenses and certificates, even though pre-filing communications are not prohibited under the provisions of this rule, our intent and preference is that pre-filing protocols will continue to be used as an element of our collaborative pre-filing procedures.

Several commenters suggest that the Commission should presume that all docketed matters will be contested and,

[96] Even though we find that pre-filing communications fall outside the scope of this rule, we are nonetheless sensitive to the concerns expressed by some commenters regarding communications that take place before an application is filed. The Commission's pre-filing collaborative procedures address these concerns, typically with communications protocols.

[97] ACHP at 3.

[98] NGSA at 9.

[99] *E.g.*, HRC at 7; INGAA at 10; Interior at 10; Indicated Shippers at 10, NGSA at 5.

[100] NMFS at 4 (suggesting that its role in compliance matters could be adversely affected if it is not provided prior notice of communications between the Commission and the licensee); WPPI at 5–6.

[101] Indicated Shippers at 10.

[102] In this example, should the permitted communication result in a conclusion that the condition cannot practicably be met, the licensee would have to seek an amendment to its license, which must be on-the-record, subject to comment by all parties to the proceeding.

[103] 18 CFR 385.206.

therefore, the prohibition on off-the-record communications should be in effect from the time of filing of an application until the time for interventions and protests has expired. If no opposing pleading has been filed by that time, the Commission could then notice that communications may take place off-the-record.[104] Another commenter requests that the Commission announce that *ex parte* provisions have been triggered at the same time it announces receipt of *any* filing. [105]

The Commission is not adopting these suggestions. The thrust of these comments would be to begin the prohibition on *ex parte* contacts as soon as an application is filed with the Commission. This would mean that there could be no off-the-record communications about any proceeding docketed by the Commission—a result that the Commission finds is too restrictive and is not required by law. To trigger the rule upon application, for example, could prevent the Commission from efficiently obtaining important information necessary to cure an incomplete filing.

As noted above, the prohibitions on off-the-record communications will typically be triggered by the filing of a protest or an intervention that disputes any material issue in an application for Commission action, not by the filing of the application itself. Because a properly filed intervention is recorded on the docket sheet and is available on other public electronic information retrieval systems maintained by the Commission and should be served by the maker on the parties, the Commission does not believe it is necessary to formally notice in any individual proceeding when the prohibitions on off-the-record communications are in effect. However, the Commission will explore electronic tools for indicating, perhaps on the docket sheet, when the prohibitions on off-the-record communications have been triggered.

Once triggered, the prohibitions against off-the-record communications remain in effect until the time for rehearing has expired and no party has filed for rehearing, or the Commission has disposed of all petitions for rehearing or clarification, or the proceeding is otherwise terminated or is no longer contested. If the Commission order is subject to judicial review which results in a remand, the prohibitions against off-the-record communications once again apply when the court issues its mandate remanding the matter to the Commission.

One commenter suggested that the prohibitions should remain in effect during judicial review.[106] This commenter's concern was that, in the event of a remand, whether voluntarily requested by the Commission or as a result of judicial review, information communicated while the proceeding is before the court by the parties to the case to Commission staff defending the Commission's orders could be improperly used to prejudice any Commission action on remand.[107]

The final rule does not adopt this suggestion. During judicial review, there is no matter pending before the Commission that would trigger the *ex parte* communication prohibitions of the APA. During the judicial review process, the record of the Commission's proceedings is closed. In the event of a remand, any further Commission action would be required to be based on that existing record or on additions made to that record after remand and the reopening of the record. As the rule's prohibitions would once again apply on remand, any additional matter made part of the record would be admitted under the protections of the rule.

### *G. Handling Prohibited Off-The-Record Communications*

The final rule, as did the proposed rule, differentiates between two types of off-the-record communications: those prohibited by the regulations, and those permitted by the regulations under specific exemptions. This section sets forth the treatment for prohibited off-the-record communications under the regulations, while the next section addresses the handling of exempted off-the-record communications.

The NOPR proposed to depart from the prior Rule 2201,[108] but not the APA, by dropping the requirement that submissions to the public, non-decisional file revealing prohibited off-the-record communications must be served on the parties to the proceeding. The proposed substitution of public notice, rather than requiring the Commission to make individual service on all parties to a proceeding, was modeled on the approach used in the FCC's *ex parte* rule with regard to off-the-record communications.[109]

Comments received on this provision of the rule express concern about the adequacy of notice, with a number of commenters arguing that mere ''bulletin board'' posting is insufficient notice.[110] However, several other commenters argue that, although merely posting a notice on the Commission's bulletin board is not sufficient, proper notice could be accomplished electronically through the Internet, electronic mail, or by posting the notice on the Commission's web page.[111] The final rule reflects these comments. In addition, in the case of a prohibited off-the-record written communication, the final rule requires the Secretary to instruct the author to directly serve the document on all parties listed on the Commission's official service list.

Commission decisional employees who make or receive a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, are obligated to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary for submission into a public, non-decisional file associated with the decisional record in the proceeding. This obligation must be met promptly after the prohibited off-the-record communication occurs.

The final rule, under Rule 2201(h),[112] requires the Secretary to issue a public notice, at least as often as every 14 days, of the receipt of any prohibited off-the-record communications. Such notice will list the maker of the prohibited off-the-record communication, date of receipt by the Commission, and the docket number to which the prohibited off-the-record communication relates. The notice also will state that the prohibited, off-the-record communication will not be considered by the Commission.

Parties to a proceeding may seek an opportunity to respond on the record to any facts or contentions made in a communication and placed in the non-decisional file, and may request that the Commission include the prohibited off-the-record communication and responses thereto in the public decisional record, as well. The Commission will grant such requests only when it determines that fairness so requires. If the request is granted, a copy of the off-the-record communication and the permitted on-the-record response will be made a part of the decisional record.

The public notice will appear on the Commission's web page in a place

[104] Indicated Shippers at 7, WPPI at 3.

[105] Interior at 15.

[106] Indicated Shippers at 7–9.

[107] *Id.*

[108] 18 CFR 385.2201.

[109] 47 CFR 1.1206(b).

[110] *E.g.*, NHA at 4–5, Interior at 16–17, EEI, at 4, HRC at 8. ''Bulletin board'' posting in this context means the posting of a paper document on a public bulletin board at Commission headquarters.

[111] *See, e.g.*, INGAA at 9, BPA at 7, Williams at 2–3, Williston at 6–10.

[112] 18 CFR 385.2201(h).

designated for such notices. The notice will describe the prohibited off-the-record communication in sufficient detail to allow interested persons to ascertain whether it is of interest and how it may be accessed through RIMS or some other means. In addition, the Secretary will periodically, but not less than every 14 days, publish in the **Federal Register** a list of prohibited off-the-record communications.

*H. Handling Exempted Off-The-Record Communications*

Many of the exemptions to the final rule require notice and disclosure of off-the-record communications permitted under their terms. Because the exemptions require notice and disclosure of off-the-record communications that are relevant to the merits, one commenter asks that when the Secretary notices an exempted off-the-record communication, whether written or oral, such notice provide details of the contact, such as the related docket number, maker, time and place of a communication, and a summary of the substance of the communication.[113] Because this section addresses exempted, rather than prohibited communications, this commenter believes that it is very important that notice of the communication be made promptly so as to allow time for a meaningful response.[114]

These comments have merit. Exempted off-the-record communications subject to a disclosure requirement will be placed in the decisional record and may be used by the Commission in coming to a decision on the merits in a proceeding. Accordingly, such communications must be available for review by all parties to the proceeding, and there must be an efficient and effective method for noticing the receipt of such off-the-record communications and making such off-the-record communications available for public inspection and comment. In the case of exempted off-the-record communications, prompt electronic notice through an electronic service list will be made and the document will be made available through the Commission's public automated information retrieval systems.

*J. Notice of Prohibited and Exempted Off-The-Record Communications*

The NOPR had two different subsections regarding notice of off-the-record communications. Rule 2201(f)(2) required notice of prohibited, off-the-record communications, and Rule 2201(g)(2) required notice of permitted off-the-record communications.[115] The final rule consolidates these two subsections into final Rule 2201(h): ''Public notice requirement of prohibited and exempted off-the-record communications.''

*K. Sanctions for Making Prohibited, Off-The-Record Communications*

The final rule adopts the NOPR's proposed sanctions. Any party or its agent who knowingly makes or causes to be made prohibited off-the-record communications may be required to show cause why its claim or interest should not be dismissed, disregarded, or otherwise adversely affected because of the improper communication. This particular sanction is already found in our existing *ex parte* regulation,[116] and mirrors that provided for in the APA itself.[117] An additional sanction subjects to possible suspension or disbarment from practice before the Commission, any individual knowingly making or causing to be made, prohibited off-the-record communications. The final rule allows the Commission to take action against the representative of a party to a proceeding, the party itself, or both. In those rare instances where a party uses attorneys or other representatives who repeatedly violate Commission procedures, both the party and the individual offender may be subject to Commission disciplinary measures.

The general view of the commenters is that the existing *ex parte* sanction, coupled with Rule 2102 on suspensions from practice before the Commission,[118] is already sufficient to dissuade individuals from engaging in improper off-the-record communications.[119] One commenter argues that the sanctions set forth in the NOPR seem disproportionate and may discourage contact with the Commission.[120]

To the extent the commenters support the new sanctions, they suggest making clear that this section should be applied in only the most egregious cases, *e.g.*, repeated violations by the same person, and then only after due process requirements have been satisfied.[121] The Commission also is urged not to invoke sanctions for inadvertent violations, and to assure that the sanction of disqualification would apply to an individual representing a party to a proceeding and not the party itself.[122]

The final rule retains the sanctions as proposed. In so doing, we acknowledge the overlap with this provision and Rule 2102.[123] The ex parte sanctions are intended to clarify that persons who engage in prohibited communications are subject to sanctions for the violation of the rule. The final rule properly provides that knowing and willful violations of the prohibitions could result in suspension or disbarment pursuant to the provisions of Rule 2102.

One commenter suggests that the final rule provide that those Commission employees who violate these provisions should be subject to the Commission's disciplinary procedures.[124] The Commission's standards of conduct [125] and administrative directives [126] provide that staff who violate its rules are subject to sanctions ranging from admonishment to removal from Federal service, depending on the severity of the violation. One intent of the revisions to the existing *ex parte* rule is to clarify that the prohibitions apply to communications by Commission decisional employees as well as to communications from persons outside the Commission. Accordingly, the final rule includes a provision that Commission personnel violating this rule may be subject to Commission disciplinary action.

## IV. Regulatory Flexibility Certification Statement

The Regulatory Flexibility Act [127] requires rulemakings either to contain a description and analysis of the impact the rule would have on small entities, or to certify that the rule will not have a significant economic impact on a substantial number of small entities. An analysis is not required if a proposed rule will not have such an impact.[128]

The regulations proposed in this rulemaking would revise the Commission's rules of practice and procedure dealing with certain off-the-record communications. The Commission certifies that this final rule will not have a significant economic impact on small entities.

## V. Environmental Statement

Commission regulations require that an environmental assessment or an

[113] HRC at 8–9.

[114] *Id.*

[115] The comments relating to the notice requirements were discussed in the previous section.

[116] 18 CFR 385.2201(f).

[117] 5 U.S.C. 557(d)(1)(D).

[118] 18 CFR 385.2102

[119] *See, e.g.*, NGSA at 12.

[120] Indicated Shippers at 14–15.

[121] *Id. See also* Process Gas at 6, EEI at 13,.

[122] NGSA at 12.

[123] 18 CFR 385.2102.

[124] INGAA at 11.

[125] 18 CFR 385.3c

[126] Federal Energy Regulatory Commission, Administrative Directive 3–7B (FERC Work Force Discipline Program).

[127] 5 U.S.C. 601–612.

[128] 5 U.S.C. 605(b).

environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.[129] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Among these are proposals for rules that are procedural.[130] The final rule falls under this exception; consequently, no environmental consideration is necessary.

## VI. Information Collection Statement

The Office of Management and Budget's (OMB's) regulations require that OMB approve certain information collection requirements imposed by agency rules.[131] However, this final rule contains no information collection requirements and therefore is not subject to OMB approval.

## VII. Congressional Review and Effective Date

The provisions of 5 U.S.C. 801, regarding Congressional review of rulemakings, do not apply to this rulemaking because it concerns agency procedure and practice and will not substantially affect the rights and obligations of non-agency parties.[132]

The rule is effective October 22, 1999.

## List of Subjects in 18 CFR Part 385

Administrative practice and procedure, Electric Power, Penalties, Pipelines, and Reporting and record keeping requirements.

By the Commission.

**David P. Boergers,**

*Secretary.*

In consideration of the foregoing, the Commission amends part 385, chapter I, Title 18, Code of Federal Regulations, as follows:

## PART 385—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 385 continues to read as follows:

**Authority:** 5 U.S.C.551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

### § 385.101 [Amended]

2. In § 385.101, remove paragraph (b)(4)(ii), and redesignate paragraph (b)(4)(i) as (b)(4).

3. Section 385.915 is revised to read as follows:

### § 385.915 Off-the-record communications (Rule 915).

The provisions of Rule 2201 (prohibited communications and other communications requiring disclosure) apply to proceedings pursuant to this subpart, commencing at the time the Secretary issues a proposed remedial order under 10 CFR 205.192, an interim remedial order for immediate compliance under 10 CFR 205.199D, or a proposed order of disallowance under 10 CFR 205.199E.

4. Section 385.1012 is revised to read as follows:

### § 385.1012 Off-the-record communications (Rule 1012).

The provisions of Rule 2201 (prohibited communications and other communications requiring disclosure) apply to proceedings pursuant to this subpart, commencing at the time a petitioner files a petition for review under Rule 1004 (commencement of proceedings).

### § 385.1415 [Removed]

5. Section 385.1415 is removed.

6. The heading of Subpart V is revised to read as follows:

## Subpart V—Off-the-Record Communications; Separation of Functions

7. Section 385.2201 is revised to read as follows:

### § 385.2201 Rules governing off-the-record communications. (Rule 2201).

(a) *Purpose and scope.* This section governs off-the-record communications with the Commission in a manner that permits fully informed decision making by the Commission while ensuring the integrity and fairness of the Commission's decisional process. This rule will apply to all contested on-the-record proceedings, except that the Commission may, by rule or order, modify any provision of this subpart, as it applies to all or part of a proceeding, to the extent permitted by law.

(b) *General rule prohibiting off-the-record communications.* Except as permitted in paragraph (e) of this section, in any contested on-the-record proceeding, no person shall make or knowingly cause to be made to any decisional employee, and no decisional employee shall make or knowingly cause to be made to any person, any off-the-record communication.

(c) *Definitions.* For purposes of this section:

(1) *Contested on-the-record proceeding* means

(i) Except as provided in paragraph (c)(1)(ii) of this section, any proceeding before the Commission to which there is a right to intervene and in which an intervenor disputes any material issue, or any proceeding initiated by the Commission on its own motion or in response to a filing.

(ii) The term does not include notice-and-comment rulemakings under 5 U.S.C. 553, investigations under part 1b of this chapter, proceedings not having a party or parties, or any proceeding in which no party disputes any material issue.

(2) *Contractor* means a direct Commission contractor and its subcontractors, or a third-party contractor and its subcontractors, working subject to Commission supervision and control.

(3) *Decisional employee* means a Commissioner or member of his or her personal staff, an administrative law judge, or any other employee of the Commission, or contractor, who is or may reasonably be expected to be involved in the decisional process of a proceeding, but does not include an employee designated as part of the Commission's trial staff in a proceeding, a settlement judge appointed under Rule 603, a neutral (other than an arbitrator) under Rule 604 in an alternative dispute resolution proceeding, or an employee designated as being non-decisional in a proceeding.

(4) *Off-the-record communication* means any communication relevant to the merits of a contested on-the-record proceeding that, if written, is not filed with the Secretary and not served on the parties to the proceeding in accordance with Rule 2010, or if oral, is made without reasonable prior notice to the parties to the proceeding and without the opportunity for such parties to be present when the communication is made.

(5) *Relevant to the merits* means capable of affecting the outcome of a proceeding, or of influencing a decision, or providing an opportunity to influence a decision, on any issue in the proceeding, but does not include:

(i) Procedural inquiries, such as a request for information relating solely to the status of a proceeding, unless the inquiry states or implies a preference for a particular party or position, or is otherwise intended, directly or indirectly, to address the merits or influence the outcome of a proceeding;

(ii) A general background or broad policy discussion involving an industry or a substantial segment of an industry, where the discussion occurs outside the context of any particular proceeding involving a party or parties and does not address the specific merits of the proceeding; or,

[129] 18 CFR part 380.

[130] 18 CFR 380.4(a)(2)(ii).

[131] 5 CFR part 1320.

[132] 5 U.S.C. 804(3)(C).

(iii) Communications relating to compliance matters not the subject of an ongoing proceeding.

(d) *Applicability of prohibitions.*

(1) The prohibitions in paragraph (b) of this section apply to:

(i) Proceedings initiated by the Commission from the time an order initiating the proceeding is issued;

(ii) Proceedings returned to the Commission on judicial remand from the date the court issues its mandate;

(iii) Complaints initiated pursuant to rule 206 from the date of the filing of the complaint with the Commission, or the date the Commission initiates an investigation, (other than an investigation under part 1b of this chapter), on its own motion; and

(iv) All other proceedings from the time of the filing of an intervention disputing any material issue that is the subject of a proceeding.

(2) The prohibitions remain in force until:

(i) A final Commission decision or other final order disposing of the merits of the proceeding or, when applicable, after the time for seeking rehearing of a final Commission decision, or other final order disposing of the merits expires;

(ii) The Commission otherwise terminates the proceeding; or

(iii) The proceeding is no longer contested.

(e) *Exempt off-the-record communications.*

(1) Except as provided by paragraph (e)(2) of this section, the general prohibitions in paragraph (b) of this section do not apply to:

(i) An off-the-record communication permitted by law and authorized by the Commission;

(ii) An off-the-record communication made by a person outside of the agency related to an emergency subject to disclosure under paragraph (g) of this section;

(iii) An off-the-record communication provided for in a written agreement among all parties to a proceeding that has been approved by the Commission;

(iv) An off-the-record written communication from a non-party elected official, subject to disclosure under paragraph (g) of this section;

(v) An off-the-record communication to or from a Federal, state, local or Tribal agency that is not a party in the Commission proceeding, subject to disclosure under paragraph (g) of this section, if the communication involves:

(A) An oral or written request for information made by the Commission or Commission staff; or

(B) A matter over which the Federal, state, local, or Tribal agency and the Commission share jurisdiction, including authority to impose or recommend conditions in connection with a Commission license, certificate, or exemption;

(vi) An off-the-record communication, subject to disclosure under paragraph (g) of this section, that relates to:

(A) The preparation of an environmental impact statement if communications occur prior to the issuance of the final environmental impact statement; or

(B) The preparation of an environmental assessment where the Commission has determined to solicit public comment on the environmental assessment, if such communications occur prior to the issuance of the final environmental document.

(ii) An off-the-record communication involving individual landowners who are not parties to the proceeding and whose property would be used or abuts property that would be used by the project that is the subject of the proceeding, subject to disclosure under paragraph (g) of this section.

(2) Except as may be provided by Commission order in a proceeding to which this subpart applies, the exceptions listed under paragraph (e)(1) of this section, will not apply to any off-the-record communications made to or by a presiding officer in any proceeding set for hearing under subpart E of this part.

(f) *Treatment of prohibited off-the-record communications.*—(1) *Commission consideration.* Prohibited off-the-record communications will not be considered part of the record for decision in the applicable Commission proceeding, except to the extent that the Commission by order determines otherwise.

(2) *Disclosure requirement.* Any decisional employee who makes or receives a prohibited off-the-record communication will promptly submit to the Secretary that communication, if written, or, a summary of the substance of that communication, if oral. The Secretary will place the communication or the summary in the public file associated with, but not part of, the decisional record of the proceeding.

(3) *Responses to prohibited off-the-record communications.* Any party may file a response to a prohibited off-the-record communication placed in the public file under paragraph (f)(2)of this section. A party may also file a written request to have the prohibited off-the-record communication and the response included in the decisional record of the proceeding. The communication and the response will be made a part of the decisional record if the request is granted by the Commission.

(4) *Service of prohibited off-the-record communications.* The Secretary will instruct any person making a prohibited written off-the-record communication to serve the document, pursuant to Rule 2010, on all parties listed on the Commission's official service list for the applicable proceeding.

(g) *Disclosure of exempt off-the-record communications.* (1) Any document, or a summary of the substance of any oral communication, obtained through an exempt off-the-record communication under paragraphs (e)(1)(ii), (iv), (v), (vi) or (vii) of this section, promptly will be submitted to the Secretary and placed in the decisional record of the relevant Commission proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under paragraph (e)(1)(v) of this section.

(2) Any person may respond to an exempted off-the-record communication.

(h) *Public notice requirement of prohibited and exempt off-the-record communications.* (1) The Secretary will, not less than every 14 days, issue a public notice listing any prohibited off-the-record communications or summaries of the communication received by his or her office. For each prohibited off-the-record communication the Secretary has placed in the non-decisional public file under paragraph (f)(1) of this section, the notice will identify the maker of the off-the-record communication, the date the off-the-record communication was received, and the docket number to which it relates.

(2) The Secretary will not less than every 14 days, issue a public notice listing any exempt off-the-record communications or summaries of the communication received by the Secretary for inclusion in the decisional record and required to be disclosed under paragraph (g)(1) of this section.

(3) The public notice required under this paragraph (h) will be posted in accordance with § 388.106 of this chapter, as well as published in the **Federal Register**, and disseminated through any other means as the Commission deems appropriate.

(i) *Sanctions.* (1) If a party or its agent or representative knowingly makes or causes to be made a prohibited off-the-record communication, the Commission may require the party, agent, or representative to show cause why the party's claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected because of the

prohibited off-the-record communication.

(2) If a person knowingly makes or causes to be made a prohibited off-the-record communication, the Commission may disqualify and deny the person, temporarily or permanently, the privilege of practicing or appearing before it, in accordance with Rule 2102 (Suspension).

(3) Commission employees who are found to have knowingly violated this rule may be subject to the disciplinary actions prescribed by the agency's administrative directives.

(j) *Section not exclusive.* (1) The Commission may, by rule or order, modify any provision of this section as it applies to all or part of a proceeding, to the extent permitted by law.

(2) The provisions of this section are not intended to limit the authority of a decisional employee to decline to engage in permitted off-the-record communications, or where not required by any law, statute or regulation, to make a public disclosure of any exempted off-the-record communication.

8. The heading of § 385.2202 is revised to read as follows:

**§ 385.2202 Separation of Functions (Rule 2202).**

**Note: This Appendix will not appear in the Code of Federal Regulations**

**Appendix A—List of Commenters**

Adirondack Mountain Club
Advisory Council on Historic Preservation (ACHP)
American Gas Association (AGA)
ANR Pipeline Company/Colorado Interstate Gas Company (ANR/CIG)
Bonneville Power Administration (BPA)
California Electric Oversight Board (Cal Board)
Chevron Pipe Line Company (Chevron)
Edison Electric Institute (EEI)
Electric Power Supply Association (EPSA)
Environmental Protection Agency (EPA)
Executive Office of the President/Council on Environmental Quality (CEQ)
Hydropower Reform Coalition (HRC)
Indicated Shippers
Interstate Natural Gas Association of America (INGAA)
Louisiana Department of Wildlife And Fisheries (La W&F)
National Association of Regulatory Utility Commissioners (NARUC)
National Marine Fisheries Services (NMFS)
National Hydropower Association (NHA)
National Rural Electric Cooperative Association/American
Public Power Supply Association (Joint Commenters)
Natural Gas Supply Association (NGSA)
Public Service Commission of New York (PSCNY)
Public Utilities Commission of State of California (PUCCAL)
Public Utilities Commission of State of California/Independent (Cal–ISO) System Operator
Process Gas Consumers Group (Process Gas)
Sacramento Municipal Utilities District (SMUD)
Sempra Energy Companies (Sempra)
Southern California Edison Company (SoCalEd)
Southern Companies Services, Inc. (SCSI)
Southern Natural Gas Company (SoNat)
United States Department of the Interior (Interior)
Williams Companies (Williams)
Williston Basin Interstate Pipeline Company (Williston)
Wisconsin Public Power, Inc. (WPPI)

[FR Doc. 99–24616 Filed 9–21–99; 8:45 am]
BILLING CODE 6717–01–P

## DEPARTMENT OF COMMERCE

## International Trade Administration

## 19 CFR Part 351

**[Docket No. 990521142–9252–02]**

**RIN 0625–AA54**

## Amended Regulation Concerning the Revocation of Antidumping and Countervailing Duty Orders

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Final rule.

**SUMMARY:** The Department of Commerce (the ''Department'' or ''DOC'') is amending its regulation, which governs the revocation of antidumping and countervailing duty orders, in whole or in part, and the termination of suspended antidumping and countervailing duty investigations, based upon an absence of dumping or subsidization, respectively. The amended regulation conforms the existing regulation to the United States' obligations under Article 11 of the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (''Antidumping Agreement'') and Article 21 of the Agreement on Subsidies and Countervailing Measures (''SCM Agreement''). The amended paragraph relating to revocation or termination based on absence of dumping provides that the Secretary, upon considering whether producers or exporters have sold subject merchandise at not less than normal value for at least three consecutive years, and whether the continued application of the antidumping duty order is otherwise necessary to offset dumping, will revoke an antidumping duty order if warranted. The amended paragraph relating to revocation or termination based on absence of countervailable subsidy provides that the Secretary, upon considering whether the government of the affected country has eliminated all countervailable subsidy programs covering the subject merchandise for at least three consecutive years, or exporters or producers have not applied for or received countervailable subsidies for at least five consecutive years, and whether the continued application of the countervailing duty order is otherwise necessary to offset subsidization, will revoke a countervailing duty order if warranted.

**EFFECTIVE DATE:** November 1, 1999.

**FOR FURTHER INFORMATION CONTACT:** Melissa G. Skinner, Office of Policy, Import Administration, U.S. Department of Commerce, at (202) 482–1560, or Myles S. Getlan, Office of the Chief Counsel for Import Administration, U.S. Department of Commerce, at (202) 482–5052.

**SUPPLEMENTARY INFORMATION:**

### Background

On June 3, 1999, the Department published a Notice of Proposed Rulemaking which proposed to amend 19 CFR 351.222(b).[1] See 64 FR 29818 (the ''Proposed Rule''). The Department explained that the process of amending this regulation arose from the findings of a dispute settlement panel convened under the auspices of the World Trade Organization (''WTO'') that considered various aspects of the Department's final results of administrative review in Dynamic Random Access Memory Semiconductors (DRAMs) Of One Megabit Or Above From Korea (62 FR 39809, July 24, 1997) (''DRAMs From Korea'').

On January 29, 1999, the Panel determined that the Department's standard for revoking an antidumping duty order contained in 19 CFR 353.25(a)(2) (the precursor to 19 CFR 351.222(b)) was inconsistent with the United States' obligations under Article 11.2 of the WTO Antidumping Agreement. See United States—Anti-Dumping Duty on Dynamic Random Access Memory Semiconductors (DRAMS) of One Megabit or Above From Korea, WT/DS99/R (''Panel Report''). Specifically, the Panel determined that requiring the Secretary

[1] This amendment does not affect the Department's regulations at 19 CFR 351.218, which implements the statutory provision at 19 U.S.C. 1675(c) and governs the Department's five-year sunset reviews, in which the Department determines whether revocation of an order ''would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.''

to conclude that ''it is not likely'' that the persons requesting revocation will dump merchandise subject to an antidumping duty order in the future did not implement properly Article 11.2 of the Antidumping Agreement. This provision requires an administering authority to consider whether ''the continued imposition of [an antidumping] duty is necessary to offset dumping'' in determining whether to revoke an antidumping duty order. Thus, the Panel recommended that the United States ''bring section 353.25(a)(2)(ii) of the DOC regulations * * * into conformity with its obligations under Article 11.2 of the AD Agreement.'' The Dispute Settlement Body (''DSB'') adopted the Panel Report on March 19, 1999. On April 15, 1999, the United States announced its intention to implement the recommendations and rulings of the DSB. Consistent with section 123(g) of the Uruguay Round Agreements Act (''URAA''), which governs the Department's implementation of adverse panel reports, the Department is revising 19 CFR 351.222(b) and (c).

**Explanation of the Final Rule**

The proposed amendment to the Department's revocation regulation concerned only antidumping proceedings, as the Department focused upon implementing the specific findings contained in the Panel Report. Consequently, at that time, the Department did not propose amending the companion revocation provision applicable to countervailing duty proceedings. However, we believe that a decision not to amend the countervailing duty provision would render the revocation standards in antidumping and countervailing duty cases inconsistent with each other. The ''not likely'' standard in 19 CFR 351.222(b), which governs the revocation of antidumping duty orders, is identical to the standard in 19 CFR 351.222(c), which governs revocation in countervailing duty cases. In addition, the ''necessary'' standard in Article 11 of the Antidumping Agreement, to which we have conformed the antidumping regulation, is identical to the standard in Article 21 of the SCM Agreement which regulates the duration of countervailing duties. Since the revocation standards in the two WTO agreements are identical, and since at least one party commented on this issue during the public comment period, we conclude that the public was on notice that the countervailing duty regulation could similarly be revised. Therefore, we are making conforming amendments to the countervailing duty provision as well in order to maintain consistency between the Department's procedures governing revocation in both antidumping and countervailing duty cases and the standards in both the Antidumping Agreement and SCM Agreement.

In addition, in response to comments, the final rule incorporates several changes to the Proposed Rule. First, the language which read ''[t]he Secretary may revoke an antidumping order * * *'' has been altered to read ''[t]he Secretary will revoke the antidumping duty order.'' Second, the final rule no longer states that the Secretary will consider whether the continued application of the order is ''no longer necessary to offset dumping.'' Instead, the final rule provides that, *inter alia,* the Secretary will consider ''whether the continued application of the antidumping duty order is otherwise necessary to offset dumping.'' These changes are discussed in more detail below.

We received comments concerning the Proposed Rule from various parties. One commenter believes that the proposed revision to the Department's regulation, which incorporates the standard set forth in Article 11.2 of the WTO Antidumping Agreement, responds appropriately to the concerns articulated by the WTO panel decision and represents a fair implementation of the panel's recommendation. Moreover, this commenter states that the proposed revision should not negatively affect the protection afforded U.S. industries against unfairly traded imports.

Several commenters insist that the revised ''necessity'' standard is ''effectively not a standard at all.'' In this respect, these commenters note the Panel's finding that there must be a demonstrable basis for consistently and reliably determining that the maintenance of an order is necessary to offset injurious dumping. These commenters contend that the Proposed Rule contains no guidelines or definitions of the ''evidence'' that would be relevant to the continued necessity of an order. Consequently, these commenters argue that the Proposed Rule will not improve the demonstrability, consistency, and reliability of revocation decisions or ensure that decisions to maintain antidumping or countervailing duty orders are based upon positive evidence demonstrating the continued need for the order. One commenter suggests that using a ''likely to recur'' standard ''would have been the most logical, direct means to meet the WTO requirement that a positive finding is necessary to support continuation of an [antidumping duty] order.''

However, another commenter noted that the amended regulation establishes a ''necessity'' standard which reflects the same standard established in the Antidumping Agreement. Thus, this commenter believes the revised standard does in fact provide the ''demonstrable basis upon which to reliably conclude that the continued imposition of the duty is necessary to offset dumping.''

We disagree with those commenters who state that the revised ''necessity'' standard is ''effectively not a standard at all.'' Article 11.2 of the Antidumping Agreement allows interested parties to request authorities to examine whether the continued imposition of the duty is ''necessary'' to offset dumping. To say that the ''necessity'' standard contained in the Department's revised regulation is effectively no standard at all is to say that Article 11.2 contains no standard. This is illogical given that this process of revising the revocation regulation stems from a panel finding that the Department's existing regulation did not properly implement the ''necessary'' standard contained in Article 11.2. On the other hand, we agree that each determination made pursuant to this new regulation will need to be supported by positive evidence. Moreover, we are confident that the revised standard, along with our established practice of considering evidence relating to the likelihood of future dumping, will provide for consistent and reliable decisions regarding revocation.

One commenter urges the Department to discontinue its practice of applying a presumption in favor of revocation in the absence of dumping for three consecutive years. As support, this commenter refers to the Court of International Trade's (''CIT'') characterization of the Department's regulation as a three-part test for revocation and states that the ''not likely'' (or the revised ''necessary'') prong constitutes an independent criterion that must be established to attain revocation. See Hyundai Electronics Co., Ltd. v. United States, Slip. Op. 99–44 (Ct. Int'l Trade, May 19, 1999). This commenter believes that the presumption nullifies the satisfaction of the second (''necessary'') prong.

In this regard, two commenters assert that a presumption favoring revocation unfairly and improperly shifts the burden to petitioners to come forward with affirmative evidence. Since respondents are in possession of information relevant to revocation, as argued by these commenters, the burden

of producing such evidence should rest with the respondents. One commenter requested that the Department include in its initial questionnaire a solicitation of data and other information from the respondent seeking revocation on why the antidumping duty order in the respondent's opinion is no longer needed to offset dumping. While this commenter conceded that this procedural element could be implemented without regulatory modification, the commenter contended that there was no reason that such a provision could not be incorporated in the regulations.

By contrast, several commenters stated that the revised regulation continues to place a burden on respondents to prove eligibility for revocation, rather than placing the burden on the Department to find positive evidence establishing that the maintenance of the order is necessary. These commenters contend that placing the burden on the Department necessitates a reformulation of the regulation, such that the revised regulation should not treat maintaining the order as the norm. Thus, these commenters suggested that the new regulation require the Secretary to revoke if the respondent has not dumped for three consecutive years and has furnished the required reinstatement agreement, ''unless the Secretary reliably demonstrates on the basis of a foundation of positive evidence that the continued application of the antidumping duty order as to the exporter or producer is necessary to offset dumping.''

However, one commenter welcomed the Department's confirmation that the regulation reflects a rebuttable presumption that favors revoking an order when there is an absence of dumping for three or more years. In this regard, this commenter states that the initial burden should clearly rest on the petitioners, as the beneficiaries of the continuation of the order, to provide evidence that the order is still necessary. Thus, this commenter states that the Department should not request information from a respondent until petitioners make allegations supported by tangible evidence that the order is still necessary.

As discussed in the Proposed Rule, in situations where there is an absence of dumping (or subsidization) for three (or five) consecutive years, the Department intends to presume that an order is not necessary in the absence of additional evidence. We believe that such a presumption is consistent with prior Department practice as well as U.S. obligations under Article 11.2 of the Antidumping Agreement and Article 21.2 of the SCM Agreement. As the Panel recognized, a decision to maintain an order must be substantiated by positive evidence. If the only evidence on record is a respondent's ability to sell subject merchandise at not less than normal value for three consecutive years, the record would not support a decision to maintain the order in light of the requirement in Article 11.2, as interpreted by the Panel, that there be positive evidence reflecting the continued necessity of the order.

We decline at this time to adopt the commenter's suggestion that we solicit information from respondents at the outset of an administrative review. The absence of dumping for three consecutive years,[2] while satisfying the first prong of the regulatory standard, is also sufficient evidence relevant to the continued necessity of the order to shift the burden of production to the petitioners. However, if a party raises an issue relating to the necessity of an order, the Department may seek additional information relevant to that issue. Nonetheless, since the manner in which we collect evidence is not necessarily a regulatory matter, we may revisit this issue at a later time in the development of our practice in applying the revised regulation.

We disagree with those commenters who suggest that the revised regulation continues to place a burden on respondents, rather than the Department, to prove eligibility for revocation. The threshold requirement for revocation continues to be that respondents not sell at less than normal value for at least three consecutive years and that, during each of those years, respondents exported subject merchandise to the United States in commercial quantities. See 19 CFR 351.222(d)(1). The Panel did not disturb this aspect of the Department's revocation practice. Moreover, we re-emphasize our statement in the Proposed Rule that ''the absence of dumping for three consecutive years served as a presumption in favor of revoking the order, which could be rebutted by positive evidence indicating that dumping may recur if the order were revoked.'' Thus, we disagree that an impermissible burden is placed on respondents. Instead, a thorough analysis of all relevant information requires a system in which there is a shifting burden of production such that the parties in the best position to provide relevant information are compelled to do so. All parties may be in a position to provide information concerning trends in prices and costs, currency movements, and other market and economic factors that may be relevant to the likelihood of future dumping. If no party provides information addressing these issues, we rest with the presumption that an order is not necessary in the absence of dumping. If the petitioner comes forward with information demonstrating that the maintenance of the order is necessary, that initial presumption is rebutted, and the burden of production shifts to respondents. While the burden of producing evidence shifts among the parties, we emphasize that the Department does not impose a burden of proof on any party. The Department must weigh all of the evidence on the record and determine whether the continued application of the order is necessary to offset dumping (or subsidization). Each revocation determination must be based upon substantial, positive evidence and be otherwise in accordance with law.

One commenter stated that, unlike the ''not likely'' standard, ''necessity'' is a minimum standard that has no shades or degrees within it. Stated differently, something that is not ''no longer necessary'' is necessary.

However, another commenter claimed that the Department's revised standard retains the negative and passive elements which rendered the prior regulatory standard inconsistent with the Antidumping Agreement. This commenter noted the Panel's distinction between failing to establish something as a negative finding and establishing something as a positive finding in the context of the ''not likely'' criterion and concluded that this same principle applies to the proposed regulation.

We have formulated the final rule in a way that clarifies that the Secretary must make an affirmative finding of necessity in order to retain an antidumping or countervailing duty order. While this reformulation does not affect the process by which the Department considers revocation, the reformulated regulation more closely tracks the wording of Article 11.2 of the Antidumping Agreement and Article 21.2 of the SCM Agreement.

Several commenters argue that the continued use of the discretionary term ''may'' in the Proposed Rule conflicts with the mandatory term ''shall'' contained in Article 11.2 of the Antidumping Agreement. These commenters suggest that the Panel rejected the existing regulation, in part, because the regulation allows the

[2] In accordance with 19 CFR 351.222(e)(ii), to be considered for revocation, the producers and exporters must have sold the subject merchandise in commercial quantities in each of the three years.

Department to maintain an order where Article 11.2 of the Antidumping Agreement requires revocation. Thus, these commenters believe that the Proposed Rule, which contains the permissive ''may'' and not the mandatory ''shall'' or ''must,'' is inconsistent with the Panel's findings.

In the final rule, we have substituted the term ''will'' for ''may.'' We do not agree that the use of the term ''may'' imbued the Department with unbridled discretion in making revocation determinations, as argued by these commenters. The Department's determinations are constrained by general legal principles. Every decision must be based upon substantial evidence and otherwise in accordance with law. In addition, each decision must be consistent with prior practice unless we reasonably explain the departure from prior practice. However, by adopting the ''necessary'' standard contained in the Antidumping and SCM Agreements, we are persuaded that it is more appropriate to use the term ''will'' instead of the term ''may'' in the amended regulation. The ''necessary'' standard represents the full spectrum of circumstances under which the Department could maintain an order and be consistent with the United States' WTO obligations under Article 11.2 of the Antidumping Agreement and Article 21.2 of the SCM Agreement. In other words, considering the comprehensive nature of the new standard, the Secretary can only retain an antidumping or countervailing duty order if there is positive evidence on the record indicating the continued necessity of such order to offset dumping or subsidization. Thus, in accordance with Article 11.2 of the Antidumping Agreement and Article 21.2 of the SCM Agreement, we are substituting the term ''will'' for ''may'' in the amended regulation.

Several commenters took issue with the Department's claim in the Proposed Rule that the ''Panel's ruling was not based upon the Department's application of the standard in DRAMs from Korea.'' These commenters note that the Panel specifically found that the regulation *and* the third review final results in DRAMs were inconsistent with Article 11.2 of the Antidumping Agreement.

While we accept that, based upon the inconsistency of the revocation regulation applied in DRAMs from Korea with the Antidumping Agreement, the Panel invalidated the third review final results, we maintain that several aspects of our practice were not invalidated by the Panel and, thus, do not require revision. As discussed above and in the preamble to the Proposed Rule, we continue to believe that, while an absence of dumping for three years is evidence that the antidumping duty order is no longer necessary, it is not conclusive in all cases. Evidence relating to the likelihood of future dumping will still be considered under the revised regulation because such evidence relates to the necessity of the order. Thus, while the Panel decision necessitated revising the standard by which the Department considers revocation, it did not necessitate changes to these specific aspects of our practice.

One commenter, citing Hyundai Electronics, in which the CIT affirmed the Department's final results of administrative review in DRAMs from Korea, argued that it is unnecessary to amend the regulation because the CIT determined that the ''not likely'' standard is consistent with U.S. international obligations and with U.S. obligations under Article 11.2 of the Antidumping Agreement.

The CIT decision in Hyundai does not preclude amending the regulation in question. While the Court stated that the Panel Report was not binding precedential authority on the Court, it recognized that ''Congress provided that the response to an adverse WTO panel report is the province of the executive branch and, more particularly, the Office of the U.S. Trade Representative.'' The United States Trade Representative and the DOC have decided to respond to the Panel Report by amending the regulation in question, and we are confident that the amended regulation, if challenged, will be found to be consistent with the statute as well as U.S. obligations under the WTO Antidumping Agreement.

Another commenter expressed concern with the Department's practice of relating an absence of dumping to declining imports following the imposition of an order. This commenter asserts that numerous factors, including changes in the strengths of alternative markets, exchange rates, changes in production capacity, changes in marketing strategies, and changes in the technology of production, may contribute to the decline in imports rather than the exporter's inability to sell in the U.S. market without dumping.

This matter is appropriate for consideration on a case-by-case basis, rather than in a rulemaking proceeding because, as the commenter suggests, numerous factors underlying an absence of dumping may be considered when evidence relating to those factors is developed on the record of each proceeding.

## Classification

*Executive Order 12866*

This rule has been determined to be not significant under Executive Order 12866.

*Paperwork Reduction Act*

This rule contains no new collection of information subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

*Executive Order 12612*

This rule does not contain federalism implications warranting the preparation of a Federalism Assessment.

*Regulatory Flexibility Act*

In issuing the proposed regulation, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. The Department's existing regulations provide a procedural and substantive process by which the Secretary considers whether to revoke an antidumping duty order. The rule retains the current procedural process and revises the substantive standard used by the Secretary to make the appropriate revocation determination. As discussed above, the regulation would not significantly change the Department's practice in determining whether to maintain an antidumping duty order. Moreover, as the revised regulation only changes the standard by which the Department considers whether to revoke an antidumping duty order, this action, in and of itself, will not have a significant economic impact. Therefore, the Chief Counsel concluded that the rule would not have a significant impact on a substantial number of small business entities, and a regulatory flexibility analysis was not prepared. We received no comments concerning this conclusion.

## List of Subjects in 19 CFR Part 351

Administrative practice and procedure, Antidumping duties, Business and industry, Cheese, Confidential business information, Countervailing duties, Investigations, Reporting and recordkeeping requirements.

Dated: September 16, 1999.

**Richard W. Moreland,**

*Acting Assistant Secretary for Import Administration.*

For the reasons stated, 19 CFR part 351 is amended to read as follows:

## PART 351—ANTIDUMPING AND COUNTERVAILING DUTIES

1. The authority citation for part 351 continues to read as follows:

**Authority:** 5 U.S.C. 301, 19 U.S.C. 1202 note; 19 U.S.C. 1303 note; 19 U.S.C. 1671 *et seq.*; and 19 U.S.C. 3538.

## Subpart B—Antidumping and Countervailing Duty Procedures

2. Section 351.222 is amended by revising paragraphs (b) and (c) to read as follows:

### § 351.222 Revocation of orders; termination of suspended investigations.

* * * * *

(b) *Revocation or termination based on absence of dumping.* (1)(i) In determining whether to revoke an antidumping duty order or terminate a suspended antidumping investigation, the Secretary will consider:

(A) Whether all exporters and producers covered at the time of revocation by the order or the suspension agreement have sold the subject merchandise at not less than normal value for a period of at least three consecutive years; and

(B) Whether the continued application of the antidumping duty order is otherwise necessary to offset dumping.

(ii) If the Secretary determines, based upon the criteria in paragraphs (b)(1)(i)(A) and (B) of this section, that the antidumping duty order or suspension of the antidumping duty investigation is no longer warranted, the Secretary will revoke the order or terminate the investigation.

(2)(i) In determining whether to revoke an antidumping duty order in part, the Secretary will consider:

(A) Whether one or more exporters or producers covered by the order have sold the merchandise at not less than normal value for a period of at least three consecutive years;

(B) Whether, for any exporter or producer that the Secretary previously has determined to have sold the subject merchandise at less than normal value, the exporter or producer agrees in writing to its immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Secretary concludes that the exporter or producer, subsequent to the revocation, sold the subject merchandise at less than normal value; and

(C) Whether the continued application of the antidumping duty order is otherwise necessary to offset dumping.

(ii) If the Secretary determines, based upon the criteria in paragraphs (b)(2)(i)(A) through (C) of this section, that the antidumping duty order as to those producers or exporters is no longer warranted, the Secretary will revoke the order as to those producers or exporters.

(3) Revocation of nonproducing exporter. In the case of an exporter that is not the producer of subject merchandise, the Secretary normally will revoke an order in part under paragraph (b)(2) of this section only with respect to subject merchandise produced or supplied by those companies that supplied the exporter during the time period that formed the basis for the revocation.

(c) *Revocation or termination based on absence of countervailable subsidy.* (1)(i) In determining whether to revoke a countervailing duty order or terminate a suspended countervailing duty investigation, the Secretary will consider:

(A) Whether the government of the affected country has eliminated all countervailable subsidies on the subject merchandise by abolishing for the subject merchandise, for a period of at least three consecutive years, all programs that the Secretary has found countervailable;

(B) Whether exporters and producers of the subject merchandise are continuing to receive any net countervailable subsidy from an abolished program referred to in paragraph (c)(1)(i)(A) of this section; and

(C) Whether the continued application of the countervailing duty order or suspension of countervailing duty investigation is otherwise necessary to offset subsidization.

(ii) If the Secretary determines, based upon the criteria in paragraphs (c)(1)(i)(A) through (C) of this section, that the countervailing duty order or suspension of the countervailing duty investigation is no longer warranted, the Secretary will revoke the order or terminate the suspended investigation.

(2)(i) In determining whether to revoke a countervailing duty order or terminate a suspended countervailing duty investigation, the Secretary will consider:

(A) Whether all exporters and producers covered at the time of revocation by the order or the suspension agreement have not applied for or received any net countervailable subsidy on the subject merchandise for a period of at least five consecutive years; and

(B) Whether the continued application of the countervailing duty order or suspension of the countervailing duty investigation is otherwise necessary to offset subsidization.

(ii) If the Secretary determines, based upon the criteria in paragraphs (c)(2)(i)(A) and (B) of this section, that the countervailing duty order or the suspension of the countervailing duty investigation is no longer warranted, the Secretary will revoke the order or terminate the suspended investigation.

(3)(i) In determining whether to revoke a countervailing duty order in part, the Secretary will consider:

(A) Whether one or more exporters or producers covered by the order have not applied for or received any net countervailable subsidy on the subject merchandise for a period of at least five consecutive years;

(B) Whether, for any exporter or producer that the Secretary previously has determined to have received any net countervailable subsidy on the subject merchandise, the exporter or producer agrees in writing to their immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Secretary concludes that the exporter or producer, subsequent to the revocation, has received any net countervailable subsidy on the subject merchandise; and

(C) Whether the continued application of the countervailing duty order is otherwise necessary to offset subsidization.

(ii) If the Secretary determines, based upon the criteria in paragraphs (c)(3)(i)(A) through (C) of this section, that the countervailing duty order as to those exporters or producers is no longer warranted, the Secretary will revoke the order as to those exporters or producers.

(4) Revocation of nonproducing exporter. In the case of an exporter that is not the producer of subject merchandise, the Secretary normally will revoke an order in part under paragraph (c)(3) of this section only with respect to subject merchandise produced or supplied by those companies that supplied the exporter during the time period that formed the basis for the revocation.

* * * * *

[FR Doc. 99–24675 Filed 9–21–99; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 510

### New Animal Drugs; Labeling of Drugs for Use in Milk-Producing Animals; Technical Amendment

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations concerning labeling of drugs for use in milk-producing animals. This document corrects two outdated cross-references. As amended, the references conform to the current statute and regulations.

**EFFECTIVE DATE:** September 22, 1999.

**FOR FURTHER INFORMATION CONTACT:** Carol J. Haley, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1682.

**SUPPLEMENTARY INFORMATION:** FDA is amending the animal drug regulations in 21 CFR 510.105(a) and (b) concerning labeling of drugs for use in milk-producing animal. Paragraph (a) cites ''Part 540 of this chapter'' and paragraph (b) cites ''section 402(a)(2)(D) of the act''. Because of revisions of the act and the regulations, these cites should be changed to ''Part 526 of this chapter'' and ''section 402(a)(2)(c)(ii) of the act'', respectively. This document amends the regulation accordingly.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

### List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

## PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

**Authority:** 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

**§ 510.105 [Amended]**

2. Section 510.105 *Labeling of drugs for use in milk-producing animals* is amended in paragraph (a) by removing ''540'' and adding in its place ''526'', and in paragraph (b) by removing ''402(a)(2)(D)'' and adding in its place ''402(a)(2)(c)(ii)''.

Dated: September 8, 1999.

**Stephen F. Sundlof,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 99–24596 Filed 9–21–99; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Parts 301 and 602

**[TD 8839]**

**RIN 1545–AV08**

### IRS Adoption Taxpayer Identification Numbers

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations under section 6109 relating to taxpayer identifying numbers. The final regulations provide rules for obtaining IRS adoption taxpayer identification numbers (ATINs), which are used to identify children placed for adoption. The regulations assist prospective adoptive parents in claiming tax benefits with respect to these children.

**DATES:** Effective Date: These regulations are effective September 22, 1999.

*Dates of Applicability:* For dates of applicability of these regulations, see §§ 301.6109–1(h)(2)(iii) and 301.6109–3(d).

**FOR FURTHER INFORMATION CONTACT:** Beverly A. Baughman, (202) 622-4940 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1545–1564. Responses to this collection of information are required to obtain ATINs, which are used by prospective adoptive parents to claim tax benefits with respect to children placed for adoption.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collection of information in this final regulation is contained in § 301.6109–3(c)(2). The information collection requirements of that section are satisfied by including the required information on Form W–7A or such other form as may be prescribed by the IRS to apply for an adoption taxpayer identification number (ATIN). The burden for this requirement is reflected in the burden estimated for the form. The current burden estimated for Form W–7A is 40 minutes per form.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

### Background

This document contains final Regulations on Procedure and Administration (26 CFR part 301) relating to identifying numbers under section 6109.

On November 24, 1997, final and temporary regulations (TD 8739) were published in the **Federal Register** (62 FR 62518). A notice of proposed rulemaking (REG–103330–97) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (62 FR 62538).

Written comments responding to these notices were received and a public hearing was held on March 4, 1998. After consideration of all the comments, the proposed regulations under section 6109 are adopted with minor changes by this Treasury decision, and the corresponding temporary regulations are removed. The comments and revisions are discussed below.

### Explanation of Revisions and Summary of Comments

Comments were received concerning the requirement that, in order for an ATIN to be assigned, the child must be placed for adoption by an *authorized placement agency* as defined in § 1.152-2(c)(2) of the regulations. The

commentators expressed concern that because of this requirement ATINs are not available in the case of independent adoptions as defined by state law. In general, independent adoptions take two forms. In one type the biological parent(s) places the child with the adoptive parents with the assistance of an attorney or other intermediary. In other independent adoptions, no such intermediary is necessary because the adoptive parents and the biological parent(s) know one another.

The IRS and Treasury Department believe that, under section 1.152–2(c), *authorized placement agency* is not limited to governmental and private organizations authorized by state law to place children for legal adoption, but also includes biological parents and other persons authorized by state law to place children for legal adoption. To address commentators' concerns regarding independent adoptions, the IRS and Treasury Department intend to amend section 1.152–2(c) to clarify that this is the meaning of *authorized placement agency*. Accordingly, the final ATIN regulations continue to provide that *authorized placement agency* has the same meaning as in section 1.152–2(c) of the regulations.

## Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Only individuals may receive ATINs under this Treasury decision.

Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking that preceded these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

## Drafting Information

The principal author of these regulations is Beverly A. Baughman of the Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

## List of Subjects

*26 CFR Part 301*

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

*26 CFR Part 602*

Reporting and recordkeeping requirements.

## Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 301 and 602 are amended as follows:

## PART 301—PROCEDURE AND ADMINISTRATION

**Paragraph 1.** The authority citation for part 301 is amended by:

1. Removing the entries for sections 301.6109–1T and 301.6109–3T; and
2. Adding an entry in numerical order to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *
Section 301.6109–3 also issued under 26 U.S.C. 6109; * * *

**Par. 2** Section 301.6109–1 is amended by:

1. Revising paragraph (a)(1)(i).
2. Revising the introductory text of paragraph (a)(1)(ii).
3. Revising paragraph (a)(1)(ii)(A).
4. Revising paragraph (a)(1)(ii)(B).
5. Revising paragraph (h)(2)(iii).

The revisions read as follows:

### § 301.6109–1 Identifying numbers.

(a) *In general*—(1) *Taxpayer identifying numbers*—(i) *Principal types.* There are several types of taxpayer identifying numbers that include the following: social security numbers, Internal Revenue Service (IRS) individual taxpayer identification numbers, IRS adoption taxpayer identification numbers, and employer identification numbers. Social security numbers take the form 000–00–0000. IRS individual taxpayer identification numbers and IRS adoption taxpayer identification numbers also take the form 000–00–0000 but include a specific number or numbers designated by the IRS. Employer identification numbers take the form 00–0000000.

(ii) *Uses.* Social security numbers, IRS individual taxpayer identification numbers, and IRS adoption taxpayer identification numbers are used to identify individual persons. Employer identification numbers are used to identify employers. For the definition of social security number and employer identification number, see §§ 301.7701–11 and 301.7701–12, respectively. For the definition of IRS individual taxpayer identification number, see paragraph (d)(3) of this section. For the definition of IRS adoption taxpayer identification number, see § 301.6109–3(a). Except as otherwise provided in applicable regulations under this chapter or on a return, statement, or other document, and related instructions, taxpayer identifying numbers must be used as follows:

(A) Except as otherwise provided in paragraph (a)(1)(ii)(B) and (D) of this section, and § 301.6109–3, an individual required to furnish a taxpayer identifying number must use a social security number.

(B) Except as otherwise provided in paragraph (a)(1)(ii)(D) of this section and § 301.6109–3, an individual required to furnish a taxpayer identifying number but who is not eligible to obtain a social security number must use an IRS individual taxpayer identification number.

* * * * *

(h) * * *

(2) * * *

(iii) Paragraphs (a)(1)(i), (a)(1)(ii) introductory text, (a)(1)(ii)(A), and (a)(1)(ii)(B) of this section apply to income tax returns due (without regard to extensions) on or after April 15, 1998.

### § 301.6109–1T [Removed]

**Par. 3.** Section 301.6109–1T is removed.

**Par. 4.** Section 301.6109–3 is added to read as follows:

### § 301.6109–3 IRS adoption taxpayer identification numbers.

(a) *In general*—(1) *Definition.* An *IRS adoption taxpayer identification number* (ATIN) is a temporary taxpayer identifying number assigned by the Internal Revenue Service (IRS) to a child (other than an alien individual as defined in § 301.6109–1(d)(3)(i)) who has been placed, by an authorized placement agency, in the household of a prospective adoptive parent for legal adoption. An ATIN is assigned to the child upon application for use in connection with filing requirements under the Internal Revenue Code and the regulations thereunder. When an adoption becomes final, the adoptive parent must apply for a social security number for the child. After the social security number is assigned, that number, rather than the ATIN, must be used as the child's taxpayer identification number on all returns, statements, or other documents required under the Internal Revenue Code and the regulations thereunder.

(2) *Expiration and extension.* An ATIN automatically expires two years after the number is assigned. However,

upon request, the IRS may grant an extension if the IRS determines the extension is warranted.

(b) *Definitions.* For purposes of this section—

(1) *Authorized placement agency* has the same meaning as in § 1.152–2(c) of this chapter;

(2) *Prospective adoptive child* or *child* means a child who has not been adopted, but who has been placed in the household of a prospective adoptive parent for legal adoption by an authorized placement agency; and

(3) *Prospective adoptive parent* or *parent* means an individual in whose household a prospective adoptive child is placed by an authorized placement agency for legal adoption.

(c) *General rule for obtaining a number*—(1) *Who may apply.* A prospective adoptive parent may apply for an ATIN for a child if—

(i) The prospective adoptive parent is eligible to claim a personal exemption under section 151 with respect to the child;

(ii) An authorized placement agency places the child with the prospective adoptive parent for legal adoption;

(iii) The Social Security Administration will not process an application for an SSN by the prospective adoptive parent on behalf of the child (for example, because the adoption is not final); and

(iv) The prospective adoptive parent has used all reasonable means to obtain the child's assigned social security number, if any, but has been unsuccessful in obtaining this number (for example, because the biological parent who obtained the number is not legally required to disclose the number to the prospective adoptive parent).

(2) *Procedure for obtaining an ATIN.* If the requirements of paragraph (c)(1) of this section are satisfied, the prospective adoptive parent may apply for an ATIN for a child on Form W–7A, *Application for Taxpayer Identification Number for Pending Adoptions* (or such other form as may be prescribed by the IRS). An application for an ATIN should be made far enough in advance of the first intended use of the ATIN to permit issuance of the ATIN in time for such use. An application for an ATIN must include the information required by the form and accompanying instructions, including the name and address of each prospective adoptive parent and the child's name and date of birth. In addition, the application must include such documentary evidence as the IRS may prescribe to establish that a child was placed in the prospective adoptive parent's household by an authorized placement agency for legal adoption. Examples of acceptable documentary evidence establishing placement for legal adoption by an authorized placement agency may include—

(i) A copy of a placement agreement entered into between the prospective adoptive parent and an authorized placement agency;

(ii) An affidavit or letter signed by the adoption attorney or government official who placed the child for legal adoption pursuant to state law;

(iii) A document authorizing the release of a newborn child from a hospital to a prospective adoptive parent for adoption; and

(iv) A court document ordering or approving the placement of a child for adoption.

(d) *Effective date.* The provisions of this section apply to income tax returns due (without regard to extension) on or after April 15, 1998.

**§ 301.6109–3T [Removed]**

**Par. 5.** Section 301.6109–3T is removed.

## PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

**Par. 6.** The authority citation for part 602 continues to read as follows:

**Authority:** 26 U.S.C. 7805.

**Par. 7.** In § 602.101, paragraph (b) is amended by removing the entry for 301.6109–3T from the table and adding an entry in numerical order to the table to read as follows:

**§ 602.101 OMB Control numbers.**

* * * * *

(b) * * *

| CFR part or section where identified and described | Current OMB control No. |
|---|---|
| * * * * * | |
| 301.6109–3 ..... | 1545–1564 |
| * * * * * | |

Approved: June 17, 1999.

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

**Donald C. Lubick,**

*Assistant Secretary of the Treasury.*

[FR Doc. 99–24313 Filed 9–21–99; 8:45 am]

BILLING CODE 4830–01–U

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 165

**[CGD01–99–161]**

**RIN 2115–AA97**

## Safety Zone: Movie Production, Gloucester, MA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for the production of the movie ''The Perfect Storm'', in Gloucester, MA. This regulation establishes a safety zone that will close the waters of Gloucester Harbor, Gloucester, MA for short periods of time throughout the hours listed to all vessel traffic except for vessels involved in the production of the movie ''The Perfect Storm''. The safety zone is in effect daily from 6:30 a.m. to 8:30 p.m. from Tuesday, September 7, 1999, until Saturday, September 27, 1999, and from 6:30 a.m. until midnight, September 11, 1999. This safety zone prevents entry into or movement within this portion of Gloucester Harbor to all vessels except for those involved in the movie production for short periods of time as directed by the Coast Guard representative on scene.

**DATES:** This rule is effective daily from 6:30 a.m. to 8:30 p.m. from September 7 through September 10, and from September 12 through September 25, 1999, and from 6:30 a.m. until midnight on September 11, 1999.

**ADDRESSES:** Documents as indicated in this preamble are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** ENS Rebecca Montleon, Waterways Management Division, Coast Guard Marine Safety Office Boston, (617) 223–3000.

**SUPPLEMENTARY INFORMATION:**

### Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing an NPRM and for making this regulation effective in less than 30 days after **Federal Register** publication. Conclusive information about this event was not provided to the Coast Guard until August 26, 1999, making it impossible

to draft or publish an NPRM or a final rule 30 days in advance of its effective date. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to close a portion of the waterway and protect the maritime public and the movie production crew during periods of restricted maneuvering.

**Background and Purpose**

On August 26, 1999, the Warner Brothers Film Production Company filed a marine event permit with the Coast Guard to begin filming on the waters of Gloucester Harbor, Gloucester, MA. This regulation establishes a safety zone that will close the waters of Gloucester Harbor, Gloucester, MA for short periods of time throughout the hours listed to all vessel traffic except for vessels involved in the production of the movie ''The Perfect Storm''. The safety zone is in effect daily from 6:30 a.m. to 8:30 p.m. from Tuesday, September 7, 1999, until Saturday, September 25, 1999, and until midnight, September 11, 1999. This safety zone prevents entry into or movement within Gloucester Harbor and it is needed to protect the maritime public and the movie production crew during periods of restricted maneuvering.

**Regulatory Evaluation**

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under the Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary since the safety zone will be limited in duration and marine advisories will be made in advance of the implementation of the safety zone.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant impact on a substantial number of small entities.

**Collection of Information**

This proposal contains no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Federalism**

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Environment**

The Coast Guard has considered the environmental impact of this final rule and concluded that, under Figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 165**

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

**Regulation**

For reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

## PART 165—[AMENDED]

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

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.2.

2. Add temporary section 165.T01–161 to read as follows:

**§ 165.T01–161 Safety Zone: Movie Production, Gloucester, MA.**

(a) *Location.* The following area is a safety zone: all the waters of Gloucester Harbor, Gloucester, MA.

(b) *Effective Date.* This section is effective daily from 6:30 a.m. to 8:30 p.m. from September 7 through 10, 1999, and from September 12 through September 25, 1999, and from 6:30 a.m. until midnight on September 11, 1999.

(c) *Regulations.*

(1) In accordance with the general regulations in section 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port Boston.

(2) All persons and vessels shall comply with the instructions of the COTP or the designated onscene U.S. Coast Guard patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(3) The general regulations covering safety zones in section 165.23 of this part apply.

Dated: September 7, 1999.

**M.A. Skordinski,**

*Commander, U.S. Coast Guard, Acting Captain of the Port, Boston, Massachusetts.*

[FR Doc. 99–24584 Filed 9–21–99; 8:45 am]

BILLING CODE 4910–15–M

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## DEPARTMENT OF COMMERCE

## Patent and Trademark Office

## 37 CFR Part 2

**[Docket No. 990401084–9227–02]**

**RIN 0651–AB00**

## Trademark Law Treaty Implementation Act Changes; Correction

**AGENCY:** Patent and Trademark Office, Commerce.

**ACTION:** Final rule; correction.

**SUMMARY:** The Patent and Trademark Office published in the **Federal Register** of September 8, 1999, (64 FR 48900) a final rule amending its rules to implement the Trademark Law Treaty Implementation Act of 1998 and to otherwise simplify and clarify procedures for registering trademarks, and for maintaining and renewing trademark registrations. This document corrects four typographical errors in the final rule.

**DATES:** Effective on October 30, 1999.

**FOR FURTHER INFORMATION CONTACT:** Mary Hannon, Office of Assistant Commissioner for Trademarks, by telephone at (703) 308–8910, extension 137; by facsimile transmission addressed to her at (703) 308–9395; or by mail marked to her attention and addressed to Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202–3513.

**SUPPLEMENTARY INFORMATION:** The Patent and Trademark Office published a final rule in the **Federal Register** of

September 8, 1999, (64 FR 48900) entitled ''Trademark Law Treaty Implementation Act Changes.'' This document amends 37 CFR 2.76(b)(1), 2.88(b)(1), 2.89(a)(3), and 2.89(b)(3) to correct a cross-reference. Specifically, these sections are amended to refer to ''§ 2.33(a)'' rather than ''§ 2.33(a)(2).''

In rule FR Doc. 99–22957, published on September 8, 1999, (64 FR 48900), make the following corrections:

**§ 2.76 [Corrected]**

1. On page 48922, in the third column, in § 2.76, in paragraph (b)(1) introductory text, in line 5, correct ''§ 2.33(a)(2)'' to read ''§ 2.33(a)''.

**§ 2.88 [Corrected]**

2. On page 48923, in the second column, in § 2.88, in paragraph (b)(1) introductory text, in line 3 from the top of the column, correct ''§ 2.33(a)(2)'' to read ''§ 2.33(a)''.

**§ 2.89 [Corrected]**

3. On page 48923, in the third column, in § 2.89, in paragraph (a)(3), in line 2 from the top of the column, correct ''§ 2.33(a)(2)'' to read ''§ 2.33(a)''.

4. On page 48923, in the third column, in § 2.89, in paragraph (b)(3), in line 5, correct ''§ 2.33(a)(2)'' to read ''§ 2.33(a)''.

Dated: September 17, 1999.

**Albin F. Drost,**

*Acting Solicitor.*

[FR Doc. 99–24676 Filed 9–21–99; 8:45 am]

BILLING CODE 3510–16–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[OPP–300918; FRL–6381–7]**

**RIN 2070–AB78**

## 2,6-Diisopropylnapthalene; Temporary Exemption From the Requirement of a Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a temporary exemption from the requirement of a tolerance for residues of the biochemical pesticide 2,6-diisopropylnapthalene (2,6-DIPN) when applied/used to inhibit sprouting in potatoes held in storage. Platte Chemical Company submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996 requesting the temporary tolerance exemption. This regulation eliminates the need to establish a maximum permissible level for residues of 2,6-DIPN. The temporary tolerance exemption will expire on September 22, 2000.

**DATES:** This regulation is effective September 22, 1999. Objections and requests for hearings, identified by docket control number OPP–300918, must be received by EPA on or before November 22, 1999.

**ADDRESSES:** Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided under Unit VIII. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300918 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Driss Benmhend, c/o Product Manager (PM) 90, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703-308-9525); and e-mail address: benmhend.driss@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does This Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS | Examples of Potentially Affected Entities |
|---|---|---|
| Potato Processors | 311 | Food manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

*B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**--Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300918. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

### II. Background and Statutory Findings

In the **Federal Register** of November 25, 1998 (63 FR 65204) (FRL–6039–7), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) (Public Law 104–170) announcing the filing of a pesticide tolerance petition by Platte Chemical Company, 419 18th Street, Greeley, CO 80632. This notice included a summary of the petition prepared by the petitioner Platte Chemical Company. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended by establishing a temporary exemption from the requirement of a tolerance for residues of 2,6-DIPN.

New section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an

exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .'' Additionally, section 408(b)(2)(D) requires that the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

## III. Toxicological Profile

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

1. *Acute toxicity.* Technical 2,6-DIPN exhibits low acute toxicity. It is a toxicity category IV biopesticide. The rat oral $LD_{50}$ is greater than 5,000 milligrams/kilograms (mg/kg), the rabbit dermal $LD_{50}$ is greater than 5,000 mg/kg, and the rat inhalation $LC_{50}$ is greater than 2.60 mg/L at the maximum attainable condition. In addition, 2,6-DIPN is not a skin sensitizer in guinea pigs, shows no dermal irritation at 72 hours in rabbits, and shows minimal ocular irritation in rabbits. The end use formulation is the same as the technical formulation; it contains no intentionally added inert ingredients.

2. *Genotoxicity.* Short-term assays for genotoxicity consisting of a bacterial reverse mutation assay (Ames test), an *in vivo/in vitro* unscheduled DNA synthesis in rat primary hepatocyte cultures at two time points, and an *in vivo* mouse micronucleus assay have been conducted for 2,6-DIPN. These studies show a lack of genotoxicity for 2,6-DIPN.

3. *Other tests.* No additional mammalian toxicology testing has been conducted. Platte requested a waiver from the requirement to submit further mammalian toxicology studies on the basis of the favorable toxicological profile for 2,6-DIPN, the low residues observed in treated potatoes, the specific plant growth regulator mode of action, and the confined nature of the proposed use. No data were found in the literature that would indicate 2,6-DIPN has any adverse effect on mammals. No incidents of hypersensitivity or any other adverse effects have been observed in individuals handling the material over the past 6 years.

## IV. Aggregate Exposures

In examining aggregate exposure, section 408 of the FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

### *A. Dietary Exposure*

Any dietary exposure resulting from applications made under an experimental use permit (EUP) would be through potato consumption and animal products in which animals are fed potato feed stocks.

1. *Food.* Residues in treated potatoes have been shown to be low (average residue was 0.08 ppm 90 days after treatment). Residues would be expected to continue to decline after potatoes are removed from storage and before consumption. Cooking and/or processing would be expected to further lower the residue level in consumed potatoes or potato products

2. *Drinking water exposure.* Since 2,6-DIPN would only be used in commercial storage warehouses, there is little if any potential for drinking water exposure.

### *B. Other Non-Occupational Exposure*

The EUP would only cover use for direct application to potatoes when stored in commercial warehouses. There are currently no other registered uses of 2,6-DIPN. Non-dietary exposure to 2,6-DIPN via lawn care, topical treatments, etc., will not occur. Thus, the potential for non-occupational exposure to the general population is virtually non-existent.

## V. Cumulative Effects

EPA also is required to consider the potential for cumulative effects of 2,6-DIPN and other substances that have a common mechanism of toxicity. Consideration of a common mode of toxicity is not appropriate, given that there is no indication of mammalian toxicity of 2,6-DIPN and no information that indicates toxic effects, if any, would be cumulative with any other compounds. Since, 2,6-DIPN does not exhibit a toxic mode of action in the target plant, it is appropriate to consider only the potential risks of 2,6-DIPN in this exposure assessment.

## VI. Determination of Safety for U.S. Population, Infants and Children

Since there are no anticipated residues in drinking water or from other non-occupational sources, and no reliable information exists on cumulative effects due to a common mechanism of toxicity, the aggregate exposure to 2,6-DIPN is adequately represented by the dietary route. The lack of toxicity of 2,6-DIPN has been demonstrated by the results of acute toxicity testing in mammals in which 2,6-DIPN caused no adverse effects when dosed orally, dermally, and via inhalation at the limit dose for each study. Anticipated residues in consumed potatoes are low. Moreover, 2,6-DIPN exhibits close structural and chemical similarity to other plant-based, naturally occurring methyl and isopropyl naphthalene. Thus, the dietary exposure to 2,6-DIPN should pose negligible risks to human health. Based on the lack of toxicity and low exposure, there is a reasonable certainty that no harm to infants, children, or adults will result from aggregate exposure to 2,6-DIPN residues. Exempting 2,6-DIPN from the requirement of a tolerance should pose no significant risk to humans or the environment.

## VII. Other Considerations

### *A. Analytical Method*

An analytical method for residues is not applicable, as this proposes an exemption from the requirement of a tolerance.

### *B. Codex Maximum Residue Level*

No Codex maximum residue levels are established for residues of 2,6-DIPN in or on any food or feed crop. There are no other established U.S. tolerances or

exemptions from tolerances for 2,6-DIPN food or feed crops in the United States. The Agency has classified 2,6-DIPN as a biochemical pesticide.

## VIII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

### *A. What Do I Need to Do to File an Objection or Request a Hearing?*

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300918 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 22, 1999.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25) as well as other requirements set forth in 40 CFR 178.25. If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information 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.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Room M3708, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement when in the judgment of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VIII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket number OPP–300918, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

### *B. When Will the Agency Grant a Request for a Hearing?*

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

## IX. Regulatory Assessment Requirements

This final rule establishes a temporary tolerance/exemption under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993) and Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), or special consideration of environmental justice related issues under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994) or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). The Agency has determined that this action will not have a substantial direct effect on 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, as specified in Executive Order 12612, entitled *Federalism* (52 FR 41685, October 30, 1987). This action directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(b)(4). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the a temporary tolerance/exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

### X. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit 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 United States prior to publication of this rule in the **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 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 15, 1999.

**Marcia E. Mulkey,**

*Director, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.1208 is added to subpart D to read as follows:

**§ 180.1208 2,6-Diisopropylnapthalene; temporary exemption from the requirement of a tolerance.**

2,6-Diisopropylnapthalene is temporarily exempt from the requirement of a tolerance when used to inhibit sprouting in potatoes held in storage in accordance with the Experimental Use Permit 034704-EUP-13. The temporary exemption from the requirement of a tolerance will expire on September 22, 2000.

[FR Doc. 99–24694 Filed 9–21–99; 8:45 am]

BILLING CODE 6560–50–F

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[OPP–300919; FRL–6381–6]**

**RIN 2070–AB78**

## Tebuconazole; Extension of Tolerances for Emergency Exemptions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation extends time-limited tolerances for residues of the fungicide tebuconazole in or on barley grain at 2.0 parts per million (ppm), barley hay at 20 ppm, barley straw at 20 ppm, wheat hay at 15 ppm, wheat straw at 2.0 ppm, and pistachios at 1.0 ppm; and extends time-limited tolerances for combined residues of tebuconazole and its metabolite in milk at 0.1 ppm and in meat byproducts of cattle, goats, hogs, horses, poultry and sheep at 0.2 ppm for an additional 1-year period. These tolerances will expire and are revoked on December 31, 2000. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on barley, wheat and pistachios. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act.

**DATES:** This regulation is effective September 22, 1999. Objections and requests for hearings, identified by docket control number OPP–300919, must be received by EPA on or before November 22, 1999.

**ADDRESSES:** Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the ''SUPPLEMENTARY INFORMATION'' section. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300919 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Stephen Schaible, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–9362; and e-mail address: schaible.stephen@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS | Examples of Potentially Affected Entities |
|---|---|---|
| Industry | 111<br>112<br>311<br>32532 | Crop production<br>Animal production<br>Food manufacturing<br>Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

*B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically.*You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from

the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**--Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300919. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

## II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** of June 20, 1997 (62 FR 33550) (FRL–5725–7), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established time-limited tolerances for the residues of tebuconazole in or on barley grain at 2.0 ppm, barley hay at 20 ppm, barley straw at 20 ppm, wheat hay at 15 ppm, wheat straw at 2.0 ppm, and pistachios at 1.0 ppm. EPA also established time-limited tolerances for the combined residues of tebuconazole and its metabolite (HGW-2061) in milk at 0.1 ppm and in meat byproducts of cattle, goats, hogs, horses, poultry and sheep at 0.2 ppm. All of these tolerances had an expiration date of June 30, 1998. The expiration date of these tolerances was extended to December 31, 1999, in a final rule published in the **Federal Register** on July 21, 1998 (63 FR 39032) (FRL–6015–9). EPA established these tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Such tolerances can be established without providing notice or period for public comment.

EPA received requests to extend the use of tebuconazole on barley, wheat and pistachios for this year's growing season due to continued non-routine situations for growers of these crops. Numerous States have requested emergency exemptions to control rust in barley and wheat; currently registered alternatives do not allow application at a sufficiently late stage of growth to control the disease. Additionally, North Dakota, Minnesota, South Dakota, and Michigan have again requested use of this chemical to control Fusarium head blight on barley and/or wheat; abundant inoculum and wet weather conditions this year are likely to result in a severe outbreak without the requested use. The continued lack of an effective alternative to control late blight and panicle/shoot blight on pistachios when disease pressure is high is likely to result in significant economic losses to growers in California if wet weather conditions occur. After having reviewed these submissions, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of tebuconazole on barley, wheat and pistachios for control of the above fungal diseases.

EPA assessed the potential risks presented by residues of tebuconazole in or on barley grain, barley hay, barley straw, wheat hay, wheat straw, pistachios, milk, and meat byproducts of cattle, goats, hogs, horses, poultry and sheep. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of June 20, 1997 (62 FR 33550). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerances will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerances are extended for an additional 1-year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations (CFR). Although these tolerances will expire and are revoked on December 31, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on barley grain, barley hay, barley straw, wheat hay, wheat straw, pistachios, milk, and meat byproducts of cattle, goats, hogs, horses, poultry and sheep after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerances. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

## III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

### *A. What Do I Need to Do to File an Objection or Request a Hearing?*

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300919 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 22, 1999.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing

request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information 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.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Room M3708, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A. of this preamble, you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. of this preamble. Mail your copies, identified by docket number OPP–300919 to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. of this preamble. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

### *B. When Will the Agency Grant a Request for a Hearing?*

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

## IV. Regulatory Assessment Requirements

This final rule establishes exemptions from the tolerance requirement under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993) and Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), or special consideration of environmental justice related issues under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994) or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). The Agency has determined that this action will not have a substantial direct effect on 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, as specified in Executive Order 12612, entitled *Federalism* (52 FR 41685, October 30, 1987). This action directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(b)(4).This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

## V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit 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 United States prior to publication of this rule in the **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 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides

and pests, Reporting and recordkeeping requirements.

Dated: September 9, 1999.

**Peter Caulkins,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180–[AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346(a) and 371.

### § 180.474 [Amended]

2. In § 180.474, by amending paragraph (b) by changing the date ''12/31/99'' to read ''12/31/00''.

[FR Doc. 99–24693 Filed 9–21–99; 8:45 am]

BILLING CODE 6560–50–F

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[OPP–300914; FRL–6380–1]**

**RIN 2070–AB**

## Tebufenozide; Benzoic Acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide; Pesticide Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a tolerance for residues of tebufenozide in or on sugarcane and sugarcane molasses. Rohm and Haas Company requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

**DATES:** This regulation is effective September 22, 1999. Objections and requests for hearings, identified by docket control number OPP–300914, must be received by EPA on or before November 22, 1999.

**ADDRESSES:** Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the ''SUPPLEMENTARY INFORMATION'' section. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300914 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Joseph Tavano, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305–6411; and e-mail address: tavanojoseph@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS | Examples of Potentially Affected Entities |
|---|---|---|
| Industry | 111<br>112<br>311<br>32532 | Crop production<br>Animal production<br>Food manufacturing<br>Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

*B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**--Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300914. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

### II. Background and Statutory Findings

In the **Federal Register** of August 19, 1998 (63 FR 44439) (FRL–6019–6), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP 7F4863) for a tolerance by Rohm and Haas Company, 100 Independence Mall West, Philadelphia, PA 19106–2399. This notice included a summary of the petition prepared by Rohm and Haas Company, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.482 be amended by establishing a tolerance for residues of the insecticide, tebufenozide, in or on sugarcane and sugarcane molasses at 0.3 and 1.0 parts per million (ppm) respectively. Tebufenozide is a reduced risk pesticide and controls sugarcane borer and Mexican rice borer on sugarcane.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to

infants and children from aggregate exposure to the pesticide chemical residue.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

## III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of tebufenozide on sugarcane and sugarcane molasses at 1.0 and 3.0 ppm respectively. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

### *A. Toxicological Profile*

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by tebufenozide are discussed in this unit.

1. Acute toxicity studies with technical grade: Oral $LD_{50}$ in the rat is > 5 grams for males and females - Toxicity Category IV; dermal $LD_{50}$ in the rat is = 5,000 milligrams/kilogram (mg/kg) for males and females - Toxicity Category III; inhalation $LC_{50}$ in the rat is > 4.5 mg/l - Toxicity Category III; primary eye irritation study in the rabbit is a non-irritant; primary skin irritation in the rabbit > 5mg - Toxicity Category IV. Tebufenozide is not a sensitizer.

2. In a 21-day dermal toxicity study, Crl:CD rats (6/sex/dose) received repeated dermal administration of either the technical 96.1% product RH-75,992 at 1,000 mg/kg/day (Limit-Dose or the formulation (23.1% a.i.) product RH-755,992 2F at 0, 62.5, 250, or 1,000 mg/kg/day, 6 hours/day, 5 days/week for 21 days. Under conditions of this study, RH-75,992 Technical or RH-75,992 2F demonstrated no systemic toxicity or dermal irritation at the highest dose tested 1,000 mg/kg/ during the 21-day study. Based on these results, the NOAEL for systemic toxicity and dermal irritation in both sexes is 1,000 mg/kg/day HDT. A lowest observable adverse effect level (LOAEL) for systemic toxicity and dermal irritation was not established.

3. A 1-year dog feeding study with a LOAEL of 250 ppm (9 mg/kg/day for male and female dogs) based on decreases in RBC, HCT, and HGB, increases in Heinz bodies, methemoglobin, MCV, MCH, reticulocytes, platelets, plasma total bilirubin, spleen weight, and spleen/body weight ratio, and liver/body weight ratio. Hematopoiesis and sinusoidal engorgement occurred in the spleen, and hyperplasia occurred in the marrow of the femur and sternum. The liver showed an increased pigment in the Kupffer cells. The no observed adverse effect level (NOAEL) for systemic toxicity in both sexes is 50 ppm (1.9 mg/kg/day).

4. An 18-month mouse carcinogenicity study with no carcinogenicity observed at dosage levels up to and including 1,000 ppm.

5. A 2-year rat carcinogenicity with no carcinogenicity observed at dosage levels up to and including 2,000 ppm (97 mg/kg/day and 125 mg/kg/day for males and females, respectively).

6. In a prenatal developmental toxicity study in Sprague-Dawley rats (25/group), tebufenozide was administered on gestation days 6-15 by gavage in aqueous methyl cellulose at dose levels of 50, 250, or 1,000 mg/kg/day and a dose volume of 10 ml/kg. There was no evidence of maternal or developmental toxicity; the maternal and developmental toxicity NOAEL was 1,000 mg/kg/day.

7. In a prenatal developmental toxicity study conducted in New Zealand white rabbits (20/group), tebufenozide was administered in 5 ml/kg of aqueous methyl cellulose at gavage doses of 50, 250, or 1,000 mg/kg/day on gestation days 7-19. No evidence of maternal or developmental toxicity was observed; the maternal and developmental toxicity NOAEL was 1,000 mg/kg/day.

8. In a 1993 2-generation reproduction study in Sprague-Dawley rats, tebufenozide was administered at dietary concentrations of 0, 10, 150, or 1,000 ppm (0, 0.8, 11.5, or 154.8 mg/kg/day for males and 0, 0.9, 12.8, or 171.1 mg/kg/day for females). The parental systemic NOAEL was 10 ppm (0.8/0.9 mg/kg/day for males and females, respectively) and the LOAEL was 150 ppm (11.5/12.8 mg/kg/day for males and females, respectively) based on decreased body weight, body weight gain, and food consumption in males, and increased incidence and/or severity of splenic pigmentation. In addition, there was an increased incidence and severity of extramedullary hematopoiesis at 2,000 ppm. The reproductive NOAEL was 150 ppm (11.5/12.8 mg/kg/day for males and females, respectively), and the LOAEL was 2,000 ppm (154.8/171.1 mg/kg/day for males and females, respectively), based on an increase in the number of pregnant females with increased gestation duration and dystocia. Effects in the offspring consisted of decreased number of pups per litter on postnatal days 0 and/or 4 at 2,000 ppm (154.8/171.1 mg/kg/day for males and females, respectively) with a NOAEL of 150 ppm (11.5/12.8 mg/kg/day for males and females, respectively).

9. In a 1995 2-generation reproduction study in rats tebufenozide was administered at dietary concentrations of 0, 25, 200, or 2,000 ppm (0, 1.6, 12.6, or 126.0 mg/kg/day for males and 0, 1.8, 14.6, or 143.2 mg/kg/day for females). For parental systemic toxicity, the NOAEL was 25 ppm (1.6/1.8 mg/kg/day in males and females, respectively), and the LOAEL was 200 ppm (12.6/14.6 mg/kg/day in males and females), based on histopathological findings (congestion and extramedullary hematopoiesis) in the spleen. Additionally, at 2,000 ppm (126.0/143.2 mg/kg/day in M/F), treatment-related findings included reduced parental body weight gain and increased incidence of hemosiderin-laden cells in the spleen. Columnar changes in the vaginal squamous epithelium and reduced uterine and ovarian weights were also observed at 2,000 ppm, but the toxicological significance was unknown. For offspring, the systemic NOAEL was 200 ppm (12.6/14.6 mg/kg/day in males and females), and the LOAEL was 2,000 ppm (126.0/143.2 mg/kg/day in M/F), based on decreased body weight on postnatal days 14 and 21.

10. Several mutagenicity tests which were all negative. These include an Ames assay with and without metabolic activation, an *in vivo* cytogenetic assay in rat bone marrow cells, and *in vitro* chromosome aberration assay in CHO cells, a CHO/HGPRT assay, a reverse mutation assay with E. Coli, and an unscheduled DNA synthesis assay (UDS) in rat hepatocytes.

11. The pharmacokinetics and metabolism of tebufenozide were studied in female Sprague-Dawley rats (3-6/sex/group) receiving a single oral dose of 3 or 250 mg/kg of RH-5992, $^{14}C$ labeled in one of three positions (A-ring, B-ring or *N*-butylcarbon). The extent of absorption was not established. The

majority of the radiolabeled material was eliminated or excreted in the feces within 48 hours; small amounts (1 to 7% of the administered dose) were excreted in the urine and only traces were excreted in expired air or remained in the tissues. There was no tendency for bioaccumulation. Absorption and excretion were rapid.

A total of 11 metabolites, in addition to the parent compound, were identified in the feces; the parent compound accounted for 96 to 99% of the administered radioactivity in the high dose group and 35 to 43% in the low dose group. No parent compound was found in the urine; urinary metabolites were not characterized. The identity of several fecal metabolites was confirmed by mass spectral analysis and other fecal metabolites were tentatively identified by cochromatography with synthetic standards. A pathway of metabolism was proposed based on these data. Metabolism proceeded primarily by oxidation of the three benzyl carbons, two methyl groups on the B-ring and an ethyl group on the A-ring to alcohols, aldehydes or acids. The type of metabolite produced varies depending on the position oxidized and extent of oxidation. The butyl group on the quaternary nitrogen also can be leaved (minor), but there was no fragmentation of the molecule between the benzyl rings.

No qualitative differences in metabolism were observed between sexes, when high or low dose groups were compared or when different labeled versions of the molecule were compared.

12. The absorption and metabolism of tebufenozide were studied in a group of male and female bile-duct cannulated rats. Over a 72-hour period, biliary excretion accounted for 30% males to 34% females of the administered dose while urinary excretion accounted for ≈5% of the administered dose and the carcass accounted for <0.5% of the administered dose for both males and females. Thus systemic absorption (percent of dose recovered in the bile, urine and carcass) was 35% (males) to 39% (females). The majority of the radioactivity in the bile (20% (males) to 24% (females) of the administered dose) was excreted within the first 6 hours postdosing indicating rapid absorption. Furthermore, urinary excretion of the metabolites was essentially complete within 24 hours postdosing. A large amount 67% (females) to 70% (males) of the administered dose was unabsorbed and excreted in the feces by 72 hours. Total recovery of radioactivity was 105% of the administered dose.

A total of 13 metabolites were identified in the bile; the parent compound was not identified i.e. - unabsorbed compound nor were the primary oxidation products seen in the feces in the pharmacokinetics study. The proposed metabolic pathway proceeded primary by oxidation of the benzylic carbons to alcohols, aldehydes or acids. Bile contained most of the other highly oxidized products found in the feces. The most significant individual bile metabolites accounted for 5% to 18% of the total radioactivity (females and/or males). Bile also contained the previously undetected (in the pharmacokinetics study ''A'' Ring ketone and the ''B'' Ring diol. The other major components were characterized as high molecular weight conjugates. No individual bile metabolite accounted for >5% of the total administered dose. Total bile radioactivity accounted for ≈17% of the total administered dose.

No major qualitative differences in biliary metabolites were observed between sexes. The metabolic profile in the bile was similar to the metabolic profile in the feces and urine.

*B. Toxicological Endpoints*

1. *Acute toxicity*. Toxicity observed in oral toxicity studies were not attributable to a single dose (exposure). No neuro or systemic toxicity was observed in rats given a single oral administration of tebufenozide at 0, 500, 1,000, or 2,000 mg/kg. No maternal or developmental toxicity was observed following oral administration of tebufenozide at 1,000 mg/kg/day (Limit-Dose) during gestation to pregnant rats or rabbits. Thus, the risk from acute exposure is considered negligible.

2. *Short- and intermediate-term toxicity*. No dermal or systemic toxicity was seen in rats receiving 15 repeated dermal applications of the technical (97.2%) product at 1,000 mg/kg/day (Limit-Dose) as well as a formulated (23% a.i.) product at 0, 62.5, 250, or 1,000 mg/kg/day over a 21-day period. The Agency noted that in spite of the hematological effects seen in the dog study, similar effects were not seen in the rats receiving the compound via the dermal route indicating poor dermal absorption. Also, no developmental endpoints of concern were evident due to the lack of developmental toxicity in either rat or rabbit studies. This risk is considered to be negligable.

3. *Chronic toxicity*. EPA has established the the chronic population adjusted dose (cPAD) for tebufenozide at 0.018 mg/kg/day. This endpoint is based on the NOAEL of 1.8 mg/kg/day from a chronic toxicity study in dogs. Growth retardation, alterations in hematology parameters, changes in organ weights, and histopathological lesions in the bone, spleen and liver were observed at the LOAEL of 8.7 mg/kg/day in this study. An uncertainty factor (UF) of 100 was applied to account for interspecies (10x) and intraspecies (10x) variation resulting in a chronic RfD of 1.8 mg/kg/day ÷ 100 = 0.018 mg/kg/day. For chronic dietary risk assessment, the 10x factor to account for the protection of infants and children (as required by FQPA) was removed. Therefore, the cPAD is identical to the chronic RfD, cPAD = chronic RfD = 0.018 mg/kg/day. Removing the 10x factor is supported by the following factors.

i. Developmental toxicity studies showed no increased sensitivity in fetuses when compared to maternal animals following *in utero* exposures in rats and rabbits.

ii. Multi-generation reproduction toxicity studies in rats showed no increased sensitivity in pups as compared to adults and offspring.

iii. There are no data gaps.

4. *Carcinogenicity*. Tebufenozide has been classified as a Group E, ''no evidence of carcinogenicity for humans,'' chemical by EPA.

*C. Exposures and Risks*

1. *From food and feed uses*. Tolerances have been established (40 CFR 180.482) for the residues of tebufenozide, in or on a variety of raw agricultural commodities. In today's action, tolerances will be established for residues of tebufenozide in or on sugarcane and sugarcane molasses at 1.0 and 3.0 ppm, respectively. Risk assessments were conducted by EPA to assess dietary exposures from as follows.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of crop treated (PCT) for assessing chronic dietary risk only if the Agency can make the following findings: That the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; that the exposure estimate does not underestimate exposure for any significant subpopulation group; and if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F),

EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows:

Estimates of PCT were used for the following crops. In all cases the maximum estimate was used.

| Crops | Average | Maximum |
|---|---|---|
| Almonds | <1% | <1% |
| Apples | 1% | 2% |
| Beans/Peas, Dry | 0% | 1% |
| Cotton | 1% | 4% |
| Walnuts | 10% | 16% |
| Cabbage, Fresh | 2% | 3% |
| Cole Crops | 1% | 2% |
| Spinach, Fresh | 2% | 3% |
| Spinach, Processed | 20% | 29% |

The Agency believes that the three conditions, discussed in section 408 (b)(2)(F) in this unit concerning the Agency's responsibilities in assessing chronic dietary risk findings, have been met. The PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of the PCT, the Agency is reasonably certain that the percentage of the food treated is not likely to be underestimated. The regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which may be applied in a particular area.

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Toxicity observed in oral toxicity studies were not attributable to a single dose (exposure). No neuro or systemic toxicity was observed in rats given a single oral administration of tebufenozide at 0, 500, 1,000 or 2,000 mg/kg. No maternal or developmental toxicity was observed following oral administration of tebufenozide at 1,000 mg/kg/day (Limit-Dose) during gestation to pregnant rats or rabbits. This risk is considered to be negligable.

ii. *Chronic exposure and risk.* In conducting the DEEM (Dietary Exposure Evaluation Model) for chronic dietary (food only) analysis, EPA used tolerance level residues and some PCT (Tier 2). For the subject crops, the tolerances used are: 10 ppm for sugarcane, 3.0 ppm for sugarcane molasses. The analysis evaluates individual food consumption as reported by respondents in the USDA Continuing Surveys of Food Intake by Individuals conducted in 1989 through 1992. Summaries of the ARC and their representations as percentages of the cPAD for the general population and subgroups of interest are presented in the following table.

TABLE 1.—CHRONIC EXPOSURE ANALYSIS BY THE DEEM SYSTEM FOR TEBUFENOZIDE

| Population Subgroup | Exposure (mg/kg/day) | cPAD%[1] |
|---|---|---|
| U.S. Population (48 Contiguous States) | 0.0017 | 10% |
| Children (1-6 years old) | 0.0038 | 21% |
| Females (13+/nursing) | 0.0017 | 10% |

[1] cPAD% = Exposure over cPAD X 100%

The subgroups listed above are: (1) The U.S. population (48 contiguous states); (2) highest exposed population subgroup that includes infants and children; and (3) Female 13+.

This chronic dietary (food only) risk assessment should be viewed as conservative. Further refinement using anticipated residue values and additional PCT information would result in a lower estimate of chronic dietary exposure.

2. *From drinking water— i. Acute exposure and risk.* Because no acute dietary endpoint was determined, the Agency concludes that there is a reasonable certainty of no harm from acute exposure from drinking water.

ii. *Chronic exposure and risk.* EPA calculated the Tier I Estimated Environmental Concentrations (EECs) for tebufenozide using GENEEC (surface water) and SCI-GROW (ground water) for use in the human health risk assessment. For chronic exposure, the worst case EECs for surface water and ground water were 16.5 parts per billion (ppb) and 1.04 ppb, respectively. These values represent upper-bound estimates of the concentrations that might be found in surface and ground water. These modeling data were compared to the chronic drinking water levels of comparison (DWLOCs) for tebufenozide in ground and surface water.

For purposes of chronic risk assessment, the estimated maximum concentration for tebufenozide in surface and ground waters (16.5 ppb=16.5 μg/L) was compared to the back-calculated human health DWLOCs for the chronic (non-cancer) endpoint. These DWLOCs for various population categories are summarized in the following table.

TABLE 2.—DRINKING WATER LEVELS OF COMPARISON FOR CHRONIC EXPOSURE TO TEBUFENOZIDE

| Population Category | Chronic RfD (mg/kg/day) | Food Exposure (mg/kg/day) | Max. Water Exposure (mg/kg/day) | DWLOC (µg/L) | EEC Calc. Max. (µg/L) |
|---|---|---|---|---|---|
| U.S. Population (48 Contiguous States) | 0.018 | 0.0017 | 0.016 | 560 | 16.5 |
| Female (13+ years) | 0.018 | 0.0017 | 0.016 | 480 | 16.5 |
| Children (1-6) | 0.018 | 0.0038 | 0.014 | 140 | 16.5 |

In performing this risk assessment, EPA has calculated drinking water levels of comparison (DWLOCs) for each of the DEEM population subgroups. Within each subgroup, the population with the highest estimated exposure was used to determine the maximum concentration of tebufenozide that can occur in drinking water without causing an unacceptable human health risk. As a comparison value, EPA has used the 16.5-ppb value in this risk assessment, as this represents a worst-case scenario. The DWLOCs for tebufenozide are above the drinking water estimated concentration (DWEC) of 16.5 ppb for all population subgroups. Therefore, the human health risk from exposure to tebufenozide through drinking water in not likely to exceed EPA's level of concern.

3. *From non-dietary exposure.* Tebufenozide is not currently registered for use on any residential non-food sites. Therefore there are no non-dietary acute, chronic, short- or intermediate-term exposure scenarios.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether tebufenozide has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, tebufenozide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that tebufenozide has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

*D. Aggregate Risks and Determination of Safety for U.S. Population*

1. *Acute risk.* Since no acute toxicological endpoints were established, no acute aggregate risk exists.

2. *Chronic risk.* Using the somewhat conservative exposure assumptions described above, and taking into account the completeness and reliability of the toxicity data, EPA has concluded that dietary (food only) exposure to tebufenozide will utilize 10% of the cPAD for the U.S. population, and 21% of the cPAD for the most highly exposed population subgroup (Children 1-6 yrs). Submitted environmental fate studies suggest that tebufenozide is moderately persistent to persistent and mobile; thus, tebufenozide could potentially leach to ground water and runoff to surface water under certain environmental conditions. The modeling data for tebufenozide indicate levels less than EPA's DWLOCs. EPA generally has no concern for exposures below 100% of the cPAD. Since there are no registered residential uses of tebufenozide, there is no potential for exposure to tebufenozide from residential uses. EPA concludes that there is a reasonable certainty that no harm will result to adults, infants and children from chronic aggregate exposure to tebufenozide residues.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

Since there are currently no registered indoor or outdoor residential non-dietary uses of tebufenozide and no short- or intermediate-term toxic endpoints, short- or intermediate-term aggregate risks do not exist.

4. *Aggregate cancer risk for U.S. population.* Since tebufenozide has been classified as a Group E, ''no evidence of carcinogenicity for humans,'' this risk does not exist.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to tebufenozide residues.

*E. Aggregate Risks and Determination of Safety for Infants and Children*

1. *Safety factor for infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined interspecies and intraspecies variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

2. *Prenatal and postnatal sensitivity.* The toxicology data base for tebufenozide included acceptable developmental toxicity studies in both rats and rabbits as well as a 2-generation reproductive toxicity study in rats. The data provided no indication of increased sensitivity of rats or rabbits to *in utero* and/or postnatal exposure to

tebufenozide. No maternal or developmental findings were observed in the prenatal developmental toxicity studies at doses up to 1,000 mg/kg/day in rats and rabbits. In the 2-generation reproduction studies in rats, effects occurred at the same or lower treatment levels in the adults as in the offspring.

3. *Conclusion*. There is a complete toxicity data base for tebufenozide and exposure data are complete and reasonably accounts for potential exposures. For the reasons summarized above, EPA concluded that an additional safety factor is not needed to protect the safety of infants and children.

4. *Acute risk*. Since no acute toxicological endpoints were established, no acute aggregate risk exists.

5. *Chronic risk*. Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to tebufenozide from food will utilize 21% of the cPAD for infants and children. Submitted environmental fate studies suggest that tebufenozide is moderately persistent to persistent and mobile; thus, tebufenozide could potentially leach to ground water and runoff to surface water under certain environmental conditions. The modeling data for tebufenozide indicate levels less than HED's DWLOCs. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Since there are no registered residential uses of tebufenozide, there is no potential for exposure to tebufenozide from residential uses. EPA concludes that there is a reasonable certainty that no harm will result to adults, infants and children from chronic aggregate exposure to tebufenozide residues.

6. *Short- or intermediate-term risk*. Short and intermediate term risks are judged to be negligible due to the lack of significant toxicological effects observed.

7. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to tebufenozide residues.

## IV. Other Considerations

### *A. Metabolism in Plants and Animals*

The qualitative nature of the residue in plants is adequately understood based upon acceptable apple, sugar beet, and rice metabolism studies. EPA has concluded that the residue of regulatory concern is tebufenozide per se. The qualitative nature of the residues in animals is also adequately understood based on acceptable poultry and ruminant metabolism studies. For animals, EPA has concluded that the residues of regulatory concern are tebufenozide and its metabolites benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-((4-carboxymethyl) benzoyl)hydrazide), benzoic acid, 3-hydroxymethyl,5-methyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide, the stearic acid conjugate of benzoic acid, 3-hydroxymethyl,5-methyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide and benzoic acid, 3-hydroxymethyl-5-methyl-1-(1,1-dimethylethyl)-2-(4-(1-hydroxyethyl)benzoyl)hydrazide.

### *B. Analytical Enforcement Methodology*

1. *Analytical methods - sugarcane*. The HPLC/UV methods (Rohm and Haas Method TR 34-95-66, TR 34-94-41, and TR34-97-115) used for determining residues of tebufenozide in/on sugarcane are adequate for collection of residue data. Adequate method validation and concurrent method recovery data have been submitted for these methods. The validated limit of quantitation (LOQ) is 0.01 ppm for residues of tebufenozide in/on sugarcane and sugarcane processed commodities.

2. *Analytical methods - sugarcane and sugarcane processed commodities*. The petitioner also submitted an enforcement method (TR34-97-115) for sugarcane and sugarcane processed commodities. This method has been adequately validated by an independent laboratory validation (ILV). EPA concludes that this proposed enforcement method (TR 34-97-115) is very similar to the previous enforcement method on apples, which has been successfully validated by the Agency Analytical Lab. Therefore EPA concludes that no Agency validation is needed for the proposed enforcement method (TR 34-97-115) for sugarcane and sugarcane processed commodities. The method is suitable for publication in the Pesticide Analytical Manual, Volume II (PAM II) with an alphabetical designation (i.e., letter method).

3. *Analytical methods - animal tissues*. A submitted HPLC/UV Method, Rohm and Haas Method TR 34-96-109, has been determined to be adequate for collecting data on residues of tebufenozide in animal tissues. The validated LOQ for tebufenozide in animal tissue is 0.02. The LOQ for each of the metabolites studied are as follows: RH-2703 in liver, 0.02 ppm; RH-9886 and RH-0282 in meat 0.02 ppm; RH-9526 in fat, 0.02 ppm. The limits of detection (LODs) for the analytes are 0.006 ppm in tissues. The method has been sent to ACB/BEAD for validation as a possible enforcement method.

4. *Multiresidue methods*. Rohm and Haas has previously submitted data involving multiresidue method testing. Tebufenozide was not recoverable by FDA Test Protocols A, B, D, or E; analysis by Protocol C was marginally successful. No further data are required at this time.

These methods may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

### *C. Magnitude of Residues*

Samples of sugarcane from the residue field trials were stored frozen for 5-14 months prior to analysis, and sugarcane processed commodities were stored frozen for 2-11 months. EPA concludes that the submitted residue data for sugarcane are adequate to support the permanent tolerance petition for sugarcane and sugarcane molasses.

EPA concludes that the geographic representation of the crop field trials on sugarcane is adequate and that data are sufficient to support the proposed 1.0 ppm tolerance for residues of tebufenozide in/on sugarcane.

The submitted sugarcane processing studies are adequate. The concentration factor for molasses is 4.5. Multiplying the average concentration factor (4.5) and the highest average field trial (HAFT) residue (0.63) gives 3.0 ppm. Therefore EPA has determined that tolerance for sugarcane molasses should be set at 3.0 ppm (instead of proposed 6.0 ppm) based on the available processing studies. No tolerance is needed for refined sugar. Tolerances for livestock commodities have been established; therefore, residues of tebufenozide in meat, milk, poultry and eggs from the use on sugarcane are covered.

### *D. International Residue Limits*

No CODEX, Canadian or Mexican limits for tebufenozide have been established on sugarcane.

### *E. Rotational Crop Restrictions*

EPA has determined that crops which the label allows tebufenozide to be treated directly can be planted at any time. All other crops can not be planted within 12 months of application.

## V. Conclusion

Therefore, the tolerance is established for residues of tebufenozide in sugarcane and sugarcane molasses at 1.0 and 3.0 ppm, respectively.

## VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

### *A. What Do I Need to Do to File an Objection or Request a Hearing?*

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300914 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 22, 1999.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information 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.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Room M3708, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A. of this preamble, you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. of this preamble. Mail your copies, identified by docket control number OPP–300914, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. of this preamble. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

### *B. When Will the Agency Grant a Request for a Hearing?*

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

## VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993) and Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), or special consideration of environmental justice related issues under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994) or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). The Agency has determined that this action will not have a substantial direct effect

on 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, as specified in Executive Order 12612, entitled *Federalism* (52 FR 41685, October 30, 1987). This action directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(b)(4). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

### VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit 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 United States prior to publication of this rule in the **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 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 9, 1999.

**James Jones,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180–[AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), (346a) and 371.

2. In § 180.482, by adding alphabetically in paragraph (b), the following commodities to the table to read as follows:

**§ 180.482 Tebufenozide; tolerances for residues.**

* * * * *

(b) * * *

| Commodity | Parts per million | Expiration/ Revocation Date |
|---|---|---|
| * * | * * | * |
| Sugarcane ..... | 1.0 | N/A |
| Sugarcane molasses ..... | 3.0 | N/A |
| * * | * * | * |

* * * * *

[FR Doc. 99–24695 Filed 9–21–99; 8:45 am]

BILLING CODE 6560–50–F

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 0, 1, 61 and 69

**[CC Docket Nos. 96–262, 94–1, 98–157; CCB/CPD File No. 98–63; FCC 99–206]**

### Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Petition of U S West Communications, Inc. for Forbearance From Regulation as a Dominant Carrier in the Phoenix, AZ MSA; Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document revises the rules that govern the provision of interstate access services by those incumbent local exchange carriers subject to price cap regulation to advance the pro-competitive, de-regulatory national policies embodied in the Telecommunications Act of 1996. With these revisions, the Commission continues the process it began in 1997 to reform the regulation of interstate access charges in order to accelerate the development of competition in all telecommunications markets and to ensure that the Commission's own regulations do not unduly interfere with the operation of these markets as competition develops.

**DATES:** Effective October 22, 1999, except for 47 CFR 1.774, 61.47, 69.709, 69.711, 69.713, 69.729, which contain information collection requirements that have not been approved by OMB. The Commission will publish a document in the **Federal Register** announcing the effective date.

**FOR FURTHER INFORMATION CONTACT:** Tamara Preiss, Deputy Division Chief, Common Carrier Bureau, Competitive Pricing Division, (202) 418–1520. For additional information concerning the information collections contained in this Report and Order contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Access Reform Fifth Report and Order* adopted August 5, 1999, and released August 25, 1999. The Order was accompanied by a Further Notice of Proposed Rulemaking (Notice) printed elsewhere in this **Federal Register** issue. The full text of this Report and Order (and the accompanying Notice), as well as the complete files for the relevant dockets, is available for inspection and copying during the weekday hours of 9:00 a.m. to 4:30 p.m. in the Commission's Reference Center, 445 12th St. SW, Room CY–A257, Washington DC, or copies may be purchased from the Commission's duplicating contractor, ITS Inc., 1231 20th St. NW, Washington DC 20036; (202) 857–3088. The complete text of the Order also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common_Carrier/Orders/1999/fcc99206.wp.

This Report and Order contains new and/or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA.

### Paperwork Reduction Act

This Report and Order contains either a new or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this Order, as required by the Paperwork Reduction Act of 1995, Public Law 104–12. Written comments by the public on the information collections are due 30 days after date of publication in the **Federal Register**. OMB notification of action is due November 22, 1999.

Comments should address: (1) Whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents including the use of automated collection techniques or other forms of information technology.

*OMB Approval Number:* 3060–0760.

*Title:* Access Charge Reform—CC Docket No. 96–262 (First Report and Order), Second Order on Reconsideration and Memorandum Opinion and Order, Third Report and Order, and Fifth Report and Order.

*Form No.:* N/A.

*Type of Review:* Revised collection.

*Respondents:* Businesses or other for profit.

| Section/title | Number of responses | Est. time per response | Total annual burden |
|---|---|---|---|
| Showings Under Market-Based Approach | 13 | 2117 | 27,520 |
| Cost Study | 13 | 8 | 104 |
| Tariff Filings | 13 | 35 | 455 |
| Third Party Disclosure | 14 | 160 | 2,240 |
| Contract Based Tariffs | 13 | 60 | 780 |

*Total Annual Burden:* 30,829 hrs.

*Estimated Cost Per Respondent:* $600.

*OMB Control No.:* 3060–0526.

*Title:* Density Pricing Plan.

*Form No.:* N/A.

*Type of Review:* Revised Collection.

*Respondents:* Businesses or other for Profit.

| Section/title | Number of responses | Est. time per response | Total annual burden |
|---|---|---|---|
| Density Pricing Plan | 13 | 48 | 624 |

*Estimated Costs Per Respondents: $0.*

*OMB Control No.:* 3060–0770.

*Title:* Price Cap Performance Review for Local Exchange Carriers—CC Docket No. 94–1 (New Services).

*Form No.:* N/A.

*Type of Review:* Revised Collection.

*Respondents:* Businesses or other for Profit.

| Section/title | Number of responses | Est. time per response | Total annual burden |
|---|---|---|---|
| New Services | 13 | 10 | 130 |

*Estimated Costs Per Respondents:* $0.

*Needs and Uses:* The Commission provides detailed rules for implementing the market-based approach, pursuant to which price cap LECs would receive pricing flexibility in the provision of interstate access services as competition for those services develops. The Order grants immediate pricing flexibility to price cap LECs in the form of streamlined introduction of new services, geographic deaveraging of rates for services in the trunking basket, and removal of certain interstate interexchange services from price cap regulation and provides for additional pricing flexibility upon showings.

## Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act, the Fifth Report and Order contains a Final Regulatory Flexibility Analysis regarding the Order which is set forth in the Order. A brief description of the analysis follows. Pursuant to section 604 of the Regulatory Flexibility Act, the Commission performed a comprehensive analysis of the Order with regard to small entities. This analysis includes: (1) A succinct statement of the need for, and objectives of, the Commission's decisions in the Order; (2) a summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the Commission's assessment of these issues, and a statement of any changes made in the Order as a result of the comments; (3) a description of and an estimate of the number of small entities to which the Order will apply; (4) a description of the projected reporting, recordkeeping and other compliance requirements of the Order, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for compliance with the requirement; and (5) a description of the steps the Commission has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the Order and why each one of the other significant alternatives to each of the Commission's decisions which affect small entities was rejected.

## Synopsis of Order

### I. Introduction

1. In this Order, the Commission revises the rules that govern the provision of interstate access services by those incumbent local exchange carriers (ILECs) subject to price cap regulation (collectively, ''price cap LECs'') to advance the pro-competitive, de-regulatory national policies embodied in the Telecommunications Act of 1996

(1996 Act). With these revisions, the Commission continues the process it began in 1997, with the *Access Reform First Report and Order* (62 FR 31868, June 11, 1997), to reform regulation of interstate access charges in order to accelerate the development of competition in all telecommunications markets and to ensure that the Commission's own regulations do not unduly interfere with the operation of these markets as competition develops.

2. In the *Access Reform First Report and Order,* the Commission adopted a primarily market-based approach to drive interstate access charges toward the costs of providing these services. The Commission envisioned that this approach would enable it to give carriers progressively greater flexibility to set rates as competition develops, until competition gradually replaces regulation as the primary means of setting prices. In this Order, the Commission fulfills its commitment to provide detailed rules for implementing the market-based approach, pursuant to which price cap LECs would receive pricing flexibility in the provision of interstate access services as competition for those services develops.

3. The pricing flexibility framework the Commission adopts in this Order is designed to grant greater flexibility to price cap LECs as competition develops, while ensuring that: (1) Price cap LECs do not use pricing flexibility to deter efficient entry or engage in exclusionary pricing behavior; and (2) price cap LECs do not increase rates to unreasonable levels for customers that lack competitive alternatives. In addition, these reforms will facilitate the removal of services from price cap regulation as competition develops in the marketplace, without imposing undue administrative burdens on the Commission or the industry.

4. Specifically, this Order grants immediate pricing flexibility to price cap LECs in the form of streamlined introduction of new services, geographic deaveraging of rates for services in the trunking basket, and removal, upon implementation of toll dialing parity, of certain interstate interexchange services from price cap regulation. The Commission also establishes a framework for granting price cap LECs greater flexibility in the pricing of all interstate access services once they satisfy certain competitive criteria. In Phase I, the Commission allows price cap LECs to offer contract tariffs and volume and term discounts for those services for which they make a specific competitive showing. In Phase II, the Commission permits price cap LECs to offer dedicated transport and special access services free from the Commission's part 69 rate structure and part 61 price cap rules, provided that the LECs can demonstrate a significantly higher level of competition for those services. This Order amends the Commission's rules, as revised in *1998 Beinnial Regulatory Review—Part 61 of the Commission's Rules and Related Tariffing Requirements,* 64 FR 46584 (August 26, 1999).

## II. Background

### *A. Price Cap Regime*

5. To recover the costs of providing interstate access services, incumbent LECs charge IXCs and end users for access services in accordance with the Commission's part 69 access charge rules. Part 69 establishes two basic categories of access services: Special access services and switched access services. Special access services do not use local switches; instead they employ dedicated facilities that run directly between the end user and the IXC's point of presence (POP). Switched access services, on the other hand, use local exchange switches to route originating and terminating interstate toll calls. The Commission has not prescribed specific rate elements in part 69 for special access services. Part 69 does establish specific switched access elements and a mandatory switched access rate structure for each element.

6. Interoffice transmission services, known as transport services, carry interstate switched access traffic between an IXC's POP and the end office that serves the end user customer. Incumbent LEC transmission facilities that carry switched interstate traffic between an IXC's POP and the incumbent LEC end office serving the POP (this office is called the serving wire center, or SWC), are known as entrance facilities. Incumbent LECs currently offer two types of interstate switched transport service between a SWC and an end user's end office. Under the first service, direct-trunked transport, calls are transported between the SWC and the end office by means of a direct trunk, a dedicated facility, that does not pass through an intervening switch. The second service, tandem-switched transport, routes calls from the SWC to the end office through a tandem switch located between the SWC and the end office. Traffic travels over a dedicated circuit from the SWC to the tandem switch and then over a shared circuit, which carries the calls of many different IXCs, from the tandem switch to the incumbent LEC end office. Incumbent LEC tandem switches and end office switches switch interstate traffic between the transport trunks carrying traffic to and from the IXC POPs and the end users' local loops.

7. Charges for special access services generally are divided into channel termination charges and channel mileage charges. Channel termination charges recover the costs of facilities between the customer's premises and the LEC end office and the costs of facilities between the IXC POP and the serving wire center. Channel mileage charges recover the costs of facilities (also known as interoffice facilities) between the serving wire center and the LEC end office serving the end user.

8. In 1990, the Commission replaced rate-of-return regulation for the BOCs and GTE with an incentives-based system of regulation that encourages companies to: (1) Improve their efficiency by developing profit-making incentives to reduce costs; (2) invest efficiently in new plant and facilities; and (3) develop and deploy innovative service offerings. The price cap plan is designed to replicate some of the efficiency incentives found in fully competitive markets and to act as a transitional regulatory scheme until actual competition makes price cap regulation unnecessary.

9. Under the original price cap plan, interstate access services were grouped into four different baskets: The common line, traffic-sensitive, special access, and interexchange baskets. In the *Second Transport Order* (59 FR 10300, March 4, 1994), the Commission combined transport and special access services into the newly created trunking basket. Each basket is subject to a price cap index (PCI), which caps the total charges a LEC may impose for interstate access services in that basket. The PCI is adjusted annually by a measure of inflation minus a ''productivity factor,'' or ''X-Factor.'' A separate adjustment is made to the PCI for ''exogenous'' cost changes, which are changes outside the carrier's control and not otherwise reflected in the price cap formula.

10. Within the traffic-sensitive and trunking baskets, services are grouped into service categories and subcategories. Rate revisions for these services are limited by upper and, in the original price cap plan, lower pricing bands established for that particular service. Originally, the pricing band limits for most of the service categories and subcategories were set at five percent above and below the Service Band Index (SBI). In 1995, however, the Commission increased the lower pricing bands to ten percent for those service categories in the trunking and traffic-sensitive baskets and 15 percent for those services subject to density zone

pricing. These pricing bands give price cap LECs the ability to raise and lower rates for elements or services as long as the actual price index (API) for the relevant basket does not exceed the PCI for that basket, and the prices for each category of services within the basket are within the established pricing bands. Together, the PCI and pricing bands restrict a price cap LEC's ability to offset price reductions for services that are subject to competition with price increases for services that are not subject to competition.

*B. Pricing Flexibility*

11. When it adopted the *LEC Price Cap Order* (55 FR 42375, October 19, 1990), the Commission required price cap LECs to offer all interstate special and switched access services at geographically averaged rates for each study area. Since that time, the Commission has taken significant steps to increase the LECs' pricing flexibility and ability to respond to the advent of competition in the exchange access market. In the *Special Access* and *Switched Transport Expanded Interconnection Orders* (57 54323, November 19, 1992; 58 FR 48756, September 17, 1993), the Commission permitted LECs to introduce density zone pricing for high capacity special access and switched transport services in a study area, provided that they could demonstrate the presence of ''operational'' special access and switched transport expanded interconnection arrangements and at least one competitor in the study area. The Commission also permitted price cap LECs to offer volume and term discounts for special access and switched transport services upon specific competitive showings.

12. Subsequently, the Commission eliminated the lower service band indices, concluding that this action would lead to lower prices and encourage LECs to charge rates that reflect the underlying costs of providing exchange access services. The Commission found that the PCI and upper pricing bands adequately control predatory pricing and that greater downward pricing flexibility would benefit consumers both directly through lower prices and indirectly by encouraging only efficient competitive entry.

13. In that same order, the Commission also relaxed the procedures for introducing new switched access services, in response to arguments that new services and technologies do not fit the part 69 rate structure requirements. The Commission prescribed the original rate structure for introducing new switched access services in 1983. At that time, incumbent LECs were required to file a part 69 waiver each time they wanted to introduce a new rate element for switched access service that did not conform to the prescribed switched access rate structure. A part 69 waiver required incumbent LECs to demonstrate that ''special circumstances warrant deviation from the general rule and that such deviation will serve the public interest.'' Incumbent LECs also had to comply with the ''new services'' test, which required an incumbent LEC to demonstrate that its tariffed rates for new services would recover no more than the carrier's direct costs of providing the service, plus a reasonable amount of overhead, and no less than the carrier's direct costs of providing the service. Finally, incumbent LECs were directed to file their tariffs introducing a new service on at least fifteen days' notice and to incorporate the new service into the appropriate price cap basket and indices within six to eighteen months after the new service tariff became effective.

14. The Commission found that the part 69 rate structure imposed a costly, time-consuming, and unnecessary burden on incumbent LECs and significantly impeded the introduction of new services. Accordingly, the Commission modified the part 69 rate structure rules to permit an incumbent LEC to introduce a new service by filing a petition based on a ''public interest'' standard that is easier to satisfy than the general standard applicable to waivers of the its rules. In addition, under the new rules, once an initial incumbent LEC has satisfied the public interest requirement for establishing new rate elements for a new switched access service, another incumbent LEC may file a petition seeking authority to introduce an identical new service, and its petition will be reviewed within ten days of the release of a Public Notice. The LEC may introduce the new rate element following the ten-day period, unless the Common Carrier Bureau (the Bureau) informs the LEC before that time that its new service does not qualify for ''me too'' treatment.

15. The Commission also recognized that additional modifications to the Part 69 rate structure could increase consumer choice, streamline regulation, and increase consumer welfare by increasing incentives for innovation. The Commission, therefore, sought comment on whether to permit price cap LECs to establish new switched access rate elements without prior approval. It also invited comment on whether to eliminate the new services test and permit LECs to offer new services free from price cap regulation. In the *Access Reform First Report and Order,* the Commission deferred resolution of these issues, as well as other issues concerning the timing and degree of pricing flexibility, to a future report and order.

**III. Summary**

*A. Pricing Flexibility*

16. Since the release of the *Access Reform First Report and Order,* the Commission has re-examined the record generated in response to the *Access Reform NPRM* (62 FR 4670, January 31, 1997) and the *Price Cap Second FNPRM* (60 FR 49539, September 26, 1995); it has observed competition develop in the marketplace; and the it has invited parties to update and refresh the record relating to access charge reform to reflect any changes that may have taken place since May 1997. In addition, the Commission has received and reviewed several petitions (and the associated records) from BOCs seeking pricing flexibility in the form of forbearance from dominant carrier regulation in the provision of certain special access and high capacity services. Although the Commission's current price cap regime gives LECs some pricing flexibility and considerable incentives to operate efficiently, significant regulatory constraints remain. As the market becomes more competitive, such constraints become counter-productive. The Commission recognizes that the variety of access services available on a competitive basis has increased significantly since the adoption of its price cap rules. Therefore, in response to changing market conditions, the Commission grants price cap LECs immediate flexibility to deaverage services in the trunking basket and to introduce new services on a streamlined basis. The Commission also removes certain interstate interexchange services from price cap regulation upon implementation of intra-and interLATA toll dialing parity, and the it establishes a framework for granting price cap LECs further pricing flexibility upon satisfaction of certain competitive showings and seek comment on additional flexibility for certain switched access services.

1. Immediate Regulatory Relief

17. As discussed above, the original rate structure for interstate switched transport services required price cap LECs to charge averaged rates throughout a study area. The Commission subsequently found that this requirement forced LECs to price above cost in the high-traffic, lower-cost

areas where competition is more likely to develop. In the *Switched Transport Expanded Interconnection Order,* therefore, the Commission created a density zone pricing plan that allows some degree of deaveraging of rates for switched transport services. It concluded that relaxing the pricing rules in this manner would enable price cap LECs to respond to increased competition in the interstate switched transport market.

18. Although the density zone pricing plan afforded some pricing flexibility to price cap LECs, it contained several constraints, such as the increased scrutiny applicable to plans with more than three zones. The Commission now concludes that market forces, as opposed to regulation, are more likely to compel LECs to establish efficient prices. Accordingly, for purposes of deaveraging rates for services in the trunking basket, the Commission eliminates the limitations inherent in the its current density zone pricing plan and allow price cap LECs to define the scope and number of zones within a study area, provided that each zone, except the highest-cost zone, accounts for at least 15 percent of the incumbent LEC's trunking basket revenues in the study area and that annual price increases within a zone do not exceed 15 percent. In addition, the Commission eliminates the requirement that LECs file zone pricing plans prior to filing their tariffs.

19. The Commission also permits price cap LECs to introduce new services on a streamlined basis, without prior approval. Generally, the Commission modifies the its rules to eliminate the public interest showing required by § 69.4(g) and to eliminate the new services test (except in the case of loop-based new services) required under §§ 61.49(f) and (g) of the Commission's rules. These modifications will eliminate the delays that now exist for the introduction of new services as well as encourage efficient investment and innovation.

20. Certain interstate interexchange services provided by price cap LECs are found in the interexchange basket, including interstate intraLATA services and certain interstate interLATA services called ''corridor services.'' In this Order, the Commission allows price cap LECs to remove from the interexchange basket, and, hence, price cap regulation, their interstate intraLATA toll services and corridor services, provided the price cap LEC has implemented intra-and interLATA toll dialing parity in all of the states in which it provides local exchange service. The presence of competitive alternatives for these services, coupled with implementation of dialing parity, should prevent price cap LECs from exploiting over a sustained period any market power may possess with respect to these services and thus warrants removal of these services from price cap regulation.

2. Relief That Requires a Competitive Showing

21. In addition, the Commission adopts a framework for granting further regulatory relief upon satisfaction of certain competitive showings. Relief generally will be granted in two phases and on an MSA (Metropolitan Statistical Area) basis. To obtain Phase I relief, price cap LECs must demonstrate that competitors have made irreversible, sunk investments in the facilities needed to provide the services at issue. For instance, for dedicated transport and special access services, price cap LECs must demonstrate that unaffiliated competitors have collocated in at least 15 percent of the LEC's wire centers within an MSA or collocated in wire centers accounting for 30 percent of the LEC's revenues from these services within an MSA. Higher thresholds apply, however, for channel terminations between a LEC end office and an end user customer. In that case, the LEC must demonstrate that unaffiliated competitors have collocated in 50 percent of the price cap LEC's wire centers within an MSA or collocated in wire centers accounting for 65 percent of the price cap LEC's revenues from this service within an MSA. For traffic-sensitive, common line, and the traffic-sensitive components of tandem-switched transport services, a LEC must show that competitors offer service over their own facilities to 15 percent of the price cap LEC's customer locations within an MSA. Phase I relief permits price cap LECs to offer, on one day's notice, volume and term discounts and contract tariffs for these services, so long as the services provided pursuant to contract are removed from price caps. To protect those customers that may lack competitive alternatives, however, LECs receiving Phase I flexibility must maintain their generally available, price cap constrained tariffed rates for these services.

22. To obtain Phase II relief, price cap LECs must demonstrate that competitors have established a significant market presence (*i.e.,* that competition for a particular service within the MSA is sufficient to preclude the incumbent from exploiting any individual market power over a sustained period) for provision of the services at issue. Phase II relief for dedicated transport and special access services is warranted when a price cap LEC demonstrates that unaffiliated competitors have collocated in at least 50 percent of the LEC's wire centers within an MSA or collocated in wire centers accounting for 65 percent of the LEC's revenues from these services within an MSA. Again, a higher threshold applies to channel terminations between a LEC end office and an end user customer. In that case, a price cap LEC must show that unaffiliated competitors have collocated in 65 percent of the LEC's wire centers within an MSA or collocated in wire centers accounting for 85 percent of the LEC's revenues from this service within an MSA. Phase II relief permits price cap LECs to file tariffs for these services on one day's notice, free from both the Commission's Part 61 rate level and its Part 69 rate structure rules.

*B. CLEC Access Charges*

23. In the *Access Reform NPRM,* the Commission sought comment on whether CLECs have market power in the provision of terminating access services and whether to regulate these services. In the *Access Reform First Report and Order,* it decided to treat CLECs as non-dominant in the provision of terminating access service, because they did not appear at that time to possess market power. The Commission stated, however, that it would revisit the issue of regulating CLEC terminating access rates if there were sufficient indications that CLECs were imposing unreasonable terminating access charges.

24. On October 23, 1998, AT&T filed a petition for declaratory ruling requesting that the Commission confirm that, under existing Commission rules and policies, an IXC may elect not to accept service at a price chosen by the CLEC. In its petition, AT&T alleges that some CLECs impose switched access charges significantly higher than those charged by the ILEC competitors in the same area. AT&T points to a Commission pronouncement in the Access Reform First Report and Order that ''terminating rates that exceed those charged by the ILEC serving the same market may suggest that a CLEC's terminating access rates are excessive,'' thereby warranting Commission regulation.

25. In this Order, the Commission denies AT&T's petition. The Commission finds, however, that the record developed in response to AT&T's petition suggests the need for the it to revisit the issue of CLEC access rates.

## IV. Procedural Issues and Ordering Clauses

*A. Final Regulatory Flexibility Analysis*

25. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in *Access Reform NPRM.* The Commission sought written comments on the proposals in the *Access Reform NPRM,* including the IRFA. Its Final Regulatory Flexibility Analysis (FRFA) in this Order conforms to the RFA, as amended. To the extent that any statement contained in this FRFA is perceived as creating ambiguity with respect to the Commission's rules or statements made in preceding sections of this Order, the rules and statements set forth in those preceding sections shall be controlling.

1. Need For and Objectives of This Report and Order

27. This proceeding is being conducted to advance the pro-competitive, de-regulatory national policies embodied in the Telecommunications Act of 1996. The Commission continues the process it began in 1997 with the Access Reform First Report and Order to reform regulation of interstate access charges in order to accelerate the development of competition in all telecommunications markets and to ensure that the its own regulations do not unduly interfere with the operation of these markets as competition develops.

2. Summary of Significant Issues Raised by the Public Comments in Response to the IRFA

28. The Commission has already addressed the general concerns raised by Rural Telephone Coalition that this proceeding may ''prejudge and prejudice'' a later rulemaking for non price cap LECs, and that the delay in implementing that rulemaking may injure non-price cap LECs. Otherwise, the comments filed do not address the specific issues contained in this Order.

3. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

29. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity '' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). The Small Business Administration has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be a small entity that has no more than 1500 employees.

Total Number of Telephone Companies Affected:

30. The Commission has included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. The Commission has therefore included small incumbent LECs in this RFA analysis, although it emphasizes that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

31. *Price Cap Local Exchange Carriers.* The rulemaking contained in this Order applies only to price cap LECs. The Commission does not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of price cap LECs that would qualify as small business concerns under the SBA's definition. However, there are only 13 price cap LECs. Consequently, the Commission estimates that significantly fewer than 13 providers of local exchange service are small entities or small price cap LECs that may be affected by these proposals.

4. Summary Analysis of the Projected Reporting, Recordkeeping, and Other Compliance Requirements

32. In this Report and Order, the Commission adopts changes in pricing flexibility to price cap LECs in the form of streamlined introduction of new services, geographic deaveraging of rates for services in the trunking basket, and removal of interexchange services from price cap regulation. These changes will affect all price cap LECs, including small price cap LECs, and will require small price cap LECs to make one or more tariff filings should they desire to obtain the additional pricing flexibility, which will involve the usage of legal skills, and possibly accounting, economic, and financial skills.

5. Burdens on Small Entities, and Significant Alternatives Considered and Rejected

33. In Sections III, IV, and V, the Commission adopts forms of regulatory relief for price cap LECs that can be granted under current market conditions and do not require a further competitive showing. Price cap LECs each will have to file at least one tariff to implement this relief, but the administrative burdens they will face in future filings will diminish as a result. In Section VI, the Commission grants additional pricing flexibility to price cap LECs that make ''competitive showings,'' or satisfy ''triggers,'' to demonstrate that market conditions in particular areas warrant the relief at issue. In order to minimize the administrative burdens on price cap LECs, the Commission bases its triggering mechanisms on objectively measurable criteria.

34. The Commission considered and rejected alternative triggers and granting a different amount of pricing flexibility. In setting the triggers and relief in the manner the Commission did, it attempted to balance the interests of price cap LECs in being able to gain regulatory relief, with its interest in protecting ratepayers from unreasonable rate levels and new entrants from anti-competitive actions.

6. Report to Congress

35. The Commission will send a copy of this Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of this Report and Order, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

*C. Paperwork Reduction Act*

36. On April 1, 1997, the Office of Management and Budget (OMB) approved all of the Commission's proposed information collection requirements in accordance with the Paperwork Reduction Act. The OMB made one recommendation, suggesting that the Commission tries ''to minimize the number of new filings that firms must create in order to be compliant with the rules adopted * * *'' The

Commission has carefully considered the recommendation of OMB, and in the course of preparing this Order, it has decided to modify several of the collection requirements proposed in the *Access Reform NPRM*. This Order has greatly reduced the number of filings a price cap LEC will have to submit to receive pricing flexibility. In addition, many of the filings should take less time to make than was originally proposed. For example, the Commission estimates that based on the competitive triggers it adopted, it should only take five hours each to make two Phase II showings per MSA for all special access and dedicated transport services, whereas the original filing to OMB estimated that each Phase II showing would take approximately 300 hours.

*D. Ordering Clauses*

37. Accordingly, *It is Ordered*, pursuant to sections 1, 4(i), 4(j), 201–205, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 303(r), 403, and section 553 of Title 5, United States Code, that revisions to Parts 1, 61, and 69 of the Commission's rules, 47 CFR Parts 1, 61, 69, *are adopted* as set forth in the rule changes in this Order.

38. *It is further ordered* that the rule revisions adopted in this Order will be effective 30 days after publication of this Order in the **Federal Register**. The collections of information contained within are contingent upon approval by the Office of Management and Budget.

39. *It is further ordered* that, pursuant to section 10(c) of the Communications Act of 1934, 47 USC. 160(c), the period for review by the Commission of the petition for forbearance filed by U S West Communications, Inc., CC Docket No. 98–157, *is extended* by 90 days.

40. *It is further ordered* that the petition for declaratory ruling filed by AT&T, CCB/CPD File No. 98–63, *is denied*.

**List of Subjects**

*47 CFR Part 0*

Organization and functions.

*47 CFR Part 1*

Administrative practice and procedure, Communications common carriers, Telecommunications.

*47 CFR Part 61*

Communications common carriers, Telephone.

*47 CFR Part 69*

Communications common carriers, Telephone.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

**Rule Changes**

Accordingly, parts 0, 1, 61, and 69 of Title 47 of the Code of Federal Regulations are amended to read as follows:

## PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

**Authority:** Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

2. Section 0.291 is amended by adding paragraph (i) to read as follows:

**§ 0.291 Authority delegated.**

* * * * *

(j) *Authority concerning petitions for pricing flexibility.* (1) The Chief, Common Carrier Bureau, shall have authority to act on petitions filed pursuant to part 69, subpart H, of this chapter for pricing flexibility involving special access and dedicated transport services. This authority is not subject to the limitation set forth in paragraph (a)(2) of this section.

(2) The Chief, Common Carrier Bureau, shall not have authority to act on petitions filed pursuant to part 69, subpart H, of this chapter for pricing flexibility involving common line and traffic sensitive services.

## PART 1—PRACTICE AND PROCEDURE

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

**Authority:** 15 U.S.C. 79 *et seq.*, 47 U.S.C. 151, 154(i), 154(j), 155, 225, and 303(r).

4. Amend § 1.773 by adding paragraph (a)(1)(v) to read as follows:

**§ 1.773 Petitions for suspension or rejection of new tariff filings.**

(a) * * *

(1) * * *

(v) For the purposes of this section, any tariff filing by a price cap LEC filed pursuant to the requirements of § 61.42(d)(4)(ii) of this chapter will be considered *prima facie* lawful, and will not be suspended by the Commission unless the petition requesting suspension shows each of the following:

(A) That there is a high probability the tariff would be found unlawful after investigation;

(B) That any unreasonable rate would not be corrected in a subsequent filing;

(C) That irreparable injury will result if the tariff filing is not suspended; and

(D) That the suspension would not otherwise be contrary to the public interest.

* * * * *

5. Add § 1.774 to read as follows:

**§ 1.774 Pricing flexibility**

(a) *Petitions.* (1) A petition seeking pricing flexibility for specific services pursuant to part 69, subpart H, of this chapter, with respect to a metropolitan statistical area (MSA), as defined in § 22.909(a) of this chapter, or the non-MSA parts of a study area, must show that the price cap LEC has met the relevant thresholds set forth in part 69, subpart H, of this chapter.

(2) The petition must make a separate showing for each MSA for which the petitioner seeks pricing flexibility, and for the portion of the study area that falls outside any MSA.

(3) Petitions seeking pricing flexibility for services described in §§ 69.709(a) and 69.711(a) of this chapter must include:

(i) The total number of wire centers in the relevant MSA or non-MSA parts of a study area, as described in § 69.707 of this chapter;

(ii) The number and location of the wire centers in which competitors have collocated in the relevant MSA or non-MSA parts of a study area, as described in § 69.707 of this chapter;

(iii) In each wire center on which the price cap LEC bases its petition, the name of at least one collocator that uses transport facilities owned by a provider other than the price cap LEC to transport traffic from that wire center; and

(iv)(A) The percentage of the wire centers in the relevant MSA or non-MSA area, as described in § 69.707 of this chapter, in which competitors have collocated and use transport facilities owned by a provider other than the price cap LEC to transport traffic from that wire center; or

(B) The percentage of total base period revenues generated by the services at issue in the petition that are attributable to wire centers in the relevant MSA or non-MSA area, as described in § 69.707 of this chapter, in which competitors have collocated and use transport facilities owned by a provider other than the price cap LEC to transport traffic from that wire center.

(4) Petitions seeking pricing flexibility for services described in § 69.713(a) of this chapter must make a showing sufficient to meet the relevant requirements of § 69.713 of this chapter.

(b) *Confidential treatment.* A price cap LEC wishing to request confidential treatment of information contained in a pricing flexibility petition should

demonstrate, by a preponderance of the evidence, that the information should be withheld from public inspection in accordance with the requirements of § 0.459 of this chapter.

(c) *Oppositions.* Any interested party may file comments or oppositions to a petition for pricing flexibility. Comments and oppositions shall be filed no later than 15 days after the petition is filed. Time shall be computed pursuant to § 1.4.

(d) *Replies.* The petitioner may file a reply to any oppositions filed in response to its petition for pricing flexibility. Replies shall be filed no later than 10 days after comments are filed. Time shall be computed pursuant to § 1.4.

(e) *Copies, service.* (1)(i) Any price cap LEC filing a petition for pricing flexibility must submit its petition pursuant to the Commission's Electronic Tariff Filing System (ETFS), following the procedures set forth in § 61.14(a) of this chapter.

(ii) The price cap LEC must provide to each party upon which the price cap LEC relies to meet its obligations under paragraph (a)(3)(iii) of this section, the information it provides about that party in its petition, even if the price cap LEC requests that the information be kept confidential under paragraph (b) of this section.

(A) The price cap LEC must certify in its pricing flexibility petition that it has made such information available to the party.

(B) The price cap LEC may provide data to the party in redacted form, revealing only that information to the party that relates to the party.

(C) The price cap LEC must provide to the Commission copies of the information it provides to such parties.

(2)(i) Interested parties filing oppositions or comments in response to a petition for pricing flexibility may file those comments through ETFS.

(ii) Any interested party electing to file an opposition or comment in response to a pricing flexibility petition through a method other than ETFS must file an original and four copies of each opposition or comment with the Commission, as follows: the original and three copies of each pleading shall be filed with the Secretary, FCC, Room CY–A257, 445 Twelfth St. S.W., Washington, D.C., 20554; one copy must be delivered directly to the Commission's copy contractor, International Transcription Service, Inc., 1231 Twentieth St. N.W., Washington, D.C. 20036. Additional, separate copies shall be served simultaneously upon the Chief, Common Carrier Bureau; the Chief, Competitive Pricing Division; and the Chief, Tariff and Pricing Analysis Branch of the Competitive Pricing Division.

(iii) In addition, oppositions and comments shall be served either personally or via facsimile on the petitioner. If an opposition or comment is served via facsimile, a copy of the opposition or comment must be sent to the petitioner via first class mail on the same day as the facsimile transmission.

(3) Replies shall be filed with the Commission through ETFS. In addition, petitioners choosing to file a reply must serve a copy on each party filing an opposition or comment, either personally or via facsimile. If a reply is served via facsimile, a copy of the reply must be sent to the recipient of that reply via first class mail on the same day as the facsimile transmission.

(f) *Disposition.* (1) A petition for pricing flexibility pertaining to special access and dedicated transport services shall be deemed granted unless the Chief, Common Carrier Bureau, denies the petition no later than 90 days after the close of the pleading cycle. The period for filing applications for review begins the day the Bureau grants or denies the petition, or the day that the petition is deemed denied. Time shall be computed pursuant to § 1.4.

(2) A petition for pricing flexibility pertaining to common-line and traffic-sensitive services shall be deemed granted unless the Commission denies the petition no later than five months after the close of the pleading cycle. Time shall be computed pursuant to § 1.4.

## PART 61—TARIFFS

6. The authority citation continues to read as follows:

**Authority:** Secs. 1, 4(i), 4(j), 201–205, and 403 of the Communications Act of 1934, as amended; 47 U.S.C. 151, 154(i), 154(j), 201–205, and 403, unless otherwise noted.

7. Amend § 61.3 by revising paragraph (m) and adding paragraphs (nn), (oo), and (pp), to read as follows:

### § 61.3 Definitions.

* * * * *

(m) *Contract-based tariff.* A tariff based on a service contract entered into between a non-dominant carrier and a customer, or between a customer and a price cap local exchange carrier which has obtained permission to offer contract-based tariff services pursuant to Part 69, Subpart H, of this chapter.

* * * * *

(nn) *Corridor service.* ''Corridor service'' refers to interLATA services offered in the ''limited corridors'' established by the District Court in United States v. Western Electric Co., Inc., 569 F. Supp. 1057, 1107 (D.D.C. 1983).

(oo) *Toll dialing parity.* ''Toll dialing parity'' exists when there is dialing parity, as defined in § 51.5 of this chapter, for toll services.

(pp) *Loop-based services.* Loop-based services are services that employ Subcategory 1.3 facilities, as defined in § 36.154 of this chapter.

* * * * *

8. Amend § 61.42 by redesignating paragraph (d)(4) as (d)(4)(i), and adding paragraph (d)(4)(ii), to read as follows:

### § 61.42 Price cap baskets and service categories.

* * * * *

(d) * * *

(4) * * *

(ii) If a price cap carrier has implemented interLATA and intraLATA toll dialing parity everywhere it provides local exchange services at the holding company level, that price cap carrier may file a tariff revision to remove corridor and interstate intraLATA toll services from its interexchange basket.

* * * * *

9. Amend § 61.45 by revising paragraph (d)(1)(vii) to read as follows:

### § 61.45 Adjustments to the PCI for local exchange carriers.

* * * * *

(d) * * *

(1) * * *

(vii) Retargeting the PCI to the level specified by the Commission for carriers whose base year earnings are below the level of the lower adjustment mark, subject to the limitation in § 69.731 of this chapter.

* * * * *

10. Amend § 61.46 to add paragraph (i) to read as follows:

### § 61.46 Adjustments to the API.

* * * * *

(i) In no case shall a price cap local exchange carrier include data associated with services offered pursuant to contract tariff in the calculations required by this section.

11. Section 61.47 is amended by revising paragraphs (a), introductory text, (e) introductory text, and (e)(1) and by adding paragraphs (f) and (k) to read as follows:

### § 61.47 Adjustments to the SBI; pricing bands.

(a) In connection with any price cap tariff filing proposing changes in the rates of services in service categories, subcategories, or density zones, the

carrier must calculate an SBI value for each affected service category, subcategory, or density zone pursuant to the following methodology: * * *

* * * * *

(e) Pricing bands shall be established each tariff year for each service category and subcategory within a basket. Each band shall limit the pricing flexibility of the service category, subcategory, as reflected in the SBI, to an annual increase of a specified percent listed in this paragraph, relative to the percentage change in the PCI for that basket, measured from the levels in effect on the last day of the preceding tariff year. For local exchange carriers subject to price cap regulation as that term is defined in § 61.3(x), there shall be no lower pricing band for any service category or subcategory.

(1) *Five percent:*

(i) Local switching (traffic sensitive basket)
(ii) Information (traffic sensitive basket)
(iii) Database Access services (traffic sensitive basket)
(iv) 800 Database Vertical Services subservice (traffic sensitive basket)
(v) Billing Name and Address (traffic sensitive basket)
(vi) Local switching trunk ports (traffic sensitive basket)
(vii) Signalling Transfer Point Port Termination (traffic sensitive basket)
(viii) Voice grade (trunking basket)
(ix) Audio/Video (trunking basket)
(x) Total High Capacity (trunking basket)
(xi) DS1 subservice (trunking basket)
(xii) DS3 subservice (trunking basket)
(xiii) Wideband (trunking basket)

(f) A local exchange carrier subject to price cap regulation may establish density zones pursuant to the requirements set forth in § 69.123 of this chapter, for any service in the trunking basket, other than the interconnection charge set forth in § 69.124 of this chapter. The pricing flexibility of each zone shall be limited to an annual increase of 15 percent, relative to the percentage change in the PCI for that basket, measured from the levels in effect on the last day of the preceding tariff year. There shall be no lower pricing band for any density zone.

* * * * *

(k) In no case shall a price cap local exchange carrier include data associated with services offered pursuant to contract tariff in the calculations required by this section.

12. In § 61.49, revise paragraphs (f)(2) and (g) introductory text, and add paragraphs (f)(3) and (f)(4) to read as follows:

**§ 61.49 Supporting information to be submitted with letters of transmittal for tariffs of carriers subject to price cap regulation.**

* * * * *

(f) * * *

(2) Each tariff filing submitted by a price cap LEC that introduces a new loop-based service, as defined in § 61.3(pp) of this part—including a restructured unbundled basic service element (BSE), as defined in § 69.2(mm) of this chapter, that constitutes a new loop-based service—that is or will later be included in a basket, must be accompanied by cost data sufficient to establish that the new loop-based service or unbundled BSE will not recover more than a just and reasonable portion of the carrier's overhead costs.

(3) A price cap LEC may submit without cost data any tariff filings that introduce new services, other than loop-based services.

(4) A price cap LEC that has removed its corridor or interstate intraLATA toll services from its interexchange basket pursuant to § 61.42(d)(4)(ii), may submit its tariff filings for corridor or interstate intraLATA toll services without cost data.

(g) Each tariff filing submitted by a local exchange carrier subject to price cap regulation that introduces a new loop-based service or a restructured unbundled basic service element (BSE), as defined in § 69.2(mm) of this chapter, that is or will later be included in a basket, or that introduces or changes the rates for connection charge subelements for expanded interconnection, as defined in § 69.121 of this chapter, must also be accompanied by:

* * * * *

13. Add § 61.55 to read as follows:

**§ 61.55 Contract-based tariffs.**

(a) This section shall apply to price cap LECs permitted to offer contract-based tariffs under § 69.727(a) of this chapter.

(b) Composition of contract-based tariffs shall comply with §§ 61.54(b) through (i).

(c) Contract-based tariffs shall include the following:

(1) The term of contract, including any renewal options;

(2) A brief description of each of the services provided under the contract;

(3) Minimum volume commitments for each service;

(4) The contract price for each service or services at the volume levels committed to by the customers;

(5) A general description of any volume discounts built into the contract rate structure; and

(6) A general description of other classifications, practices, and regulations affecting the contract rate.

14. Amend § 61.58 to add paragraphs (b), (c) and (d) to read as follows:

**§ 61.58 Notice requirements.**

* * * * *

(b) Tariffs for new services filed by price cap local exchange carriers shall be filed on at least one day's notice.

(c) Contract-based tariffs filed by price cap local exchange carriers pursuant to § 69.727(a) of this chapter shall be filed on at least one day's notice.

(d)(1) A local exchange carrier that is filing a tariff revision to remove its corridor or interstate intraLATA toll services from its interexchange basket pursuant to § 61.42(d)(4)(ii) shall submit such filing on at least fifteen days' notice.

(2) A local exchange carrier that has removed its corridor and interstate intraLATA toll services from its interexchange basket pursuant to § 61.42(d)(4)(ii) shall file subsequent tariff filings for corridor or interstate intraLATA toll services on at least one day's notice.

* * * * *

## PART 69—ACCESS CHARGES

15. The authority citation for part 69 continues to read as follows:

**Authority:** 47 U.S.C. 154, 201, 202, 203, 205, 218, 220, 254, 403.

16. Amend § 69.3 by revising paragraph (e)(7) to read as follows:

**§ 69.3 Filing of access service tariffs.**

* * * * *

(e) * * *

(7) Such a tariff shall not contain charges for any access elements that are disaggregated or deaveraged within a study area that is used for purposes of jurisdictional separations, except as otherwise provided in this chapter.

* * * * *

17. Amend § 69.4 by revising paragraph (g)(1) and adding paragraph (i), to read as follows:

**§ 69.4 Charges to be filed.**

* * * * *

(g)(1) Local exchange carriers subject to price cap regulation, as that term is defined in § 61.3(x) of this chapter, may establish appropriate rate elements for a new service, within the meaning of § 61.3(t) of this chapter, in any tariff filing with a scheduled effective date after October 22, 1999.

* * * * *

(i) Paragraphs (b) and (h) of this section are not applicable to a price cap local exchange carrier to the extent that

it has been granted the pricing flexibility in § 69.727(b)(1).

18. In § 69.110, revise paragraph (e) to read as follows:

**§ 69.110 Entrance facilities.**

* * * * *

(e) Except as provided in paragraphs (f), (g), and (h) of this section, and subpart H of this part, telephone companies shall not offer entrance facilities based on term discounts or volume discounts for multiple DS3s or any other service with higher volume than DS3.

* * * * *

19. Amend § 69.123 by revising paragraphs (a), (b), (e)(2), and (f)(1), to read as follows:

**§ 69.123 Density pricing zones.**

(a)(1) Incumbent local exchange carriers not subject to price cap regulation may establish a reasonable number of density pricing zones within each study area that is used for purposes of jurisdictional separations, in which at least one interconnector has taken the subelement of connection charges for expanded interconnection described in § 69.121(a)(1).

(2) Such a system of pricing zones shall be designed to reasonably reflect cost-related characteristics, such as the density of total interstate traffic in central offices located in the respective zones.

(3) Non-price cap incumbent local exchange carriers may establish only one set of density pricing zones within each study area, to be used for the pricing of both special and switched access pursuant to paragraphs (c) and (d) of this section.

(b)(1) Incumbent local exchange carriers subject to price cap regulation may establish any number of density zones within a study area that is used for purposes of jurisdictional separations, provided that each zone, except the highest-cost zone, accounts for at least 15 percent of that carrier's trunking basket revenues within that study area, calculated pursuant to the methodology set forth in § 69.725.

(2) Price cap incumbent local exchange carriers may establish only one set of density pricing zones within each study area, to be used for the pricing of all services within the trunking basket for which zone density pricing is permitted.

(3) An access service subelement for which zone density pricing is permitted shall be deemed to be offered in the zone that contains the telephone company location from which the service is provided.

(4) An access service subelement for which zone density pricing is permitted which is provided to a customer between telephone company locations shall be deemed to be offered in the highest priced zone that contains one of the locations between which the service is offered.

* * * * *

(e) * * *

(2) Notwithstanding § 69.3(e)(7), incumbent local exchange carriers subject to price cap regulation may charge different rates for services in different zones pursuant to § 61.47(f) of this chapter, provided that the charges for any such service are not deaveraged within any such zone.

(f)(1) An incumbent local exchange carrier that establishes density pricing zones under this section must reallocate additional amounts recovered under the interconnection charge prescribed in § 69.124 of this subpart to facilities-based transport rates, to reflect the higher costs of serving lower density areas. Each incumbent local exchange carrier must reallocate costs from the interexchange charge each time it increases the ratio between the prices in its lowest-cost zone and any other zone in that study area.

* * * * *

20. Amend part 69 by adding subpart H to read as follows:

**Subpart H—Pricing Flexibility**

Sec.
69.701 Application of rules in this supbart.
69.703 Definitions.
69.705 Procedure.
69.707 Geographic scope of petition.
69.709 Dedicated transport and special access services other than channel terminations between LEC end offices and customer premises.
69.711 Channel terminations between LEC end offices and customer premises.
69.713 Common line, traffic-sensitive, and tandem-switched transport services.
69.714–69.724 [Reserved]
69.725 Attribution of revenues to particular wire centers.
69.727 Regulatory relief.
69.729 New services.
69.731 Low-end adjustment mechanism.

## Subpart H—Pricing Flexibility

**§ 69.701 Application of rules in this subpart.**

The rules in this subpart apply to all incumbent LECs subject to price cap regulation, as defined in § 61.3(x) of this chapter, seeking pricing flexibility on the basis of the development of competition in parts of its service area.

**§ 69.703 Definitions.**

For purposes of this subpart:

(a) *Channel terminations.*

(1) A channel termination between an IXC POP and a serving wire center is a dedicated channel connecting an IXC POP and a serving wire center, offered for purposes of carrying special access traffic.

(2) A channel termination between a LEC end office and a customer premises is a dedicated channel connecting a LEC end office and a customer premises, offered for purposes of carrying special access traffic.

(b) *Metropolitan Statistical Area (MSA).* This term shall have the definition provided in § 22.909(a) of this chapter.

(c) *Interexchange Carrier Point of Presence (IXC POP).* The point of interconnection between an interexchange carrier's network and a local exchange carrier's network.

(d) *Wire center.* For purposes of this subpart, the term ''wire center'' shall refer to any location at which an incumbent LEC is required to provide expanded interconnection for special access pursuant to § 64.1401(a) of this chapter, and any location at which an incumbent LEC is required to provide expanded interconnection for switched transport pursuant to § 64.1401(b)(1) of this chapter.

(e) *Study area.* A common carrier's entire service area within a state.

**§ 69.705 Procedure.**

Price cap LECs filing petitions for pricing flexibility shall follow the procedures set forth in § 1.774 of this chapter.

**§ 69.707 Geographic scope of petition.**

(a) *MSA.* (1) A price cap LEC filing a petition for pricing flexibility in an MSA shall include data sufficient to support its petition, as set forth in this subpart, disaggregated by MSA.

(2) A price cap LEC may request pricing flexibility for two or more MSAs in a single petition, provided that it submits supporting data disaggregated by MSA.

(b) *Non-MSA.* (1) A price cap LEC will receive pricing flexibility with respect to those parts of a study area that fall outside of any MSA, provided that it provides data sufficient to support a finding that competitors have collocated in a number of wire centers in that non-MSA region sufficient to satisfy the criteria for the pricing flexibility sought in the petition, as set forth in this subpart, if the region at issue were an MSA.

(2) The petitioner may aggregate data for all the non-MSA regions in a single study area for which it requests pricing flexibility in its petition.

(3) A petitioner may request pricing flexibility in the non-MSA regions of

two or more of its study areas, provided that it submits supporting data disaggregated by study area.

**§ 69.709 Dedicated transport and special access services other than channel terminations between LEC end offices and customer premises.**

(a) *Scope.* This paragraph governs requests for pricing flexibility with respect to the following services:

(1) Entrance facilities, as described in § 69.110.

(2) Transport of traffic over dedicated transport facilities between the serving wire center and the tandem switching office, as described in § 69.111(a)(2)(iii).

(3) Direct-trunked transport, as described in § 69.112.

(4) Special access services, as described in § 69.114, other than channel terminations as defined in § 69.703(a)(2) of this part.

(b) *Phase I Triggers.* To obtain Phase I pricing flexibility, as specified in § 69.727(a) of this part, for the services described in paragraph (a) of this section, a price cap LEC must show that, in the relevant area as described in § 69.707 of this part, competitors unaffiliated with the price cap LEC have collocated:

(1) In fifteen percent of the petitioner's wire centers, and that at least one such collocator in each wire center is using transport facilities owned by a transport provider other than the price cap LEC to transport traffic from that wire center; or

(2) In wire centers accounting for 30 percent of the petitioner's revenues from dedicated transport and special access services other than channel terminations between LEC end offices and customer premises, determined as specified in § 69.725 of this part, and that at least one such collocator in each wire center is using transport facilities owned by a transport provider other than the price cap LEC to transport traffic from that wire center.

(c) *Phase II Triggers.* To obtain Phase II pricing flexibility, as specified in § 69.727(b) of this part, for the services described in paragraph (a) of this section, a price cap LEC must show that, in the relevant area as described in § 69.707 of this part, competitors unaffiliated with the price cap LEC have collocated:

(1) in 50 percent of the petitioner's wire centers, and that at least one such collocator in each wire center is using transport facilities owned by a transport provider other than the price cap LEC to transport traffic from that wire center; or

(2) in wire centers accounting for 65 percent of the petitioner's revenues from dedicated transport and special access services other than channel terminations between LEC end offices and customer premises, determined as specified in § 69.725 of this part, and that at least one such collocator in each wire center is using transport facilities owned by a transport provider other than the price cap LEC to transport traffic from that wire center.

**§ 69.711 Channel terminations between LEC end offices and customer premises.**

(a) *Scope.* This paragraph governs requests for pricing flexibility with respect to channel terminations between LEC end offices and customer premises.

(b) *Phase I Triggers.* To obtain Phase I pricing flexibility, as specified in § 69.727(a) of this part, for channel terminations between LEC end offices and customer premises, a price cap LEC must show that, in the relevant area as described in § 69.707 of this part, competitors unaffiliated with the price cap LEC have collocated:

(1) In 50 percent of the petitioner's wire centers, and that at least one such collocator in each wire center is using transport facilities owned by a transport provider other than the price cap LEC to transport traffic from that wire center; or

(2) In wire centers accounting for 65 percent of the petitioner's revenues from channel terminations between LEC end offices and customer premises, determined as specified in § 69.725 of this part, and that at least one such collocator in each wire center is using transport facilities owned by a transport provider other than the price cap LEC to transport traffic from that wire center.

(c) *Phase II Triggers.* To obtain Phase II pricing flexibility, as specified in § 69.727(b) of this part, for channel terminations between LEC end offices and customer premises, a price cap LEC must show that, in the relevant area as described in § 69.707, competitors unaffiliated with the price cap LEC have collocated:

(1) In 65 percent of the petitioner's wire centers, and that at least one such collocator in each wire center is using transport facilities owned by a transport provider other than the price cap LEC to transport traffic from that wire center; or

(2) In wire centers accounting for 85 percent of the petitioner's revenues from channel terminations between LEC end offices and customer premises, determined as specified in § 69.725, and that at least one such collocator in each wire center is using transport facilities owned by a transport provider other than the price cap LEC to transport traffic from that wire center.

**§ 69.713 Common line, traffic-sensitive, and tandem-switched transport services.**

(a) *Scope.* This paragraph governs requests for pricing flexibility with respect to the following services:

(1) Common line services, as described in §§ 69.152, 69.153, and 69.154.

(2) Services in the traffic-sensitive basket, as described in § 61.42(d)(2) of this chapter.

(3) The traffic-sensitive components of tandem-switched transport services, as described in §§ 69.111(a)(2)(i) and (ii).

(b) *Phase I Triggers.* (1) To obtain Phase I pricing flexibility, as specified in § 69.727(a), for the services identified in paragraph (a) of this section, a price cap LEC must provide convincing evidence that, in the relevant area as described in § 69.707, its unaffiliated competitors, in aggregate, offer service to at least 15 percent of the price cap LEC's customer locations.

(2) For purposes of the showing required by paragraph (b)(1) of this section, the price cap LEC may not rely on service the competitors provide solely by reselling the price cap LEC's services, or provide through unbundled network elements as defined in § 51.5 of this chapter, except that the price cap LEC may rely on service the competitors provide through the use of the price cap LEC's unbundled loops.

(c) [Reserved.]

**§§ 69.714–69.724 [Reserved.]**

**§ 69.725 Attribution of revenues to particular wire centers.**

If a price cap LEC elects to show, in accordance with § 69.709 or § 69.711, that competitors have collocated in wire centers accounting for a certain percentage of revenues from the services at issue, the LEC must make the following revenue allocations:

(a) For entrance facilities and channel terminations between an IXC POP and a serving wire center, the petitioner shall attribute all the revenue to the serving wire center.

(b) For channel terminations between a LEC end office and a customer premises, the petitioner shall attribute all the revenue to the LEC end office.

(c) For any dedicated service routed through multiple wire centers, the petitioner shall attribute 50 percent of the revenue to the wire center at each end of the transmission path, unless the petitioner can make a convincing case in its petition that some other allocation would be more representative of the extent of competitive entry in the MSA or the non-MSA parts of the study area at issue.

**§ 69.727 Regulatory relief.**

(a) *Phase I Relief.* Upon satisfaction of the Phase I triggers specified in §§ 69.709(b), 69.711(b), or 69.713(b) for an MSA or the non-MSA parts of a study area, a price cap LEC will be granted the following regulatory relief in that area for the services specified in §§ 69.709(a), 69.711(a), or 69.713(a), respectively:

(1) Volume and term discounts;

(2) Contract tariff authority, provided that

(i) Contract tariff services are made generally available to all similarly situated customers; and

(ii) The price cap LEC excludes all contract tariff offerings from price cap regulation pursuant to § 61.42(f)(1) of this chapter.

(iii) Before the price cap LEC provides a contract tariffed service, under § 69.727(a), to one of its long-distance affiliates, as described in section 272 of the Communications Act of 1934, as amended, or § 64.1903 of this chapter, the price cap LEC certifies to the Commission that it provides service pursuant to that contract tariff to an unaffiliated customer.

(b) *Phase II Relief.* Upon satisfaction of the Phase II triggers specified in §§ 69.709(c) or 69.711(c) for an MSA or the non-MSA parts of a study area, a price cap LEC will be granted the following regulatory relief in that area for the services specified in §§ 69.709(a) or 69.711(a), respectively:

(1) Elimination of the rate structure requirements in subpart B of this part;

(2) Elimination of price cap regulation; and

(3) Filing of tariff revisions on one day's notice, notwithstanding the notice requirements for tariff filings specified in § 61.58 of this chapter.

**§ 69.729 New services.**

(a) Except for new services subject to paragraph (b) of this section, a price cap LEC may obtain pricing flexibility for a new service that has not been incorporated into a price cap basket by demonstrating in its pricing flexibility petition that the new service would be properly incorporated into one of the price cap baskets and service bands for which the price cap LEC seeks pricing flexibility.

(b) Notwithstanding paragraph (a) of this section, a price cap LEC must demonstrate satisfaction of the triggers in § 69.711(b) to be granted pricing flexibility for any new service that falls within the definition of a ''channel termination between a LEC end office and a customer premises'' as specified in § 69.703(a)(2).

**§ 69.731 Low-end adjustment mechanism.**

(a) Any price cap LEC obtaining Phase I or Phase II pricing flexibility for any service in any MSA in its service region, or for the non-MSA portion of any study area in its service region, shall be prohibited from making any low-end adjustment pursuant to § 61.45(d)(1)(vii) of this chapter in all or part of its service region.

(b) Any affiliate of any price cap LEC obtaining Phase I or Phase II pricing flexibility for any service in any MSA in its service region shall be prohibited from making any low-end adjustment pursuant to § 61.45(d)(1)(vii) of this chapter in all or part of its service region.

[FR Doc. 99–24141 Filed 9–21–99; 8:45 am]

BILLING CODE 6712–01–U

# Proposed Rules

Federal Register
Vol. 64, No. 183
Wednesday, September 22, 1999

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.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 72

**RIN 3150—AG36**

### List of Approved Spent Fuel Storage Casks: (VSC–24) Revision

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations revising the Pacific Sierra Nuclear Associates (PSNA) VSC–24 cask system listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 1 to the Certificate of Compliance. Amendment No. 1 will modify the present cask system design to permit a licensee to store burnable poison rod assemblies in the VSC–24 cask system design along with the spent fuel under a general license.

**DATES:** Comments on the proposed rule must be received on or before October 22, 1999.

**ADDRESSES:** Comments may be sent to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff. Hand deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 am and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website through the NRC's home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail CAG@nrc.gov.

Certain documents related to this rule, including comments received by the NRC, may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. These documents also may be viewed and downloaded electronically via the interactive rulemaking website established by NRC for this rule.

**FOR FURTHER INFORMATION CONTACT:** Stan Turel, telephone (301) 415–6234, e-mail, spt@nrc.gov of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

**SUPPLEMENTARY INFORMATION:** For additional information see the Direct Final Rule published in the final rules section of this **Federal Register**.

### Procedural Background

Because NRC considers this action noncontroversial and routine, we are publishing this proposed rule concurrently as a direct final rule. The direct final rule will become effective on December 6, 1999. However, if the NRC receives significant adverse comments on the direct final rule by October 22, 1999, then the NRC will publish a document to withdraw the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to the proposed revisions in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period for this action if the direct final rule is withdrawn.

### List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR part 72.

## PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for part 72 continues to read as follows:

**Authority:** Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 10d—48b, sec. 7902, 10b Stat. 31b3 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, the entry for Certificate of Compliance Number 1007 is revised to read as follows:

**§ 72.214 List of approved spent fuel storage casks.**

* * * * *

*Certificate Number:* 1007.

*Initial Certificate Effective Date:* May 7, 1993.

*Amendment Number 1 Effective Date:* [75 days after publication of final rule in the **Federal Register**].

*SAR Submitted by:* Pacific Sierra Nuclear Associates.

*SAR Title:* Final Safety Analysis Report for the Ventilated Storage Cask System.

*Docket Number:* 72–1007.

*Certificate Expiration Date:* May 7, 2013.

*Model Number:* VSC–24.

* * * * *

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 3rd day of September, 1999.

**William D. Travers,**

*Executive Director for Operations.*

[FR Doc. 99–24635 Filed 9–21–99; 8:45 am]

BILLING CODE 7590–01–P

**NUCLEAR REGULATORY COMMISSION**

**10 CFR Part 72**

**RIN 3150–AG31**

## List of Approved Spent Fuel Storage Casks: Holtec HI–STORM 100 Addition

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to add the Holtec International HI–STORM 100 cask system to the list of approved spent fuel storage casks. This amendment will allow the holders of power reactor operating licenses to store spent fuel in the Holtec HI–STORM 100 cask system under a general license.

**DATES:** The comment period expires December 6, 1999. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** Comments may be sent to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff. Hand deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website (http://ruleforum.llnl.gov). This site provides the availability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher (301) 415–5905; e-mail CAG@nrc.gov.

Certain documents related to this rulemaking, including comments received by the NRC, may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. These documents also may be viewed and downloaded electronically via the interactive rulemaking website established by NRC for this rulemaking.

**FOR FURTHER INFORMATION CONTACT:** Merri Horn, telephone (301) 415–8126, e-mail mlh1@nrc.gov of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

**SUPPLEMENTARY INFORMATION:**

### Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that ''[t]he Secretary [of Energy] shall establish a demonstration program for the dry storage of spent nuclear fuel at civilian power reactor sites, with the objective of establishing one or more technologies the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the NWPA states, in part, ''[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license, publishing on July 18, 1990, a final rule in 10 CFR part 72 entitled ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181). This rule also established a new Subpart L within 10 CFR part 72 entitled ''Approval of Spent Fuel Storage Casks,'' containing procedures and criteria for obtaining NRC approval of dry storage cask designs.

### Discussion

This proposed rule would add the Holtec HI–STORM 100 cask system to the list of NRC-approved casks for spent fuel storage in 10 CFR 72.214. Following the procedures specified in 10 CFR 72.230 of Subpart L, Holtec submitted an application for NRC approval with the Safety Analysis Report (SAR): ''Topical Safety Analysis Report for the HI–STORM 100 Cask System.'' The NRC evaluated the Holtec submittal and issued a preliminary Safety Evaluation Report (SER) on the Holtec SAR and proposed Certificate of Compliance (CoC) for the Holtec HI–STORM 100 cask system on September 10, 1999.

The NRC is proposing to approve the Holtec HI–STORM 100 cask system for storage of spent fuel under the conditions specified in the proposed CoC. This cask system, when used in accordance with the conditions specified in the CoC and NRC regulations, will meet the requirements of 10 CFR part 72; thus, adequate protection of the public health and safety would be ensured. This cask system is being proposed for listing under 10 CFR 72.214, ''List of approved spent fuel storage casks,'' to allow holders of power reactor operating licenses to store spent fuel in this cask system under a general license. The CoC would terminate 20 years after the effective date of the final rule listing this cask in 10 CFR 72.214, unless the cask system's CoC is renewed. The certificate contains conditions for use which are specific for this cask system and addresses issues such as operating procedures, training, and spent fuel specification.

The proposed CoC for the Holtec HI–STORM 100 cask system and the underlying preliminary SER, dated September 10, 1999, are available for inspection and comment at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies of the proposed CoC and preliminary SER may be obtained from Merri Horn, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–8126, email mlh1@nrc.gov.

### Discussion of Proposed Amendments by Section

*Section 72.214 List of Approved Spent Fuel storage Casks*

Certificate Number 1014 would be added indicating that:

(1) The title of the SAR is ''Final Safety Analysis Report for the HI–STORM 100 Cask System'';

(2) The Docket Number is 72–1014;

(3) The certificate expiration date would be 20 years after final rule effective date; and

(4) The model number affected is HI–STORM 100.

### Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as compatibility Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of the Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

### Plain Language

The Presidential Memorandum dated June 1, 1998, entitled ''Plain Language

in Government Writing,'' directed that the Government's writing be in plain language. The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

**Voluntary Consensus Standards**

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the NRC would add the Holtec HI–STORM 100 cask system to the list of NRC approved casks for spent fuel storage in 10 CFR 72.214. This action does not constitute the establishment of a standard that establishes generally-applicable requirements.

**Finding of No Significant Environmental Impact: Availability**

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in Subpart A of 10 CFR part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The rule is mainly administrative in nature. It would not have significant environmental impacts. The proposed rule would add the Holtec HI–STORM 100 cask system to the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites without additional site-specific approvals by the NRC. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and finding of no significant impact are available from Merri Horn, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–8126, email mlh1@nrc.gov.

**Paperwork Reduction Act Statement**

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150–0132.

**Public Protection Notification**

If a means to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

**Regulatory Analysis**

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license. Any nuclear power reactor licensee can use NRC-certified casks to store spent nuclear fuel if it notifies the NRC in advance, spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. In that rule, four spent fuel storage casks were approved for use at reactor sites and were listed in 10 CFR 72.214. That rule envisioned that storage casks certified in the future could be added to the listing in 10 CFR 72.214 through rulemaking procedures. Procedures and criteria for obtaining NRC approval of new spent fuel storage cask designs were provided in 10 CFR part 72, Subpart L. Subsequently, additional casks have been added to the listing in 10 CFR 72.214.

The alternative to this proposed action is not to certify these new designs and give a site-specific license to each utility that proposes to use the casks. This would cost both the NRC and the utilities more time and money in that each utility would have to pursue a new site-specific license. Using site-specific licenses would ignore the procedures and criteria currently in place for the addition of new cask designs and would be in conflict with the NWPA direction to the Commission to approve technologies for the use of spent fuel storage at the sites of civilian nuclear power reactors without, to the extent practicable, the need for additional site reviews. Also, this alternative is anticompetitive because it would exclude new vendors without cause and would arbitrarily limit the choice of cask designs available to power reactor licensees. Approval of the proposed rule would eliminate the above problems and is consistent with previous Commission actions. Further, the proposed rule will have no adverse effect on public health and safety.

The benefit of this proposed rule to nuclear power reactor licensees is to make available a greater choice of spent fuel storage cask designs that can be used under a general license. The new cask vendors with casks to be listed in 10 CFR 72.214 benefit by having to obtain NRC certificates only once for a design that can then be used by more than one power reactor licensee. The NRC also benefits because it will need to certify a cask design only once for use by multiple licensees. Casks approved through rulemaking are to be suitable for use under a range of environmental conditions sufficiently broad to encompass multiple nuclear power plant sites in the United States without the need for further site-specific approval by NRC. Vendors with cask designs already listed may be adversely impacted because power reactor licensees may choose a newly listed design over an existing one. However, the NRC is required by its regulations and the NWPA direction to certify and list approved casks. This proposed rule would have no significant identifiable impact or benefit on other Government agencies.

Based on the above discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the proposed rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

**Regulatory Flexibility Certification**

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and cask vendors. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

**Backfit Analysis**

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this proposed rule because this amendment does not involve any provisions that would impose backfits as defined in the backfit rule. Therefore, a backfit analysis is not required.

**List of Subjects in 10 CFR Part 72**

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping

requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR part 72.

## PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for Part 72 continues to read as follows:

**Authority:** Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 10d–48b, sec. 7902, 10b Stat. 31b3 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In Section 72.214, Certificate of Compliance 1014 is added to read as follows:

### § 72.214 List of approved spent fuel storage casks.

* * * * *

*Certificate Number:* 1014.

*SAR Submitted by:* Holtec International.

*SAR Title:* Final Safety Analysis Report for the HI-STORM 100 Cask System.

*Docket Number:* 72–1014.

*Certification Expiration Date:* [insert 20 years after the effective date of the final rule].

*Model Number:* HI-STORM 100.

* * * * *

Dated at Rockville, Maryland, this 10th day of September 1999.

For the Nuclear Regulatory Commission.

**William D. Travers,**

*Executive Director for Operations.*

[FR Doc. 99–24667 Filed 9–21–99; 8:45 am]

BILLING CODE 7590–01–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 99–ASW–19]**

## Proposed Revision of Class D Airspace; NAS JRB (Carswell Field), Fort Worth, TX

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to revise Class D airspace extending upward from the surface to and including 3,000 feet mean sea level (MSL), within a 4.5-mile radius of the Naval Air Station (NAS) Joint Reserve Base (JRB) Carswell Field, Fort Worth, TX. This action is prompted by the U.S. Navy request to enhance flight safety and reduce the mid-air collision potential for aircraft operating in the vicinity of NAS JRB Carswell Field, Fort Worth, TX. The intended effect of this proposal is to provide adequate controlled airspace for aircraft operating in the vicinity of NAS JRB Carswell Field, Fort Worth, TX.

**DATES:** Comments must be received on or before November 22, 1999.

**ADDRESSES:** Send comments on the proposal in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 99–ASW–19, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

**FOR FURTHER INFORMATION CONTACT:** Donald J. Day, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0520; telephone: (817) 222–5593.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES.** Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: ''Comment to Airspace Docket No. 99–ASW–19.'' The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, Southwest Region Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0520. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

### The Proposal

The FAA is considering an amendment to 14 CFR part 71 to revise Class D airspace, controlled airspace extending upward from the surface to and including 3,000 feet MSL, at NAS JRB Carswell Field. This action is prompted by the U.S. Navy request to enhance flight safety and reduce the

mid-air collision potential for aircraft operating in the vicinity of NAS JRB Carswell Field, Fort Worth, TX. The intended effect of this proposal is to provide adequate controlled airspace for aircraft operating in the vicinity of NAS JRB Carswell Field, Fort Worth, TX.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class D airspace areas are published in Paragraph 5000 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in the order.

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

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

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

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, *Airspace Designations and Reporting Points,* dated September 10, 1998, and effective September 16, 1998, is amended as follows:

*Paragraph 5000 Class D airspace areas.*

* * * * *

**ASW TX D Fort Worth NAS JRB (Carswell Field), TX [Revised]**

Fort Worth, NAS JRB Carswell Field, TX
(Lat. 32°46′09″N., long. 97°26′30″W.)
Carswell ILS Localizer North
(Lat. 32°47′19″N., long. 97°26′28″W.)
Carswell TACAN
(Lat. 32°46′18″N., long. 97°26′22″W.)
Carswell ILS Localizer South
(Lat. 32°45′08″N., long. 97°26′27″W.)

That airspace extending upward from the surface to and including 3,000 feet MSL within a 4.5-mile radius of NAS JRB Carswell Field and within 1 mile each side of the Carswell ILS Localizer north course extending from the 4.5-mile radius to 6.5 miles north of the airport and within 1.3 miles each side of the 359° radial of the Carswell TACAN extending from the 4.5-mile radius to 6.5 miles north of the airport and within 1 mile each side of the Carswell ILS Localizer south course extending from the 4.5-mile radius to 6.5 miles south of the airport and within 1.3 miles each side of the 182° radial of the Carswell TACAN extending from the 4.5-mile radius to 6.5 miles south of the airport excluding that airspace east of long. 97°24′00″W.

* * * * *

Issued in Forth Worth, TX on September 14, 1999.

**Robert N. Stevens,**

*Acting Manager, Air Traffic Division, Southwest Region.*

[FR Doc. 99–24655 Filed 9–21–99; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Part 212

**[Docket No. 99N–4063]**

## Current Good Manufacturing Practices for Positron Emission Tomography Drug Products; Preliminary Draft Regulations; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Availability of preliminary draft regulations.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of preliminary draft regulations on current good manufacturing practices (CGMP's) for positron emission tomography (PET) drug products. FDA is developing CGMP's for PET drugs in accordance with the Food and Drug Administration Modernization Act of 1997 (Modernization Act). These preliminary draft regulations are being made available to allow full discussion of them at an upcoming public meeting on the regulation of PET drugs.

**DATES:** A public meeting on PET drug matters will be held on September 28, 1999. Submit written comments on or before October 13, 1999.

**ADDRESSES:** A copy of the preliminary draft regulations will be on display at the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Copies of the preliminary draft regulations may be obtained from the Drug Information Branch (HFD–210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573, and the Center for Drug Evaluation and Research's Fax-on-Demand system at 301–827–0577 or 800–342–2722. An electronic version of the preliminary draft regulations is available on the Internet at ''http://www.fda.gov/cder/fdama'' under ''Section 121—PET (Positron Emission Tomography).'' Submit written comments to the Dockets Management Branch (address above).

**FOR FURTHER INFORMATION CONTACT:** Tracy A. Roberts, Center for Drug Evaluation and Research (HFD–336), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 301–594–0093.

**SUPPLEMENTARY INFORMATION:**

The President signed the Modernization Act (Public Law 105–115) into law on November 21, 1997. Section 121(c)(1)(A)(ii) of the Modernization Act directs FDA to establish within 2 years after enactment appropriate CGMP requirements for PET drugs.

Section 121(c)(1)(B) of the Modernization Act requires FDA to consult with patient advocacy groups, professional associations, manufacturers, and other interested persons as the agency develops PET drug CGMP requirements and approval procedures. To that end, the agency has conducted public meetings on PET drug matters and has established a public docket.

In accordance with section 121 of the Modernization Act, FDA has developed preliminary draft CGMP requirements for PET drug products. In accordance with 21 CFR 10.40(f)(4) and 10.80(b)(2), FDA has decided to make available to the public these preliminary draft CGMP regulations to facilitate discussion at the public meeting on PET drug matters to be held on September 28, 1999, from 9 a.m. to 4 p.m., at the Holiday Inn, Gaithersburg, MD (Goshen Room). Subsequently, FDA will issue a proposed rule on CGMP's for PET drug

products and will invite comments on the proposed rule.

Interested persons may, on or before October 13, 1999, submit to the Dockets Management Branch (address above) written comments on the preliminary draft regulations. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. The preliminary draft regulations and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

(**Authority:** 21 U.S.C. 321 *et seq.*)

Dated: September 15, 1999.

**Margaret M. Dotzel,**

*Acting Associate Commissioner for Policy.*

[FR Doc. 99–24592 Filed 9–21–99; 8:45 am]

BILLING CODE 4160–01–F

## OFFICE OF NATIONAL DRUG CONTROL POLICY

## 21 CFR Part 1401

**RIN 3201–ZA02**

## Freedom of Information Act

**AGENCY:** Office of National Drug Control Policy.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Office of National Drug Control Policy proposes this rule to comply with the Electronic Freedom of Information Act. The proposed rule defines records as defined in the Act, establishes an electronic reading room, institutes an expedited process for handling requests and conforms to the statutory time limitations for a response.

**DATES:** Submit comments on or before November 22, 1999.

**ADDRESSES:** Send comments to Executive Office of the President, Office of National Drug Control Policy, Office of Legal Counsel, Attention General Counsel, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Daniel R. Petersen, (202) 395–6745.

**SUPPLEMENTARY INFORMATION:** This proposed rule is not a major rule for the purposes of Executive Order 12866. As required by the Regulatory Flexibility Act, ONDCP certifies that this proposed rule would not have a significant impact on small business entities.

### List of Subjects in 21 CFR Part 1401

Freedom of information, Organization and functions (Government agencies).

For the reasons stated in the preamble, the Office of National Drug Control Policy proposes to revise 21 CFR part 1401 to read as follows:

## PART 1401—PUBLIC AVAILABILITY OF INFORMATION

Sec.

1401.1 Purpose.
1401.2 The Office of National Drug Control Policy—organization and functions.
1401.3 Definitions.
1401.4 Access to information.
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1401.6 Expedited process.
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1401.11 Fees to be charged—miscellaneous provisions.
1401.12 Fees to be charged—categories of requesters.
1401.13 Waiver or reduction of fees.

**Authority:** 5 U.S.C. 552.

### § 1401.1 Purpose.

The purpose of this part is to prescribe rules, guidelines and procedures to implement the Freedom of Information Act (FOIA), as amended, 5 U.S.C. 552.

### § 1401.2 The Office of National Drug Control Policy—organization and functions.

(a) The Office of National Drug Control Policy (ONDCP) was created by the Anti-Drug Abuse Act of 1988, 21 U.S.C. 1501 *et seq.*, and reestablished under 21 U.S.C. 1701 *et seq.* The mission of ONDCP is to coordinate the anti-drug efforts of the various agencies and departments of the Federal government, to consult with States and localities and assist their anti-drug efforts, to conduct a national media campaign, and to annually promulgate the National Drug Control Strategy.

(b) ONDCP is headed by the Director of National Drug Control Policy. The Director is assisted by a Deputy Director of National Drug Control Policy, a Deputy Director for Supply Reduction, a Deputy Director for Demand Reduction, and a Deputy Director for State and Local Affairs.

(c) Offices within ONDCP include Chief of Staff, and the Offices of Legal Counsel, Strategic Planning, Legislative Affairs, Programs Budget and Evaluation, Supply Reduction, Demand Reduction, Public Affairs, State and Local Affairs, and the Financial Management Office.

(d) The Office of Public Affairs is responsible for providing information to the press and to the general public. If members of the public have general questions about ONDCP that can be answered by telephone, they may call the Office of Public Affairs at (202) 395–6618. This number should not be used to make FOIA requests. All oral requests for information under FOIA will be rejected.

### § 1401.3 Definitions.

For the purpose of this part:

(a) All the terms defined in the Freedom of Information Act apply.

(b) *Commercial-use request* means a request from or on behalf of one who seeks information for a cause or purpose that furthers the commercial, trade or profit interests of the requester or the person or institution on whose behalf the request is made. In determining whether a requester properly belongs in this category, ONDCP will consider the intended use of the information.

(c) *Direct costs* means the expense actually expended to search, review, or duplicate in response to a FOIA request. For example, direct costs include 116% of the salary of the employee performing work and the actual costs incurred while operating equipment.

(d) *Duplicate* means the process of making a copy of a document. Such copies may take the form of paper, microform, audio-visual materials, or machine-readable documentation. ONDCP will provide a copy of the material in a form that is usable by the requester.

(e) *Educational institution* means preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education that operates a program or programs of scholarly research.

(f) *Noncommercial scientific institution* means an institution that is not operated on a commercial basis as that term is defined above, and that is operated solely for the purpose of conducting scientific research not intended to promote any particular product or industry.

(g) *Records* and any other terms used in this part in reference to information includes any information that would be an agency record subject to the requirements of this part when maintained in any format, including electronic format.

(h) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. News is information about current events or information that would be of interest to the public. Examples of the news media include television or radio stations that broadcast to the public at large and publishers of news periodicals that

make their products available to the general public for purchase or subscription. Freelance journalists may be regarded as working for the news media where they demonstrate a reasonable basis for expecting publication through that organization, even though not actually employed by it.

(i) *Request* means a letter or other written communication seeking records or information under FOIA.

(j) *Review* means the process of examining documents that are located during a search to determine if any portion should lawfully be withheld. It is the processing of determining disclosability.

(k) *Search* means to review, manually or by automated means, agency records for the purpose of locating those records responsive to a request.

**§ 1401.4 Access to information.**

The Office of National Drug Control Policy makes available information pertaining to matters issued, adopted, or promulgated by ONDCP, that are within the scope of 5 U.S.C. 552(a)(2). A public reading area and the ONDCP FOIA Handbook are located at http://www.whitehousedrugpolicy.gov/about/about.html.

**§ 1401.5 How to request records.**

(a) Each request must reasonably describe the record(s) sought including the type of document, specific event or action, originator of the record, date or time period, subject matter, location, and all other pertinent data.

(b) Requests must be received by ONDCP through the mail or by electronic facsimile transmission. Mailed requests must be addressed to Executive Office of the President, Office of National Drug Control Policy, Office of Legal Counsel, Washington, DC 20503. The applicable fax number is (202) 395–5543.

(c) The words ''FOIA REQUEST'' or ''REQUEST FOR RECORDS'' must be clearly marked on the cover-letter, letter and envelope. The time limitations imposed by § 1401.7 will not begin until the Office of the General Counsel identifies a letter or fax as a FOIA request.

**§ 1401.6 Expedited process.**

(a) Requests and appeals will be given expedited treatment whenever ONDCP determines either:

(1) The lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) An urgency to inform the public about an actual or alleged federal government activity occurs and the request is made by a person primarily engaged in disseminating information.

(b) A request for expedited processing may be made at the time of the initial request for records or at a later time.

(c) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. A requester within the category in paragraph (a)(2) of this section also must establish a particular urgency to inform the public about the government activity involved in the request, beyond the public's right to know about government activity generally. The formality of certification may be waived as a matter of administrative discretion.

(d) Within ten days of receipt of a request for expedited processing, ONDCP will decide whether to grant it and will notify the requester of the decision. If a request for expedited treatment is granted, the request will be given priority and will be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision will be acted on expeditiously.

**§ 1401.7 Prompt response.**

The General Counsel, or designee, will determine within 20 days (excepting Saturdays, Sundays and legal public holidays) after the receipt of a FOIA request whether it is appropriate to grant the request and will provide written notification to the person making the request. If the request is denied, the written notification will include the names of the individuals who participated in the determination, the reasons for the denial, and that an appeal may be lodged within the Office of National Drug Control Policy.

**§ 1401.8 Extension of time.**

(a) In unusual circumstances, the Office of General Counsel may extend the time limit prescribed in § 1401.7 or § 1401.9 by written notice to the FOIA requester. The notice will state the reasons for the extension and the date a determination is expected. The extension period may be divided among the initial request and an appeal but will not exceed a total of 10 working days (excepting Saturdays, Sundays, or legal public holidays).

(b) The phrase ''unusual circumstances'' means:

(1) The requested records are located in establishments that are separated from the office processing the request;

(2) A voluminous amount of separate and distinct records are demanded in a single request; or

(3) Another agency or two or more components in the same agency have substantial interest in the determination of the request.

(c) Where unusual circumstance exist, ONDCP may provide an opportunity for amendment of the initial request so that the request may be timely processed. Refusal by the person to reasonably modify the request or arrange an alternative time frame shall be considered as a factor for purposes of 5 U.S.C. 552 (a)(6)(C).

(d) ONDCP may aggregate requests by a requester or a group of requestors where multiple requests reasonably appear to be a single request.

**§ 1401.9 Appeals.**

An appeal to the ONDCP must explain in writing the legal and factual basis for the appeal. It must be received by mail at the address specified in Section 1401.5 within 30 days of receipt of a denial. The Director or designee will decide the appeal within 20 days (excepting Saturdays, Sundays, and legal public holidays). If the Director or designee deny an appeal in whole or in part, the written determination will contain the reason for the denial, the names of the individuals who participated in the determination, and the provisions for judicial review.

**§ 1401.10 Fees to be charged—general.**

ONDCP will recoup the full allowable costs it incurs in response to a FOIA request.

(a) *Manual search for records.* ONDCP will charge 116% of the salary of the individual(s) making a search.

(b) *Computerized search for records.* ONDCP will charge 116% of the salary of the programmer/operator and the apportionable time of the central processing unit directly attributed to the search.

(c) *Review of records.* ONDCP will charge 116% of the salary of the individual(s) conducting a review. Records or portions of records withheld under an exemption subsequently determined not to apply may be reviewed to determine the applicability of exemptions not considered. The cost for a subsequent review is assessable.

(d) *Duplication of records.* Request for copies prepared by computer will cost 116% of the apportionable operator time and the cost of the tape or disk. Other methods of duplication will cost 116% of the salary of the individual copying the data plus 15 cents per copy of 8½ x 11 inch original.

(e) *Other charges.* ONDCP will recover the costs of providing other services such as certifying records or sending records by special methods.

**§ 1401.11 Fees to be charged—miscellaneous provisions.**

(a) Remittance shall be mailed to the Office of Legal Counsel, ONDCP, Washington DC 20503, and made payable to the order of the Treasury of the United States on a postal money order or personal check or bank draft drawn on a bank in the United States.

(b) ONDCP may require advance payment where the estimated fee exceeds $250, or a requester previously failed to pay within 30 days of the billing date.

(c) ONDCP may assess interest charges beginning the 31st day of billing. Interest will be at the rate prescribed in section 3717 of title 31 of the United States Code and will accrue from the date of the billing.

(d) ONDCP may assess search charges where records are not located or where records are exempt from disclosure.

(e) ONDCP may aggregate individual requests and charge accordingly for requests seeking portions of a document or documents.

**§ 1401.12 Fees to be charged—categories of requesters.**

(a) There are four categories of FOIA requesters: commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters.

(b) The specific levels of fees for each of these categories are:

(1) *Commercial use requesters.* ONDCP will recover the full direct cost of providing search, review and duplication services. Commercial use requesters will not receive free search-time or free reproduction of documents.

(2) *Educational and non-commercial scientific institution requesters.* ONDCP will charge the cost of reproduction, excluding charges for the first 100 pages. Requesters must demonstrate the request is authorized by and under the auspices of a qualifying institution and that the records are sought for scholarly or scientific research not a commercial use.

(3) *Requesters who are representatives of the news media.* ONDCP will charge the cost of reproduction, excluding charges for the first 100 pages. Requesters must meet the criteria in § 1401.3(h), and the request must not be made for a commercial use. A request that supports the news dissemination function of the requester shall not be considered a commercial use.

(4) *All other requesters.* ONDCP will recover the full direct cost of the search and the reproduction of records, excluding the first 100 pages of reproduction and the first two hours of search time. Requests for records concerning the requester will be treated under the fee provisions of the Privacy Act of 1974, 5 U.S.C. 552a, which permits fees only for reproduction.

**§ 1401.13 Waiver or reduction of fees.**

Fees chargeable in connection with a request may be waived or reduced where ONDCP determines that disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester.

**Janet Crist,**

*Chief of Staff.*

[FR Doc. 99–24491 Filed 9–21–99; 8:45 am]

BILLING CODE 3180–02–P

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## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

### 29 CFR Part 2510

**RIN 1210–AA48**

### Plans Established or Maintained Pursuant to Collective Bargaining Agreements Under Section 3(40)(A) of ERISA

**AGENCY:** Pension and Welfare Benefits Administration, Department of Labor.

**ACTION:** Negotiated Rulemaking Committee notice of meeting.

**SUMMARY:** The Department of Labor's (Department) ERISA Section 3(40) Negotiated Rulemaking Advisory Committee (Committee) was established under the Negotiated Rulemaking Act of 1990 and the Federal Advisory Committee Act (the FACA) to develop a proposed rule implementing the Employee Retirement Income Security Act of 1974 (ERISA), as amended. The purpose of the proposed rule is to establish a process and criteria for a finding by the Secretary of Labor that an agreement is a collective bargaining agreement for purposes of section 3(40) of ERISA. The proposed rule will also provide guidance for determining when an employee benefit plan is established or maintained under or pursuant to such an agreement. Employee benefit plans that are established or maintained for the purpose of providing benefits to the employees of more than one employer are ''multiple employer welfare arrangements'' (MEWAs) under section 3(40) of ERISA, and therefore are subject to certain state laws, unless they meet one of the exceptions set forth in section 3(40)(A). At issue in this regulation is the exception for plans or arrangements that are established or maintained under one or more agreements which the Secretary finds to be collective bargaining agreements. It is the view of the Department that it is necessary to distinguish organizations that provide benefits through collectively bargained employee representation from organizations that are primarily in the business of marketing commercial insurance products.

**DATES:** The Committee will meet from 9:00 am to approximately 5:00 pm on each day on Wednesday, October 13, 1999, and Thursday, October 14, 1999.

**ADDRESSES:** This Committee meeting will be held at the offices of the U.S. Department of Labor, Room C–5515, Conference Room 1–A, 200 Constitution Avenue, NW, Washington, DC. All interested parties are invited to attend this public meeting. Seating is limited and will be available on a first-come, first-serve basis. Individuals with disabilities wishing to attend who need special accommodations should contact, at least 4 business days in advance of the meeting, Ellen Goodwin, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N–4611, 200 Constitution Avenue, NW, Washington, DC 20210 (telephone (202) 219–4600; fax (202) 219–7346). The date, location and time for subsequent Committee meetings will be announced in advance in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Ellen Goodwin, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N–4611, 200 Constitution Avenue, NW, Washington, DC 20210 (telephone (202) 219–4600; fax (202) 219–7346). This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Minutes of all public meetings and other documents made available to the Committee will be available for public inspection and copying in the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW, Washington, DC from 8:30 a.m. to 4:30 p.m. Any written comments on these minutes should be directed to Ellen Goodwin, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N–4611, 200 Constitution Avenue, NW, Washington, DC 20210 (telephone (202)

219–4600; fax (202) 219–7346). This is not a toll-free number.

## Agenda

The Committee will continue to discuss the possible elements of a process and potential criteria for a finding by the Secretary of Labor that an agreement is a collective bargaining agreement for purposes of section 3(40) of ERISA (29 U.S.C. 1002(40)). Discussion of these issues is intended to help the Committee members define the scope of a possible proposed rule.

Members of the public may file a written statement pertaining to the subject of this meeting by submitting 15 copies on or before Wednesday, October 6, 1999, to Ellen Goodwin, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N–4611, 200 Constitution Avenue, NW, Washington, DC 20210. Individuals or representatives wishing to address the Committee should forward their request to Ms. Goodwin or telephone (202) 219–4600. During each day of the negotiation session, time permitting, there shall be time for oral public comment. Members of the public are encouraged to keep oral statements brief, but extended written statements may be submitted for the record.

Organizations or individuals may also submit written statements for the record without presenting an oral statement. 15 copies of such statements should be sent to Ms. Goodwin at the address above. Papers will be accepted and included in the record of the meeting if received on or before October 6, 1999.

Signed at Washington, DC, this 15th day of September 1999.

**Richard McGahey,**

*Assistant Secretary, Pension and Welfare Benefits Administration.*

[FR Doc. 99–24659 Filed 9–21–99; 8:45 am]

BILLING CODE 4510–29–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[CA 217–0179; FRL–6442–2]**

## Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District and Ventura County Air Pollution Control District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing a revision to the California State Implementation Plan (SIP) which controls the sulfur content of fuels within the South Coast Air Quality Management District and the Ventura County Air Pollution Control District.

The intended effect of proposing approval of these rules is to regulate emissions of sulfur dioxide ($SO_2$) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this proposed rule will incorporate these rules into the federally approved SIP. EPA has evaluated each of these rules and is proposing to approve them under provisions of the CAA regarding EPA action on SIP submittals and SIPs for national primary and secondary ambient air quality standards.

**DATES:** Comments must be received on or before October 22, 1999.

**ADDRESSES:** Comments may be mailed to: Andrew Steckel, Rulemaking Office, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket, 401 ''M'' Street, SW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

South Coast Air Quality Management District, 21865 E. Copley Dr., Diamond Bar, CA 91765–4182.

Ventura County APCD, 669 County Square Dr., 2nd Fl., Ventura, CA 93003–5417.

**FOR FURTHER INFORMATION CONTACT:** Stanley Tong, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1191.

**SUPPLEMENTARY INFORMATION:**

## I. Applicability

The rules proposed for approval into the California SIP include: South Coast Air Quality Management District (SCAQMD) Rule 431.1, Sulfur Content of Gaseous Fuels and Ventura County Air Pollution Control District (VCAPCD) Rule 64, Sulfur Content of Fuels. SCAQMD Rule 431.1 was submitted by the California Air Resources Board (CARB) to EPA on September 29, 1998 and VCAPCD Rule 64 was submitted by CARB to EPA on June 3, 1999.

## II. Background

40 CFR 81.305 provides the attainment status designations for air districts in California. South Coast Air Quality Management District [1] and Ventura County Air Pollution Control District are listed as in attainment of the national ambient air quality standards (NAAQS) for sulfur dioxide ($SO_2$). Therefore, for purposes of controlling $SO_2$, these rules need only comply with the general provisions of section 110 of the Act.

Sulfur dioxide is formed by the combustion of fuels containing sulfur compounds. SCAQMD adopted Rule 431.1, Sulfur Content of Gaseous Fuels, on June 12, 1998. On September 29, 1998, the State of California submitted many rules for incorporation into its SIP, including SCAQMD Rule 431.1. This rule was found to be complete on January 26, 1999 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V [2] and is being proposed for approval.

VCAPCD adopted Rule 64, Sulfur Content of Fuels, on April 13, 1999. On June 3, 1999, the State of California submitted many rules for incorporation into its SIP, including VCAPCD Rule 64. This rule was found to be complete on June 24, 1999 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V and is being proposed for approval.

The following is EPA's evaluation and proposed action for SCAQMD Rule 431.1 and VCAPCD Rule 64.

## III. EPA Evaluation and Proposed Action

In determining the approvability of an $SO_2$ rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans).

While the SCAQMD and VCAPCD are in attainment with the $SO_2$ NAAQS, many of the general SIP requirements regarding enforceability, for example, are still appropriate for these rules. In determining the approvability of these rules, EPA evaluated them in light of the ''$SO_2$ Guideline Document,'' EPA–452/R–94–008.

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[1] This **Federal Register** action for the South Coast Air Quality Management District excludes the Los Angeles County portion of the Southeast Desert AQMA, otherwise known as the Antelope Valley Region in Los Angeles County, which is now under the jurisdiction of the Antelope Valley Air Pollution Control District as of July 1, 1997.

[2] EPA adopted completeness criteria on February 16, 1990 (55 FR 5824) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

On October 19, 1984, EPA approved into the SIP a version of Rule 431.1, Sulfur Content of Gaseous Fuels, that had been adopted by SCAQMD on May 6, 1983. Revisions to this rule were subsequently adopted on May 4, 1990, April 5, 1991, September 11, 1992, October 2, 1992, November 17, 1995 and June 12, 1998. All but the September 11, 1992 and October 2, 1992 revisions were submitted to EPA. While EPA can only act on the most recently submitted version, EPA reviewed relevant materials associated with the superseded versions that were submitted. SCAQMD submitted Rule 431.1 includes the following significant changes from the current SIP:

- Added new sections for purpose, monitoring, reporting and recordkeeping, and test methods.
- Clarified that a person shall not burn in equipment requiring a Permit to Operate, purchase, transfer, sell or offer for sale any gaseous fuel containing sulfur compounds in excess of the concentration limits specified in the rule.
- Reduced the sulfur limit from 250 ppm down to 150 ppm, averaged daily, for gaseous fuels from landfills.
- Reduced the sulfur limit from 250 ppm down to 40 ppm, averaged daily, for sewage digesters and allows an alternate limit of 40 ppm averaged monthly with a 500 ppm peak averaged over 15 minutes.
- Reduced the sulfur limit from 80 ppm down to 40 ppm for the selling of other gaseous fuel.
- Reduced the sulfur limit from 800 ppm down to 40 ppm for the burning of other gaseous fuels.
- Specified averaging times for the sulfur limits.
- Added an Optional Facility Compliance Plan.
- Added a requirement for a continuous emission monitoring system (CEMS) or a continuous fuel gas monitoring system (CFGMS) to monitor sulfur content.
- Added an option for landfills and sewage digesters to use an alternative monitoring method provided the alternative method has been approved by the District, CARB and US EPA.
- Lowered the sulfur emissions ceiling from 30 pounds per day down to 5 pounds per day for facilities to be considered exempt.
- Removed exemptions for: Combined unit gases from an air pollution control system for steam drive oil wells, (Rule 1148), provided gases from individual well vents comply with the requirements of the rule; gaseous fuels where gaseous combustion products are used as raw materials for other processes; and vent gas streams, excluding coker blowdown, which have been connected to fuel gas or vent gas disposal systems.

EPA has evaluated SCAQMD submitted Rule 431.1 for consistency with the CAA, EPA regulations, and EPA policy and has found that the revisions result in a clearer, more enforceable rule. Furthermore, the addition of more stringent limits in submitted Rule 431.1 should lead to greater emission reductions.

EPA recommends the following improvements to the rule.

- The rule specifies an $SO_2$ averaging time of 4 hours for refineries and other gases. The averaging time should be based on time periods consistent with the national ambient air quality standard for sulfur dioxide.
- The period of record retention specified should be consistent with the federal record retention requirement of 5 years.

On January 15, 1999, EPA approved into the SIP (64 FR 2575) a version of VCAPCD Rule 64, Sulfur Content of Fuels, that had been adopted by VCAPCD on June 14, 1994. EPA's January action granted a limited approval and limited disapproval to Rule 64 stating that while the rule strengthened the SIP, it did not contain recordkeeping requirements and therefore was not fully approvable. VCAPCD subsequently amended Rule 64 to address EPA's comments and to make other rule improvements.

VCAPCD's amended Rule 64 corrects all the deficiencies identified in the previous limited approval (64 FR 2575). As stated in that final action, there is no sanctions clock as VCAPCD is in attainment for $SO_2$.

The VCAPCD submitted Rule 64 includes the following significant changes from the current SIP:

- Deleted an obsolete limit for natural gas and deleted the sulfur limit for solid fuels.
- Exempted Public Utilities Commission regulated natural gas, propane, butane, CARB quality reformulated gasoline and CARB certified diesel fuel from the recordkeeping and monitoring requirements of the rule, provided records are maintained to substantiate the use of these fuels.
- Clarified that sewage digester gases are exempt from the rule provided any supplemental fuel used to combust the gas complies with the rule.
- Added sections on Monitoring/ Recordkeeping and Violations.
- Requires records to be retained for five years.
- Requires annual monitoring of sulfur. Requires quarterly monitoring if a facility is new; has not provided historical monitoring data to the District; or if sulfur measurements of gaseous fuels at landfills or oil fields exceed 394 ppmv.
- Initial sulfur monitoring must begin within 30 days of the effective date of the rule and new sources must begin monitoring within 30 days of initial operation.
- Requires operators to either test or obtain certification that liquid fuels meet the sulfur requirements of Rule 64 for each liquid fuel delivery.
- Allows the use of colorimetric tubes for the sulfur content of landfill or oil field gases if levels are below 200 ppm.
- Allows the use of colorimetric tubes to measure other gaseous fuels only if written approval is obtained from the VCAPCD and US EPA.
- Allows the use of alternative test methods for analysis of sulfur.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. A detailed discussion of the rules can be found in the Technical Support Document for SCAQMD Rule 431.1 and VCAPCD Rule 64 (8/23/99), which is available from the U.S. EPA, Region IX office. Therefore, SCAPCD, Rule 431.1 and VCAPCD Rule 64 are being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a).

## IV. Administrative Requirements

### *A. Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, Regulatory Planning and Review.

### *B. Executive Order 12875*

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to

issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

*C. Executive Order 13045*

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

*D. Executive Order 13084*

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

*E. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

*F. Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Sulfur oxides.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: September 9, 1999.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 99–24690 Filed 9–21–99; 8:45 am]

BILLING CODE 6560–50–P

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Parts 0, 1, 61 and 69

**[CC Docket Nos. 96–262, 94–1, 98–157; CCB/CPD File No. 98–63; FCC 99–206]**

## Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Petition of US West Communications, Inc. for Forbearance From Regulation as a Dominant Carrier in the Phoenix, Arizona MSA; Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to revise the rules that govern the provision of interstate access services by those incumbent local exchange carriers subject to price cap regulation to advance the pro-competitive, de-regulatory national policies embodied in the Telecommunications Act of 1996. The document seeks comment on: Pricing flexibility and geographic deaveraging of rates for services in the common line and traffic-sensitive baskets; the rate structure for the local switching service category of the traffic-sensitive basket and for tandem-switched transport and whether

capacity-based charges, rather than per-minute charges, better reflect the manner in which the underlying costs of these services are incurred; adjustments to the traffic-sensitive and trunking price cap index formulae for these charges so that price cap LECs do not enjoy all the benefits of growth if they have not been exclusively responsible for creating that growth; market-based or other approaches to ensure that rates charged by competitive carriers are just and reasonable.

**DATES:** Written comments from the public on the Notice and the proposed information collections are due on or before October 29, 1999. Reply comments are due on or before November 29, 1999. Written comments on the new and/or modified information collections must be submitted to the Office of Management and Budget (OMB) on or before November 22, 1999.

**FOR FURTHER INFORMATION CONTACT:** Tamara Preiss, Deputy Division Chief, Common Carrier Bureau, Competitive Pricing Division, (202) 418–1520. For additional information concerning the information collections contained in document contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Further Notice of Proposed Rulemaking (Notice) adopted August 5, 1999, and released August 25, 1999. The full text of this Notice, as well as the complete files for the relevant dockets, is available for inspection and copying during the weekday hours of 9:00 a.m. to 4:30 p.m. in the Commission's Reference Center, 445 12th St. SW, Room CY–A257, Washington DC, or copies may be purchased from the Commission's duplicating contractor, ITS Inc., 1231 20th St. NW, Washington DC 20036; (202) 857–3088. The complete text of the Notice also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common_Carrier/Orders/1999/fcc99206.wp.

In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Virginia Huth, OMB Desk Officer, 10236 NEOB, 725–17th Street, NW, Washington, DC 20503 or via the Internet to huth_v@al.eop.gov.

## Paperwork Reduction Act

This NPRM contains either a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due 60 days from date of publication of this NPRM in the **Federal Register**. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

*OMB Approval Number:* 3060–0760.

*Title:* Access Charge Reform—CC Docket No. 96–262 (First Report and Order), Second Order on Reconsideration and Memorandum Opinion and Order, Third Report and Order, and Fifth Report and Order and FNPRM

*Form No.:* N/A.

*Type of Review:* Revised Collection.

*Respondents:* Business or other for profit.

| Section/title | No. of responses | Est. time per response | Total annual burden |
|---|---|---|---|
| Proposed Deaveraging of Common Line and Traffic Sensitive Access Elements (Tariff Filing) | 13 | 109 | 1,420 |
| Proposed Common Line and Traffic Sensitive Phase II Showings | 13 | 1,984 | 25,800 |

*Total Annual Burden:* 27,220 Hrs.

*Estimated costs per respondent:* $600.

*Needs and Uses:* The Commission will use the information collected to provide price cap LECs with additional pricing flexibility. The pricing flexibility would permit price cap LECs to deaverage geographically their pricing of access services other than those in the trunking basket; and to make a showing in order to receive Phase II pricing flexibility for common line and traffic-sensitive services.

## Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act, the Notice contains an Initial Regulatory Flexibility Analysis regarding the Further Notice of Proposed Rulemaking (Notice). A brief description of the analysis follows. Pursuant to section 604 of the Regulatory Flexibility Act, the Commission performed a comprehensive analysis of the Order with regard to small entities. This analysis includes: (1) A succinct statement of the need for, and objectives of, the Commission's proposals in the Notice; (2) a description of and an estimate of the number of small entities to which the Notice may apply; (3) a description of the projected reporting, recordkeeping and other compliance requirements of the Notice, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for compliance with the requirement; (4) a description of the steps the Commission has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the Notice and why each one of the other significant alternatives to each of the Commission's decisions which affect small entities was rejected.

## Synopsis of Notice

### *I. Summary of Notice*

1. This Further Notice of Proposed Rulemaking (Notice) accompanies an order, printed elsewhere in this **Federal Register** issue, in which the Commission revises the rules that govern the provision of interstate access services by those incumbent local exchange carriers (ILECs) subject to price cap regulation (collectively, ''price cap LECs'') to advance the pro-competitive, de-regulatory national policies embodied in the Telecommunications Act of 1996 (1996 Act). With the proposed revisions in the Notice and revisions made in the Order, the Commission continues the process it

began in 1997, with the *Access Reform First Report and Order* (62 FR 31868, June 11, 1997), to reform regulation of interstate access charges in order to accelerate the development of competition in all telecommunications markets and to ensure that the Commission's own regulations do not unduly interfere with the operation of these markets as competition develops.

2. In the *Access Reform First Report and Order,* the Commission adopted a primarily market-based approach to drive interstate access charges toward the costs of providing these services. The Commission envisioned that this approach would enable it to give carriers progressively greater flexibility to set rates as competition develops, until competition gradually replaces regulation as the primary means of setting prices. In the accompanying Order, the Commission fulfills its commitment to provide detailed rules for implementing the market-based approach, pursuant to which price cap LECs would receive pricing flexibility in the provision of interstate access services as competition for those services develops.

3. The pricing flexibility framework the Commission adopts in the Order is designed to grant greater flexibility to price cap LECs as competition develops, while ensuring that: (1) Price cap LECs do not use pricing flexibility to deter efficient entry or engage in exclusionary pricing behavior; and (2) price cap LECs do not increase rates to unreasonable levels for customers that lack competitive alternatives. In addition, these reforms will facilitate the removal of services from price cap regulation as competition develops in the marketplace, without imposing undue administrative burdens on the Commission or the industry.

4. Specifically, the Order grants immediate pricing flexibility to price cap LECs in the form of streamlined introduction of new services, geographic deaveraging of rates for services in the trunking basket, and removal, upon implementation of toll dialing parity, of certain interstate interexchange services from price cap regulation. The Commission also establishes a framework for granting price cap LECs greater flexibility in the pricing of all interstate access services once they satisfy certain competitive criteria. In Phase I, the Commission allows price cap LECs to offer contract tariffs and volume and term discounts for those services for which they make a specific competitive showing. In Phase II, the Commission permits price cap LECs to offer dedicated transport and special access services free from the Commission's part 69 rate structure and part 61 price cap rules, provided that the LECs can demonstrate a significantly higher level of competition for those services.

5. The Commission addresses additional pricing flexibility proposals in this Notice. The Commission seeks comment on proposals for geographic deaveraging of the rates for services in the common line and traffic-sensitive baskets. The Commission also invites comment on the appropriate triggers for granting Phase II relief for services in the common line and traffic-sensitive baskets, as well as for the traffic-sensitive parts of tandem-switched transport service.

6. In addition to adopting rules to implement the market-based approach to access reform, the Commission takes this opportunity to re-examine the rate structure for the local switching service category of the traffic-sensitive basket. Accordingly, the Commission seeks comment on a number of proposed changes to the rate structure so that it better replicates the operation of a competitive market. Generally, the Commission invites parties to discuss proposed revisions to its rules that would require price cap LECs to develop capacity-based local switching charges rather than per-minute charges. The Commission also solicits comment on whether the traffic-sensitive price cap index (PCI) formula should be modified. For the same reasons that the Commission considers revising the local switching rate structure, it also seeks comment on whether similarly to revise the rate structure for tandem switched transport.

7. In the accompanying Order, the Commission denies a petition for declaratory ruling filed by AT&T requesting that the Commission confirm that interexchange carriers (IXCs) may elect not to purchase switched access services offered under tariff by competitive local exchange carriers (CLECs). The Commission declines to address AT&T's concerns in a declaratory ruling; however, it finds that AT&T's petition and supporting comments suggest a need for the Commission to revisit the issue of CLEC access rates. Therefore, the Commission initiates a rulemaking regarding the reasonableness of these charges and whether it might adopt rules to address, by the least intrusive means, any failure of market forces to constrain CLEC access charges.

8. Because the Commission's ultimate goal is to continue to foster competition and allow market forces to operate where they are present, it seeks comment on pricing flexibility for common line and traffic-sensitive services. First, the Commission considers permitting price cap LECs to deaverage rates for services in the common line and traffic-sensitive baskets in conjunction with identification and removal of implicit universal service support in interstate access charges and implementation of an explicit high cost support mechanism. The Commission also invites parties to comment on how it should define zones for purposes of deaveraging. In addition, the Commission seeks comment on which rate elements may be deaveraged and whether deaveraging should be subject to subscriber line charge (SLC) and presubscribed interexchange carrier charge (PICC) caps or any other constraint. The Commission also seeks comment on the appropriate Phase II triggers for granting greater pricing flexibility for traffic-sensitive, common line, and the traffic-sensitive components of tandem-switched transport services.

9. The Notice also seeks comment on certain price cap regulation issues. Specifically, consistent with the *Access Reform First Report and Order's* efforts to reform access charges so costs are recovered in a manner that reflects how they are incurred, the Commission seeks comment on adopting a capacity-based rate structure for local switching. The local switch, which consists of an analog or digital switching system and line and trunk cards, connects subscriber lines both with other local subscriber lines and with dedicated and common interoffice trunks. As discussed in more detail below, prior to the *Access Reform First Report and Order,* the interstate allocated portion of these costs was recovered entirely through per-minute charges assessed on IXCs.

10. Recognizing that a significant portion of these costs (*i.e.,* the costs associated with line cards and trunk ports) do not vary with usage, however, the Commission determined that such non-traffic-sensitive costs should be recovered on a flat-rated, rather than usage sensitive, basis. Accordingly, consistent with principles of cost-causation and economic efficiency, the Commission directed price cap LECs to reassign all line-side port costs from the Local Switching rate element to the Common Line rate element and to recover these costs through the common line rate elements, including the SLC and flat-rated PICC. Because the record in that proceeding was not adequate, however, to determine whether and to what extent the remaining local switching costs were traffic-sensitive or

non-traffic-sensitive, LECs continue to recover these costs through traffic-sensitive charges.

11. The Commission takes this opportunity to re-examine the local switching rate structure to determine whether it reasonably reflects the manner in which price cap LECs incur costs. The Commission invites comment on whether and to what extent it should modify further its price cap rules for the traffic-sensitive basket to reflect a capacity-based local switching rate structure.

12. The Commission also invites parties to discuss proposed revisions to its rules for the common line basket, and it considers redefining the price cap baskets and pricing bands. Specifically, the Commission solicits comment on whether to increase the ''g'' factor in the common line PCI formula and whether it should revise the baskets so that services with flat rates are not placed in the same basket as services with traffic-sensitive rates. In addition, the Commission seeks comment on its tentative conclusion that the inflation measure in the PCI formula should be consistent with the measure defined by the Bureau of Labor Statistics (BLS).

13. Finally, the Commission initiates a rulemaking to determine the reasonableness of CLEC access rates and whether it might adopt rules to address, by the least intrusive means, any failure of market forces to constrain CLEC access charges.

## II. Procedural Issues and Ordering Clauses

### *A. Initial Regulatory Flexibility Act Analysis*

14. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking (Further Notice). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice provided below in Section IX.D. The Office of Public Affairs will send a copy of the Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the Further Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.

15. *Need for, and objectives of, the proposed rules.* Consistent with the Telecommunications Act of 1996, the Commission has revised its interstate access charges to facilitate competition in the provision of interstate access services. These proposals attempt to effect additional regulations reflective of the competitive marketplace. In Sections VIII.A and VIII.B, the Commission seeks to establish additional pricing flexibilities for price cap incumbent LECs, while at the same time limit use of those flexibilities to deter entry, to drive existing competitors from the market, or to increase rates for those customers that lack competitive alternatives. In Section VIII.C, the Commission seeks to modify the common line rate structure should the Commission determine that a capacity-based rate structure reflects the manner in which price cap LECs incur their costs better than the current traffic-sensitive rate structure. In Section VIII.D, the Commission seeks to refine several of its price cap rules to better reflect the manner in which price cap incumbent LECs costs are incurred. In Section VIII.E, the Commission seeks to prevent CLECs from charging unreasonable rates for terminating access service.

16. *Legal Basis.* The proposed action is supported by sections 4(i), 4(j), 201–205, 208, 251, 252, 253 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201, 205, 208, 251, 252, 253, 403.

17. *Description, potential impact and number of small entities affected.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). The Small Business Administration has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be a small entity that has no more than 1500 employees.

*Total Number of Telephone Companies Affected:*

18. The Commission has included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. The Commission has therefore included small incumbent LECs in this RFA analysis, although it emphasizes that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

19. *Price Cap Local Exchange Carriers.* The proposals in Section VIII.A–D apply only to price cap LECs. The Commission does not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of price cap LECs that would qualify as small business concerns under the SBA's definition. However, there are only 13 price cap LECs. Consequently, the Commission estimates that significantly fewer than 13 providers of local exchange service are small entities or small price cap LECs that may be affected by these proposals.

20. *Competitive Local Exchange Carriers.* The proposals in Section VIII.E apply only to competitive LECs. Neither the Commission nor the Small Business Administration has developed a definition of small providers of local exchange service. The closest applicable definition under Small Business Administration rules is for telephone telecommunications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of competitive LECs nationwide of which the Commission is aware appears to be the data that it collects annually in connection with the Telecommunications Relay Service (TRS). According to the Commission's most recent data, 129 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. The Commission does not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of competitive LECs that would qualify as small business concerns under the SBA's

definition. Consequently, the Commission estimates that fewer than 129 providers of local exchange service are small entities or small competitive LECs that may be affected by these proposals.

21. *Reporting, record keeping and other compliance requirements.* The Commission expects that, on balance, the proposals in this Further Notice will slightly increase price cap LECs' administrative burdens. The proposals in Section VIII.A would require at least one additional tariff filing, and may require additional showings. The proposals in Section VIII.B will require a price cap LEC, to the extent that it chooses to avail itself of the additional flexibility, to file a petition demonstrating that it has met the triggers, and make an initial tariff filing. The Commission expects that the proposals in Sections VIII.C and VIII.D would establish new methodologies that price cap LECs would need to apply in their tariff filings, but otherwise should not affect their administrative burdens.

22. The Commission expects that the proposals in Section VIII.E will have no effect on the administrative burdens of competitive LECs, because they would have no additional filing requirement. They would only be required to respond to complaints.

23. *Steps taken to minimize significant economic impact on small entities, and significant alternatives considered.* In this Notice, the Commission sought comment on how a number of proposals would affect small entities. The Commission believes that overall, these proposals should have a positive economic impact on small price cap LECs. The proposals in Sections VIII.A, VIII.B, and VIII.C should enable small price cap LECs to price their regulated services in a manner that is more reflective of the underlying costs of these services. In Sections VIII.C, the Commission has also sought comment on whether small interexchange carriers would be artificially disadvantaged if it adopts a capacity-based local switching rate structure. The proposals in Sections VIII.D and VIII.E should not have a significant economic impact on small entities. The Commission seeks comment on these proposals and urge that parties support their comments with specific evidence and analysis.

24. *Federal rules which overlap, duplicate or conflict with this proposal.* None.

*B. Paperwork Reduction Act*

25. The Further Notice of Proposed Rulemaking contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, the Commission invites the general public and the OMB to take this opportunity to comment on the information collections contained in the Further Notice of Proposed Rulemaking, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. Public and agency comments are due at the same time as other comments on the Further Notice of Proposed Rulemaking; OMB comments are due 60 days from date of publication of the Further Notice of Proposed Rulemaking in the **Federal Register**. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

*C. Filing Comments*

26. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before October 29, 1999, and reply comments on or before November 29, 1999. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings* (63 FR 24121, May 1, 1998).

27. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appears in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

28. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth St., SW., Room TW–A325, Washington, DC 20554.

**E. Ordering Clauses**

29. *It is ordered,* pursuant to sections 1, 4(i) and (j), 201–205, 303(r), and 403 of the Communications Act, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 303(r), and 403 that this Notice of Proposed Rulemaking *is hereby adopted* and comments *are requested* as described above.

30. *It is further ordered* that the Commission's Office of Public Affairs Reference Operations Division, shall send a copy of this Notice of Proposed Rulemaking, including the Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects**

*47 CFR Part 0*

Organization and functions.

*47 CFR Part 1*

Administrative practice and procedure, Communications common carriers, Telecommunications.

*47 CFR Part 61*

Communications common carriers, Telephone.

*47 CFR Part 69*

Communications common carriers, Telephone.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 99–24142 Filed 9–21–99; 8:45 am]

BILLING CODE 6712–01–U

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

**[DA 99–1849; MM Docket No. 99–278; RM–9424]**

## Radio Broadcasting Services; Susquehanna, PA and Conklin, NY

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition jointly filed by

Majac of Michigan, Inc. and Equinox Broadcasting Corporation proposing the reallotment of Channel 223A from Susquehanna, Pennsylvania, to Conklin, New York, and the modification of Station WKGB–FM's license accordingly. Petitioners also request the reallotment of Channel 263A from Conklin, New York, to Susquehanna, Pennsylvania, and the modification of Station WCDW(FM)'s license accordingly. Channel 223A can be reallotted to Conklin in compliance with the Commission's minimum distance separation requirements without the imposition of site restriction at Station WKGB–FM's requested site. The coordinates for Channel 223A at Conkilin are 42–06–53 North Latitude and 75–51–16 West Longitude. *See* Supplementary Information, *infra.*

**DATES:** Comments must be filed on or before November 1, 1999, reply comments on or before November 16, 1999.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultants, as follows: John J. McVeigh, Esq., 12101 Blue Paper Trail, Columbia, Maryland 21044–2787 (Counsel for Equinox Broadcasting Corporation); and Peter Tannenwald, Esq., Irwin Campbell & Tannenwald, P.C., 1730 Rhode Island Ave., NW., Suite 200, Washington, DC 20036–3101 (Counsel for Majac of Michigan, Inc.).

**FOR FURTHER INFORMATION CONTACT:** Robert Hayne, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–278, adopted September 9, 1999, and released September 10, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Additionally, Channel 263A can be reallotted to Susquehanna without the imposition of a site restriction. The coordinates for Channel 263A at Susquehanna are 42–02–30 North Latitude and 75–41–30 West Longitude. Since Conklin and Susquehanna are located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been requested. In accordance with provisions of Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 223A at Conklin, New York, or Channel 263A at Susquehanna, Pennsylvania.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

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

[FR Doc. 99–24665 Filed 9–21–99; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

**[DA 99–1851; MM Docket No. 99–280; RM–9672]**

## Radio Broadcasting Services; Elaine, AR

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rule making filed on behalf of Phillips County Broadcasting, requesting the allotment of Channel 238A to Elaine, Arkansas, as that community's first local aural transmission service. Coordinates used for this proposal are 34–22–52 NL and 90–45–56 WL.

**DATES:** Comments must be filed on or before November 1, 1999, and reply comments on or before November 16, 1999.

**ADDRESSES:** Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Allan G. Moskowitz, Esq., Kaye, Scholer, Fierman, Hays & Handler, LLP, 901 15th Street, NW., Suite 1100, Washington, DC 20005.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–280, adopted September 1, 1999, and released September 10, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

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

[FR Doc. 99–24663 Filed 9–21–99; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

**[DA 99–1851; MM Docket No. 99–281; RM–9684]**

## Radio Broadcasting Services; Ringgold, LA

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rule making filed on behalf of Black Lake Broadcasting, requesting the allotment of Channel 253C3 to Ringgold,

Louisiana, as that community's first local aural transmission service. Coordinates used for this proposal are 32–19–49 NL and 93–12–33 WL.

**DATES:** Comments must be filed on or before November 1, 1999, and reply comments on or before November 16, 1999.

**ADDRESSES:** Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Henry E. Crawford, Esq., 1150 Connecticut Avenue, NW., Suite 900, Washington, DC 20036–4192.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–281, adopted September 1, 1999, and released September 10, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY A–257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

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

[FR Doc. 99–24662 Filed 9–21–99; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 99–1851; MM Docket No. 99–282; RM–9710]**

### Radio Broadcasting Services; Littlefield, AZ

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rule making filed by Mountain West Broadcasting requesting the allotment of Channel 265C to Littlefield, Arizona, as that locality's first local aural transmission service. Information is requested regarding the attributes of Littlefield, Arizona, to determine whether it is a *bona fide* community for allotment purposes. Coordinates used for this proposal are 36–52–59 NL and 114–33–13 WL.

**DATES:** Comments must be filed on or before November 1, 1999, and reply comments on or before November 16, 1999.

**ADDRESSES:** Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., 6807 Foxglove Drive, Cheyenne, WY 82009.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–282, adopted September 1, 1999, and released September 10, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY A–257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

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

[FR Doc. 99–24661 Filed 9–21–99; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 99–1851; MM Docket No. 99–283; RM–9711]**

### Radio Broadcasting Services; Hays, KS

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rule making filed on behalf of Gatoradio Media Group, Inc., requesting the allotment of Channel 289C2 to Hays, Kansas, as that community's third local FM transmission service. Coordinates used for this proposal are 38–57–15 NL and 99–26–43 WL.

**DATES:** Comments must be filed on or before November 1, 1999, and reply comments on or before November 16, 1999.

**ADDRESSES:** Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Naomi S. Travers, Esq., Arter & Hadden, LLP, 1801 K Street, NW., Suite 400K, Washington, DC 20006–1301.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–283, adopted September 1, 1999, and released September 10, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room CY–A257) 445 Twelfth Street, SW., Washington, DC. The complete text of

this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

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

[FR Doc. 99–24660 Filed 9–21–99; 8:45 am]

BILLING CODE 6712–01–P

# Notices

Federal Register
Vol. 64, No. 183
Wednesday, September 22, 1999

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. 99–062–1]**

### Notice of Request for Extension of Approval of an Information Collection

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Extension of approval of an information collection; comment request.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of the regulations issued under the Animal Welfare Act governing the humane handling, care, treatment, and transportation of certain animals by dealers, research institutions, exhibitors, carriers, and intermediate handlers.

**DATES:** Comments on this notice must be received by November 22, 1999 to be assured of consideration.

**ADDRESSES:** We invite you to comment regarding the accuracy of burden estimate, ways to minimize the burden (such as through the use of automated collection techniques or other forms of information technology), or any other aspect of this collection of information. Please send your comment and three copies to: Docket No. 99–062–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 99–062–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

**FOR FURTHER INFORMATION CONTACT:** For information regarding the regulations for the humane handling, care, treatment, and transportation of certain animals by dealers, research institutions, exhibitors, carriers, and intermediate handlers, contact Dr. Jerry DePoyster, Animal Care Staff Officer, AC, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234; (301) 734–7833; or e-mail: Jerry.D.Depoyster@usda.gov. For copies of more detailed information on the information collection, contact Ms. Cheryl Groves, APHIS' Information Collection Coordinator, at (301) 734–5086.

**SUPPLEMENTARY INFORMATION:**

*Title:* Animal Welfare.

*OMB Number:* 0579–0036.

*Expiration Date of Approval:* December 31, 1999.

*Type of Request:* Extension of approval of an information collection.

*Abstract:* Regulations have been promulgated under the Animal Welfare Act (the Act) (7 U.S.C. 2131 *et seq.*) to promote and ensure the humane care and treatment of regulated animals under the Act. Title 9, parts 1 through 3, of the Code of Federal Regulations (CFR) contain regulations for the care and handling of certain animals covered under the Act. The regulations in 9 CFR part 2 require documentation of specified information concerning the humane handling, care, treatment, and transportation of certain animals by dealers, research institutions, exhibitors, carriers, and intermediate handlers. The regulations also require that facilities that use animals for regulated purposes obtain a license or register with the U.S. Department of Agriculture (USDA).

The Act is enforced by USDA's Animal and Plant Health Inspection Service (APHIS), which performs unannounced inspections of regulated facilities. A significant component of the inspection process is review of mandatory records that must be established and maintained by regulated facilities. The information contained in these records is used by APHIS inspectors to ensure that dealers, research facilities, exhibitors, intermediate handlers, and carriers comply with the Act and regulations.

Facilities must make and maintain records that contain official identification for all dogs and cats and certification of those animals received from pounds, shelters, and private individuals. These records are used to ensure that stolen pets are not used for regulated activities. Records must also be maintained for animals other than dogs and cats when the animals are used for purposes regulated under the Act.

Research facilities must also make and maintain additional records for animals covered under the Act that are used for teaching, testing, and experimentation. This information is used by APHIS personnel to review the research facility's animal care and use program concerning animal activities regulated under the Act.

The reporting and recordkeeping requirements contained in 9 CFR part 2 are necessary to enforce regulations intended to ensure the humane care and treatment of covered animals. The collected information is also used by APHIS to provide a mandatory annual Animal Welfare Enforcement report to Congress.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), we are asking the Office of Management and Budget to approve the continued use of this information collection.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the proposed information collection 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 our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(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, through use, as appropriate, of automated, electronic, mechanical, or other collection technologies, e.g., permitting electronic submission of responses.

*Estimate of burden:* The public reporting burden for this collection of information is estimated to average 1.1708 hours per response.

*Respondents:* Research facilities, ''A'' and ''B'' dealers, exhibitors, carriers, and intermediate handlers.

*Estimated annual number of respondents:* 8,564.

*Estimated annual number of responses per respondent:* 9.9738.

*Estimated annual number of responses:* 85,416.

*Estimated total annual burden on respondents:* 100,006. (Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 15th day of September 1999.

**Bobby R. Acord,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 99–24678 Filed 9–21–99; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

**[Order No. 1050]**

## Grant of Authority for Subzone Status; Equilon Enterprises LLC (Oil Refinery), Los Angeles County, CA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas*, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

*Whereas*, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

*Whereas*, an application from the Board of Harbor Commissioners of the City of Long Beach, grantee of Foreign-Trade Zone 50, for authority to establish special-purpose subzone status at the oil refinery complex of Equilon Enterprises LLC, located in Los Angeles, California, was filed by the Board on September 30, 1998, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 46–98, 63 FR 54671, 10/13/98); and,

*Whereas*, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

*Now, Therefore*, the Board hereby authorizes the establishment of a subzone (Subzone 50G) at the oil refinery complex of Equilon Enterprises LLC, located in Los Angeles, California, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.00.1000—#2710.00.1050, #2710.00.2500, and #2710.00.4510 which are used in the production of: petrochemical feedstocks and refinery by-products (examiners report, Appendix C); products for export; and, products eligible for entry under HTSUS #9808.00.30 and #9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2004, subject to extension.

Signed at Washington, DC, this 13th day of September, 1999.

**Richard W. Moreland,**

*Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

**Attest: Dennis Puccinelli,**

*Acting Executive Secretary.*

[FR Doc. 99–24588 Filed 9–21–99; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

**[Order No. 1058]**

## Approval for Expanded Manufacturing Authority (Pharmaceutical Products) Within Foreign-Trade Subzone 202A; Minnesota Mining and Manufacturing Company, Los Angeles, CA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas*, the Minnesota Mining and Manufacturing Company (3M), operator of FTZ 202A, has requested authority to expand the scope of manufacturing activity conducted under FTZ procedures within Subzone 202A, the 3M pharmaceutical manufacturing plant in Los Angeles, California (FTZ Doc. 2–99, filed 1–11–99); and

*Whereas*, notice inviting public comment was given in the **Federal Register** (64 FR 4068, 1/27/99); and

*Whereas*, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

*Now, Therefore*, the Board hereby approves the request subject to the FTZ Act and the Board's regulations, including § 400.28, and further subject to the following special conditions:

1. The admission levels of CFC–11 and CFC–12 products to the subzone are limited to the essential-use allowance levels authorized by the Environmental Protection Agency (EPA) for this facility.

2. The merchandise admitted to the subzone shall continue to be subject to all EPA regulatory requirements, including 40 CFR part 82.

3. 3M shall provide the FTZ Board annually with evidence that it is in compliance with EPA requirements.

Signed at Washington, DC, this 13th day of September, 1999.

**Richard W. Moreland,**

*Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

**Attest: Dennis Puccinelli,**

*Acting Executive Secretary.*

[FR Doc. 99–24590 Filed 9–21–99; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

**[Order No. 1059]**

### Grant of Authority for Subzone Status; Hewlett-Packard Company (Computer and Related Electronic Products), San Diego, CA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas,* the Foreign-Trade Zones Act provides for '' * * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board (the Board) to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

*Whereas,* the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

*Whereas,* the City of San Diego, California, grantee of Foreign-Trade Zone 153, has made application to the Board for authority to establish special-purpose subzone status at the computer and electronic products manufacturing facilities of the Hewlett-Packard Company, located in San Diego, California, (FTZ Docket 36–98, filed 7/1/98);

*Whereas,* notice inviting public comment has been given in the **Federal Register** (63 FR 37514, 7/13/98); and,

*Whereas,* the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

*Now, therefore,* the Board hereby grants authority for subzone status at the computer products plant of the Hewlett-Packard Company, located in San Diego, California (Subzone 153B), at the locations described in the application, and subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 13th day of September, 1999.

**Richard W. Moreland,**

*Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

**Attest: Dennis Puccinelli,**

*Acting Executive Secretary.*

[FR Doc. 99–24591 Filed 9–21–99; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

**[Order No. 1054]**

### Approval for Manufacturing Authority (Automotive Audio/Electronics and Telecommunications Products) Within Foreign-Trade Zone 26 Matsushita Communication Industrial Corporation of U.S.A. Peachtree City, GA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas,* the Georgia Foreign-Trade Zone, Inc., grantee of FTZ 26, has requested authority on behalf of Matsushita Communication Industrial Corporation of U.S.A., to manufacture automotive audio, electronic, and telecommunications products under FTZ procedures within FTZ 26'Site 2 (FTZ Doc. 8–99, filed 2–16–99);

*Whereas,* notice inviting public comment was given in the **Federal Register** (64 FR 9126, 2–24–99);

*Whereas,* the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

*Now therefore,* the Board hereby approves the request subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 13th day of September 1999.

**Richard Moreland,**

*Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

Attest:

**Dennis Puccinelli,**

*Acting Executive Secretary.*

[FR Doc. 99–24587 Filed 9–21–99; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

**[Order No. 1057]**

### Grant of Authority for Subzone Status; Lexmark International, Inc. (Computer Printers and Related Products), Seymour, IN

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas,* the Foreign-Trade Zones Act provides for '' * * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board (the Board) to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

*Whereas,* the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

*Whereas,* the Indiana Port Commission, grantee of Foreign-Trade Zone 170, has made application to the Board for authority to establish special-purpose subzone status at the computer printer and related products distribution and assembly facility of Lexmark International, Inc., located in Seymour, Indiana, (FTZ Docket 45–98, filed 9–28–98);

*Whereas,* notice inviting public comment has been given in the **Federal Register** (63 FR 53641, 10–6–98); and,

*Whereas,* the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

*Now, Therefore,* the Board hereby grants authority for subzone status at the computer products facility of Lexmark International, Inc., located in Seymour, Indiana, (Subzone 170A), at the location described in the application, and subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 13th day of September, 1999.

**Richard W. Moreland,**

*Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

**Attest: Dennis Puccinelli,**

*Acting Executive Secretary.*

[FR Doc. 99–24589 Filed 9–21–99; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

**[Order No. 1053]**

## Expansion of Foreign-Trade Zone 181 Akron-Canton, OH, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas,* the Northeast Ohio & Trade Economic Consortium (NEOTEC), grantee of Foreign-Trade Zone 181, submitted an application to the Board for authority to expand FTZ 181 to include a site at the Terminal Warehouse, Inc., facility in Summit County, Ohio (Site 6), within the Cleveland/Akron Customs port of entry (FTZ Docket 74–96; filed 10/10/96; amended 3/25/99);

*Whereas,* notice inviting public comment was given in the **Federal Register** (61 FR 54766, 10/22/96) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

*Whereas,* the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

*Now, Therefore,* the Board hereby orders:

The application to expand FTZ 181 is approved, subject to the Act and the Board's regulations, including Section 400.28, and further subject to the Board's standard 2,000-acre activation limit for the overall zone project, and to a sunset provision that terminates authority for this site (Site 6) in five years, unless the site is activated pursuant to 19 CFR Part 146 of the U.S. Customs Service regulations.

Signed at Washington, DC, this 13th day of September 1999.

**Richard W. Moreland,**

*Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

Attest:

**Dennis Puccinelli,**

*Acting Executive Secretary.*

[FR Doc. 99–24586 Filed 9–21–99; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

**[Docket 46–99]**

## Foreign-Trade Zone 137—Washington Dulles International Airport, VA, Area—Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by Washington Dulles Foreign Trade Zone, Inc., grantee of FTZ 137 (Fairfax/Loudoun Counties, Virginia), requesting authority to expand its zone to include sites in the Winchester-Frederick County, Virginia area, adjacent to the Washington, DC., 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 10, 1999.

FTZ 137 was approved on April 17, 1987 (Board Order 350, 52 FR 13489, 4/23/87). The zone project currently consists of the following sites (392 acres): *Site 1*—within the Washington Dulles International Airport complex, Fairfax and Loudoun Counties; *Site 2*—warehouse facility, 110 Terminal Drive, Sterling; and, *Site 3*—near the intersection of Routes 606 and 621, Loudoun County. An application is currently pending with the Board for two additional sites in Virginia's Eastern Shore region (Doc. 44–98).

This application is requesting authority to expand the general-purpose zone to include 3 new sites (498 acres) within industrial parks in the Winchester-Frederick County region of Virginia (Proposed Sites 6–8): *Proposed Site 6* (183 acres, 6 parcels)—within the 330-acre Fort Collier Industrial Park (owned primarily by the Fort Collier Group, L.C.), U.S. Route 11, Winchester; *Proposed Site 7* (160 acres)—airport properties contiguous to the Winchester Regional Airport consisting of three industrial parks: Parcel 1A (5 acres)—Pegasus Business Center (owned by C.D. Adams & K.D. Adams), Airport Road, Winchester; Parcel 1B (145 acres)—within the 219-acre Airport Business Center (owned by the Adams Family Limited Partnership and Crum Electric Company), Airport Road, Winchester; and, Parcel 2 (10 acres)—AeroCentre Business Park (owned by North Frederick Realty, L.L.C.), east of U.S. Highway 522 South, Winchester; and, *Proposed Site 8* (155 acres, 6 parcels)—within the 236-acre Wrights Run complex, U.S. Route 522 and new Route 624 (Tasker Road), Winchester, consisting of two industrial parks: Parcels 1–4 and 6 (71 acres) are located within the Jouan Global Center (owned by Wrights Run LP Properties (WRLP), Jouan Inc., Donald Rainville and Hermitage Place L.L.C.); and, Parcel 5 (84 acres) within the Wrights Run Industrial Park (owned by WRLP). All of the properties are located within Frederick County, approximately 46 miles west of the Washington Dulles International Airport. No specific manufacturing requests are being made at this time. Such 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.

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 22, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to December 6, 1999).

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

Washington Dulles Foreign Trade Zone, Inc., 44701 Propeller Court, Dulles, VA 20166

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

Dated: September 13, 1999.

**Dennis Puccinelli,**

*Acting Executive Secretary.*

[FR Doc. 99–24710 Filed 9–21–99; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–428–815, C–428–817]**

### Notice of Final Results of Changed Circumstances Antidumping Duty and Countervailing Duty Reviews and Revocation of Orders in Part: Certain Corrosion-Resistant Carbon Steel Flat Products From Germany

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

**ACTION:** Notice of final results of changed circumstances antidumping duty and countervailing duty reviews and revocation of orders in part.

**EFFECTIVE DATE:** September 22, 1999.

**SUMMARY:** On June 11, 1999, the U.S. Department of Commerce (the Department) received a request on behalf of Bethlehem Steel Corporation, Ispat Inland Steel, LTV Steel Company, Inc., National Steel Corporation, and U.S. Steel Group, a unit of USX Corporation, petitioners in the above mentioned cases, for changed circumstances antidumping (AD) and countervailing duty (CVD) reviews for the purpose of revoking, in part, the AD and CVD orders with respect to specific corrosion-resistant carbon steel flat products from Germany. Petitioners' letter confirmed a lack of interest in the continuation of the AD and CVD orders with respect to the subject merchandise defined in the Scope of the Review section below.

Accordingly, on August 2, 1999, the Department published a notice of initiation and preliminary results of changed circumstances reviews and intent to revoke these orders in part (64 FR 41916). We gave interested parties an opportunity to comment on the preliminary results of these changed circumstances reviews. No comments were received.

**FOR FURTHER INFORMATION CONTACT:** Barbara Chaves (202–482–0414) or Linda Ludwig (202–482–3833), Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230.

**SUPPLEMENTARY INFORMATION:**

### Applicable Statute and Regulations

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 regulations at 19 CFR part 351 (April 1998).

### Background

On August 17, 1993, the Department published the CVD order on certain corrosion-resistant carbon steel flat products from Germany (58 FR 43756). On August 19, 1993, the Department published the AD order on certain corrosion-resistant carbon steel flat products from Germany (58 FR 44170).

On June 11, 1999, petitioners requested partial revocation of the AD and CVD orders with respect to specific corrosion-resistant carbon steel flat products from Germany described below pursuant to section 751(b)(1) of the Act and § 351.222(g) of the Department's regulations. On August 2, 1999, the Department published a notice of initiation and preliminary results of changed circumstances reviews and intent to revoke these orders in part. We gave interested parties an opportunity to comment on the preliminary results of these changed circumstances reviews. No comments were received.

### Scope of the Reviews

The corrosion-resistant steel products covered by these AD/CVC orders include flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.60.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.32.5000, 7217.33.5000, 7217.39.1000, and 7217.39.5000. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under review is dispositive.

Included in these orders are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been ''worked after rolling'')—for example, products which have been bevelled or rounded at the edges. Excluded from these orders are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin-free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, and certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio.

Merchandise covered by these changed circumstances reviews and partial revocations are shipments of certain corrosion-resistant carbon steel flat products that are deep-drawing carbon steel strip, roll-clad on both sides with aluminum (AlSi) foils in accordance with St3 LG as to EN 10139/10140. The merchandise's chemical composition encompasses a core material of U St 23 (continuous casting) in which carbon is less than 0.08; manganese is less than 0.30; phosphorous is less than 0.20; sulfur is less than 0.015; aluminum is less than 0.01; and the cladding material is a minimum of 99% aluminum with silicon/copper/iron of less than 1%. The products are in strips with thicknesses of 0.07mm to 4.0mm (inclusive) and widths of 5mm to 800mm (inclusive). The thickness ratio of aluminum on either side of steel may range from 3%/94%/3% to 10%/80%/10%.

**Final Results of Changed Circumstances AD and CVD Reviews, and Revocation of Orders in Part**

Based on the affirmative statement of no interest by petitioners, combined with the lack of comments from interested parties, the Department has determined that substantially all of the domestic producers have no further interest in maintaining these orders with respect to certain corrosion-resistant carbon steel flat products, described above, in accordance with section 782(h) of the Act. This lack of interest by domestic producers constitutes changed circumstances sufficient to warrant partial revocation of these orders. Therefore, the Department is partially revoking these orders on certain corrosion-resistant carbon steel flat products with respect to deep-drawing carbon steel strip, roll-clad on both sides with aluminum (AlSi) foils in accordance with St3 LG as to EN 10139/10140, as described above, in accordance with sections 751(b) and 782(h) of the Act and 19 CFR 351.216(d). This partial revocation applies to all unliquidated entries of certain corrosion-resistant carbon steel flat products described above that are not covered by the final results of an administrative review.

The Department will instruct the U.S. Customs Service to proceed with liquidation, without regard to antidumping or countervailing duties, of all unliquidated entries of deep-drawing carbon steel strip, roll-clad on both sides with aluminum (AlSi) foils in accordance with St3 LG as to EN 10139/10140, as described above, as provided under section 778 of the Act.

These changed circumstances administrative reviews, partial revocations of the antidumping duty and countervailing duty orders and notice are in accordance with sections 751(b) and 782(h) of the Act and §§ 351.216, 351.221(c)(3) and 351.222(g)(1)(i) of the Department's regulations.

Dated: September 14, 1999.

**Richard W. Moreland,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 99–24709 Filed 9–21–99; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

## International Trade Administration

**[C–475–819]**

## Amendment to Certain Pasta From Italy: Final Results of the Second Countervailing Duty Administrative Review

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

**ACTION:** Amendment of Final Results of Countervailing Duty Administrative Review.

**SUMMARY:** On August 16, 1999, the Department of Commerce published in the **Federal Register** its final results of the second administrative review of the countervailing duty order on certain pasta from Italy for the period January 1, 1997 to December 31, 1997 (64 FR 44489). After publishing the final results, we discovered one calculation error, and we received a timely filed allegation regarding another ministerial error.

**EFFECTIVE DATE:** September 22, 1999.

**FOR FURTHER INFORMATION CONTACT:** Vincent Kane, Sally Hastings or Suresh Maniam, AD/CVD Enforcement, Group I, Office 1, Import Administration, US Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–2815, 482–3463, 482–0176, respectively.

**Corrections**

*Audisio Industrie Alimentari S.p.A (''Audisio'') and Pastificio Fabianelli S.p.A (''Fabianelli'')*

The Department of Commerce (''the Department'') inadvertently miscalculated the duty rates for respondents Audisio and Fabianelli. In the final notice, we specified a total duty rate of 1.03 percent for Audisio and 0.49 percent for Fabianelli. In calculating these rates, we erroneously attributed a European Social Fund (ESF) subsidy rate in the amount of 0.04 percent to Fabianelli. The ESF subsidy rate instead should have been attributed to Audisio. Neither the petitioners [1] nor the respondents have made a ministerial error allegation with respect to this miscalculation, and the Department is correcting this error on its own initiative.

*Delverde, SrL (''Delverde'') and Tamma Industrie Alimentari, SrL (''Tamma'')*

On August 26, 1999, respondent (Delverde/Tamma) timely filed a ministerial error allegation. Delverde/Tamma states that, with respect to one publicity grant, the Department should not have countervailed the entire amount of the grant, but instead should have countervailed only that portion of the grant attributable to pasta products. Respondent further states that countervailing only the pasta portion of the grant would be consistent with our previous calculations in the original investigation (*see Final Affirmative Countervailing Duty Determination: Certain Pasta from Italy* 61 FR 30288, 30303 (June 14, 1996)) and the first administrative review (*see Certain Pasta from Italy: Final Results of the Countervailing Duty Administrative Review*, 63 FR 43905, 43907 (August 17, 1998)). We agree with the respondent that the Department inadvertently countervailed the entire amount of the grant rather than only that portion of the grant received for pasta products. The petitioners have not commented on this ministerial error allegation. We have made the suggested corrections for the amended final results.

**Amended Final Results of Review**

Pursuant to the Department's regulations at 19 CFR 351.224(e), we correct the duty rates for Audisio, Fabianelli, Delverde, and Tamma to be as follows:

AD VALOREM RATES

| Producer/Exporter | 01/01/97 through 12/31/97 (percent) |
|---|---|
| Audisio Industrie Alimentari S.p.A. | 1.07 |
| Pastificio Fabianelli S.p.A. | 0.45 |
| Delverde, SrL | 3.98 |
| Tamma Industrie Alimentari, SrL | 3.98 |

The Department will instruct the US Customs Service (''Customs'') to assess countervailing duties on all appropriate entries on or after January 1, 1997, and on or before December 31, 1997. The Department will issue liquidation instructions directly to Customs. The amended deposit requirements are effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a reminder to all parties subject to an administrative protective order (APO) of their

[1] The petitioners in this review are Borden, Inc., Hershey Foods Corp. and Gooch Foods, Inc.

responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 355.34(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 sanctionable violation.

This amendment to the final results of the countervailing duty administrative review notice is in accordance with section 751(a)(1) of the Tariff Act, as amended, (19 U.S.C. 1675(a)(1), 19 CFR 351.213, and 19 CFR 351.221(b)(5)).

Dated: September 13, 1999.

**Richard W. Moreland,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 99–24585 Filed 9–21–99; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

**[Docket Number 990809210–9210–01]**

### Voluntary Product Standard; DOC PS 20–99 ''American Softwood Lumber Standard''

**AGENCY:** National Institute of Standards and Technology, Commerce.

**ACTION:** Notice.

**SUMMARY:** The National Institute of Standards and Technology (NIST) announces voluntary product standard DOC PS 20–99 ''American Softwood Lumber Standard'' is to supersede DOC PS 20–94. The Standard establishes standard sizes and requirements for developing and coordinating the lumber grades of the various species of softwood lumber, the assignment of design values, and the preparation of grading rules applicable to each species. Its provisions include implementation of the Standard through an accreditation and certification program; establishment of principal trade classifications and lumber sizes for yard, structural, factory/shop use; classification, measurement, grading and grade-marking of lumber; definitions of terms and procedures to provide a basis for the use of uniform methods in the grading, inspection, measurement and description of softwood lumber; commercial names of the principal softwood species; definitions of terms used in describing standard grades of lumber; and commonly used industry abbreviations. The Standard also includes the organization and functions of the American Lumber Standard Committee, the Board of Review, and the National Grading Rule Committee.

**DATES:** DOC PS 20–99 ''American Softwood Lumber Standard,'' a voluntary product standard developed under Department of Commerce procedures, becomes effective September 1, 1999, for products produced thereunder on and after that date. The standard being superseded, DOC PS 20–94 ''American Softwood Lumber Standard,'' is effective for products produced thereunder through August 1, 1999.

**ADDRESSES:** Requests for a copy of DOC PS 20–99 should be submitted to the Technical Standards Activities program, NIST, 100 Bureau Drive Stop 2150, Gaithersburg, MD 20899–2150.

**FOR FURTHER INFORMATION CONTACT:** Barbara M. Meigs, Technical Standards Activities Program, telephone: 301–975–4025, fax: 301–926–1559, e-mail: barbara.meigs@nist.gov.

**SUPPLEMENTARY INFORMATION:** DOC PS 20–99 ''American Softwood Lumber Standard'' was developed by the American Lumber Standard Committee, the Standing Committee responsible for maintaining DOC PS 20–94. The revision was processed in accordance with provisions of Department ''Procedures for the Development of Voluntary Product Standards'' (15 CFR Part 10, as amended; 51 FR 119 dated June 20, 1986). A notice, which appeared in the **Federal Register** on February 1, 1999 (54 FR 4844–4845), announced NIST's circulation of the revision for public review and comment and provided the history of the revision.

An analysis of the results of the comments and responses received by NIST indicated that the revision was supported by a consensus (general concurrence and, in addition, no substantive objection deemed valid by the Department); therefore, in accordance with DOC procedures, DOC PS 20–99 supersedes DOC PS 20–94, effective September 1, 1999. The new edition reflects efforts toward updating and improving the presentation of DOC PS 20 with clarification and simplification of text and terms while maintaining the technical requirements and administrative structure for implementing and enforcing the Standard.

Authority: 15 USC 272.

Dated: September 16, 1999.

**Karen H. Brown,**

*Deputy Director.*

[FR Doc. 99–24698 Filed 9–21–99; 8:45 am]

BILLING CODE 3510–13–M

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Correction to Notice of Public Hearing for the Draft Overseas Environmental Impact Statement/Draft Environmental Impact Statement (DOEIS/DEIS) for the Operational Employment of the Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Announcement of correction.

**SUMMARY:** The Department of the Navy published in the **Federal Register**, September 14, 1999 (Volume 64, Number 177) Notice of Public Hearing concerning the operational employment of the SURTASS LFA sonar. This announcement corrects the submission date for written comments.

**DATES:** The date for submission of written comments is not later than October 28, 1999.

**FOR FURTHER INFORMATION CONTACT:** Mr. Clayton H. Spikes, telephone (703) 465–8404.

**SUPPLEMENTARY INFORMATION:** The public hearing will be conducted in English. Requests for language interpreters or assistance with other special needs should be made to Mr. Clayton Spikes (703) 465–8404 at least one week prior to the meeting. The Navy will make every reasonable effort to accommodate these needs.

Dated: September 17, 1999.

**J.L. Roth,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 99–24702 Filed 9–21–99; 8:45 am]

BILLING CODE 3810–FF–P

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Availability of Government-Owned Invention for Licensing

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice.

**SUMMARY:** The invention U.S. Patent Number 5,752,713 entitled *Discriminate Reduction Data Processing* is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy.

**ADDRESSES:** Requests for copies of the patent cited should be directed to Naval Surface Warfare Center, Carderock Division, Code 0117, 9500 MacArthur Blvd, West Bethesda, MD 20817–5700.

**FOR FURTHER INFORMATION CONTACT:** Mr. Dick Bloomquist, Director Technology Transfer, Naval surface Warfare Center, Carderock Division, Code 0117, 9500 MacArthur Blvd., West Bethesda, MD 20817–5700, telephone (301) 227–4299.

Dated: September 13, 1999.

**J.L. Roth,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 99–24614 Filed 9–21–99; 8:45 am]

BILLING CODE 3810–FF–U

## DEPARTMENT OF THE DEFENSE

### Department of the Navy

### Notice of Intent To Grant Exclusive License: Applied Analysis Research Company

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice.

**SUMMARY:** The Department of the Navy hereby gives notice of its intent to grant to Applied Analysis Research Company a revocable, nonassignable, exclusive license to practice the government-owned inventions described in the following: U.S. Patent Number 5,619,432 entitled *Discriminate Reduction Data Processor* and U.S. Patent Number 5,652,713 entitled *Discriminate Reduction Data Processing.*

**DATES:** Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than November 22, 1999.

**ADDRESSES:** Written objections are to be filed with the Carderock Division, Naval Surface Warfare Center, Code 004, 9500 MacArthur Blvd., West Bethesda MD 20817–5700.

**FOR FURTHER INFORMATION CONTACT:** Mr. Dick Bloomquist, Director Technology Transfer, Carderock Division, Naval Surface Warfare Center, Code 0117, 9500 MacArthur Blvd., West Bethesda MD 20817–5700, telephone (301) 227–4299.

Dated: September 13, 1999.

**J.L. Roth,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 99–24613 Filed 9–21–99; 8:45 am]

BILLING CODE 3810–FF–U

## DELAWARE RIVER BASIN COMMISSION

### Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold an informal conference and public hearing on Thursday, September 30, 1999. The hearing will be part of the Commission's regular business meeting. Both the conference and business meeting are open to the public and will be held in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

The conference among the Commissioners and staff will begin at 9:30 a.m. and will include a presentation on New York City's Water Conservation Program; status reports on drought conditions and the codification of the existing Comprehensive Plan; discussions of fiscal year 2001 budget and health insurance issues; summaries of the Governors' Summit and the flood preparedness meeting; and a report on the Pittsburgh Joint ICWP and River Basin Commission meeting.

In addition to the subjects summarized below which are scheduled for public hearing at the 1:00 p.m. business meeting, the Commission will also address the following: Minutes of the August 18, 1999 business meeting; announcements; report on Basin hydrologic conditions; reports by the Executive Director and General Counsel; and public dialogue. The Commission will consider resolutions to: confirm the appointment of the Secretary to the Commission; make FY '99 budget adjustments; amend the cost of the barrier-free unisex bathroom facility at the headquarters building; establish a Watershed Council; and approve a cooperative agreement for the Schuylkill River Monitoring Program. The Commission will also review and possibly act on drought related emergency resolutions.

The subjects of the hearing will be as follows:

1. *Northeast Land Company D–89–10 CP RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 4.96 million gallons (mg)/30 days of water to the applicant's distribution system from Well Midlake #1. Commission approval on April 26, 1989 was extended to 10 years. The applicant requests that the total withdrawal from the well remain limited to 4.96 mg/30 days. The project is located in Kidder Township, Carbon County, Pennsylvania.

2. *Seabrook Brothers & Sons, Inc. D–98–44.* A ground water withdrawal project to supply up to 133.6 mg/30 days of water to the applicant's vegetable processing and packaging facility from existing Well Nos. 1, 2R and 4, and new Well No. 5. The project entails an increase of the existing total combined withdrawal limit from 117.5 mg/30 days to 133.6 mg/30 days. The project is located in Upper Deerfield Township, Cumberland County, New Jersey.

3. *Utilities, Inc. D–98–47 CP.* A project to replace the withdrawal of water from Well No. 1 which has become an unreliable source of supply, and to increase the total withdrawal from all wells from 8.25 mg/30 days to 10.65 mg/30 days. The applicant requests that the withdrawal from replacement Well No. 6 be limited to 2.4 mg/30 days. The project wells are located in Stroud Township and will continue to serve the applicant's Penn Estates residential community located in Stroud and Pocono Townships, all in Monroe County, Pennsylvania.

4. *Lower Providence Township Municipal Authority D–99–21 CP.* A ground water withdrawal project to supply a combined total of up to 2.27 mg/30 days of water to the applicant's golf course irrigation system from Well Nos. 1 and 2. The project is located in Lower Providence Township, Montgomery County in the Southeastern Pennsylvania Ground Water Protected Area.

5. *Pennsylvania-American Water Company D–99–29 CP.* A project to upgrade and expand the applicant's existing 0.567 million gallons per day (mgd) secondary treatment plant to 1.256 mgd to provide advanced secondary treatment. The project will continue to serve the Pocono Country Place development in Coolbaugh Township, Monroe County, Pennsylvania. Treated effluent will continue to discharge to East Branch Dresser Run, a tributary of Tobyhanna Creek in the Lehigh River watershed.

6. *Central Carbon Municipal Authority D–99–48 CP.* A project to construct a new 1.6 mgd oxidation ditch process sewage treatment plant to replace an existing failing overloaded 0.72 mgd plant. The new advanced secondary treatment plant is located approximately one-half mile downstream of the existing plant along the Lehigh River in Mahoning Township, Carbon County, Pennsylvania. The new facilities will serve portions of Franklin and Mahoning Townships, and Weissport and Lehighton Boroughs, all in Carbon

County. The project effluent will discharge to the Lehigh River.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact Thomas L. Brand at (609) 883–9500 ext. 221 concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Acting Secretary at (609) 883–9500 ext. 222 prior to the hearing.

Individuals in need of an accommodation as provided for in the Americans With Disabilities Act who would like to attend the hearing should contact the Acting Secretary at (609) 883–9500 ext. 222 or through the New Jersey Relay Service at 1–800–852–7899 (TTY) to discuss how the DRBC may accommodate your needs.

Dated: September 14, 1999.

**Anne M. Zamonski,**

*Acting Secretary.*

[FR Doc. 99–24637 Filed 9–21–99; 8:45 am]

BILLING CODE 6360–01–P

## DEPARTMENT OF ENERGY

### Oak Ridge Operations Office, Office of Transportation Technologies; Notice of Solicitation for Research and Development for Class 1–8 Truck Diesel Engine and Natural Gas Fueled Hybrid Propulsion Technologies: Energy Efficiency and Renewable Energy Technology for Transportation

**AGENCY:** Department of Energy.

**ACTION:** Notice of solicitation availability.

**SUMMARY:** The U.S. Department of Energy (DOE) announces its interest in receiving financial assistance applications for research and development (R&D) on Technologies for Class 1–8 truck Diesel engine and hybrid propulsion technologies. DOE's Office of Heavy Vehicle Technologies (OHVT) has set a goal of improving the efficiency and emissions performance of Class 1–8 trucks through the use of advanced Diesel engines, emission control technologies, and hybrid electric propulsion systems.

**DATES:** The complete solicitation document will be available on or about September 21, 1999. Preapplications are due October 4, 1999, and applications are due November 15, 1999.

**ADDRESSES:** The complete solicitation document will be available on the DOE Industry Interactive Procurement System (IIPS) Home Page at http://*doe-iips.pr.doe.gov/* under the heading ''IIPS Business Opportunities'', Solicitation Number DE–SC05–99OR22735. Any amendments to this solicitation will be posted at the IIPS site on the Internet. Please note that users will not be alerted when the solicitation is issued on the Internet or when amendments are posted on the Internet. Prospective applicants are therefore advised to check the above Internet address on a daily basis. The cooperative agreements are expected to be awarded on or about January 28, 2000.

**FOR FURTHER INFORMATION CONTACT:** Beth L. Holt, at (423) 576–0783, U.S. Department of Energy, P.O. Box 2001, Oak Ridge, Tennessee 37831–8759; by fax at (423) 241–2549; or by e-mail at *holtbl@oro.doe.gov*.

**SUPPLEMENTARY INFORMATION:** Topic (1) is Heavy Truck Engine Program. The goal is to develop high efficiency, low emission Diesel engine technologies for Class 7–8 trucks. Topic (2) is Heavy Hybrid Vehicles Program. The goal is to develop hybrid electric vehicle systems technologies utilizing reciprocating natural gas engines for Class 3–6 urban trucks and buses. Topic (3) is Clean Diesel Engine Component Improvement Program. The goal is to develop component and technology improvements and/or alterations for increased efficiency, reduced emissions, and decreased manufacturing costs of Class 1–8 Diesel engines. The primary fuel for programs 1 and 3 is the applicable (per Environmental Protection Agency) Diesel certification fuel specified for Federal Test Procedure emissions testing. The fuel grade may be appropriately revised throughout the duration of the three research efforts to be consistent with EPA regulations or proposed rules. The impact of fuel properties on efficiency and performance is the focus of a companion program in OHVT. (If appropriate, new fuels identified in that companion program may be introduced into one or more of the three R&D programs described in this solicitation.) For program 3, applicant teams must propose to include a hybrid propulsion system using a reciprocating engine operating on natural gas. Proposals may be submitted for one, two, or all three programs. Proposals must be submitted separately for each program. Under Topic 1, approximately 2–4 awards will be made, with periods of performance ranging from twenty-four to sixty months, with total estimated DOE funding of $50,000,000 to $70,000,000. Under Topic 2, there will be approximately 3–5 awards, with periods of performance ranging from forty-eight to sixty months, with total estimated DOE funding of $30,000,000 to $50,000,000. Under Topic 3, there will be approximately 3–5 awards, with periods of performance ranging from twenty-four to forty-eight months, with total estimated DOE funding of $5,000,000 to $10,000,000. Topics 1 and 2 require a minimum 50 percent cost share; Topic 3 requires a minimum 25 percent cost share. Awards are subject to the availability of funds and the solicitation will not obligate DOE to make any awards(s). Any non-profit or for-profit organization, university, or other institution of higher education, or non-federal agency or entity is eligible to apply. Federal laboratory participation is encouraged and will be subject to DOE approval. The solicitation will provide further guidance in this area. Awards resulting from this solicitation will be subject to the requirements of the Energy Policy Act which in general requires that the awardee be a United States-owned company (including certain non-profits) or that the foreign country in which the parent company is located meets certain conditions of reciprocity in the treatment of investments, access to research and development programs, and protection of intellectual property. All responsible sources, as indicated above, may submit a preapplication or application which shall be considered by the Government.

Issued in Oak Ridge, Tennessee on September 15, 1999.

**Peter D. Dayton,**

*Director, Procurement and Contracts Division, Oak Ridge Operations Office.*

[FR Doc. 99–24645 Filed 9–21–99; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Notice of Availability of Solicitation

**AGENCY:** Idaho Operations Office, Department of Energy.

**ACTION:** Notice of Availability of Solicitation Number DE–PS07–99ID13831—Steel Industries of the Future.

**SUMMARY:** The U.S. Department of Energy (DOE), Idaho Operations Office, is seeking applications for cost-shared research and development of technologies which will reduce energy consumption, enhance economic competitiveness, and reduce environmental impacts of the steel industry. The research is to address research priorities identified by the steel industry in the Steel Industry Technology Roadmap.

**DATES:** The deadline for receipt of applications is 3:00 p.m. MST November 12, 1999.

**ADDRESSES:** Applications should be submitted to: Procurement Services Division, U. S. Department of Energy, Idaho Operations Office, Attention: Carol Van Lente [DE–PS07–99ID13831], 850 Energy Drive, MS 1221, Idaho Falls, Idaho 83401–1563.

**FOR FURTHER INFORMATION CONTACT:** Carol Van Lente, Contract Specialist, at *vanlencl@id.doe.gov*.

**SUPPLEMENTARY INFORMATION:** The statutory authority for this program is the Federal Non-Nuclear Energy Research & Development Act of 1974 (Pub. L. 93–577). Approximately $5,000,000 to $6,000,000 in federal funds is expected to be available to fund the first year of selected research efforts. DOE anticipates making one to three cooperative agreement awards each with a duration of five years or less. Collaborations between industry, university, and National Laboratory participants are encouraged.

The issuance date of Solicitation No. DE–PS07–99ID13831 is on or about September 15, 1999. The solicitation is available in full text via the Internet at the following address: http://www.id.doe.gov/doeid/psd/proc-div.html. Technical and non-technical questions should be submitted in writing to Carol Van Lente by e-mail vanlencl@id.doe.gov, or facsimile at 208–526–5548 no later than October 6, 1999.

Issued in Idaho Falls on September 10, 1999.

**Michael Adams,**

*Deputy Director, Procurement Services Division.*

[FR Doc. 99–24249 Filed 9–21–99; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Office of Fossil Energy

**[Docket Nos. FE C&E 99–17, C&E 99–18 and C&E 99–19; Certification Notice—178]**

### Notice of Filings of Coal Capability of Cordova Energy Company LLC, Athens Generating Co., L.P. and Mantua Creek Generating Co., L.P. Powerplant and Industrial Fuel Use Act

**AGENCY:** Office of Fossil Energy, Department of Energy.

**ACTION:** Notice of filing.

**SUMMARY:** Cordova Energy Company LLC, Athens Generating Co., L.P. and Mantua Creek Generating Co., L.P. submitted coal capability self-certifications pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

**ADDRESSES:** Copies of self-certification filings are available for public inspection, upon request, in the Office of Coal & Power Im/Ex, Fossil Energy, Room 4G–039, FE–27, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Ellen Russell at (202) 586–9624.

**SUPPLEMENTARY INFORMATION:** Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date filed with the Department of Energy. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owners/operators of the proposed new baseload powerplants have filed a self-certification in acccordance with section 201(d).

*Owner:* Cordova Energy Company LLC (C&E 99–17).
*Operator:* CalEnergy Generation Operating Company.
*Location:* Cordova, IL.
*Plant Configuration:* Combined cycle.
*Capacity:* 537 megawatts.
*Fuel:* Natural gas.
*Purchasing Entities:* El Paso Power Services Company.
*In-Service Date:* June 1, 2001.

*Owner:* Athens Generating Company, L.P. (C&E 99–18).
*Operator:* Athens Generating Company, L.P.
*Location:* Athens, Greene County, New York.
*Plant Configuration:* Combined cycle.
*Capacity:* 1,080 megawatts.
*Fuel:* Natural gas.
*Purchasing Entities:* Wholesale power markets.
*In-Service Date:* First quarter of 2002.

*Owner:* Mantua Creek Generating Company, L.P. (C&E 99–19).
*Operator:* Mantua Creek Generating Company, L.P.
*Location:* West Deptford, New Jersey.
*Plant Configuration:* Combined cycle.
*Capacity:* 800 megawatts.
*Fuel:* Natural gas.
*Purchasing Entities:* Wholesale power market.
*In-Service Date:* Second quarter of 2002.

Issued in Washington, DC, September 16, 1999.

**Anthony J. Como,**

*Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.*

[FR Doc. 99–24644 Filed 9–21–99; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP99–618–000]**

### ANR Pipeline Company; Notice of Request Under Blanket Authorization

September 15, 1999.

Take notice that on September 10, 1999, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP99–618–000 a request pursuant to Sections 157.205 and 157.208 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.208) for authorization to construct and operate facilities in the Federal Waters, Offshore Louisiana to permit ANR to receive and transport gas from the system of Garden Banks Gas Pipeline, LLC (Garden Banks), under the blanket certificate issued in Docket No. CP82–553–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/onLine/htm (call 202–208–2222 for assistance).

ANR proposes to construct and operate approximately 8.2 miles of 16-inch pipeline extending from the terminus of Garden Banks' system in South Marsh Island (SMI) Block 76, to ANR's 20 lateral at SMI Block 61, along with a subsea tie-in at SMI Block 61 and two 10-inch orifice meters on the platform at SMI 76. ANR indicates that the facilities will accommodate up to 225,000 Mcf per day and will cost approximately $10,000,000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section

157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–24626 Filed 9–21–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP99–446–001]**

### CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 15, 1999.

Take notice that on September 9, 1999, CNG Transmission Corporation (CNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet, with an effective date of August 25, 1999:

Substitute Original Sheet No. 397

CNG states that the purpose of this filing is to comply with the August 25, 1999, letter order. Consistent with the order CNG states that it has deleted the fifth discount category and replaced ''reservation charge'' with ''maximum rate'' in the sixth discount category.

CNG states that copies of its letter of transmittal and enclosures are being served upon its customers and to interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–24623 Filed 9–21–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. MG99–26–000]**

### Dauphin Island Gathering Partners; Notice of Filing

September 14, 1999.

Take notice that on September 2, 1999, Dauphin Island Gathering Partners filed standards of conduct under Order Nos. 497 *et seq.*[1] Order Nos. 566 *et seq.*,[2] and Order No. 599.[3]

Any person desiring to be heard or to protest said failing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. 385.211 or 385.214). All such motions to intervene or protest should be filed on or before September 29, 1999. 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. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–24631 Filed 9–20–99; 8:45 am]

BILLING CODE 6717–01–M

[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. 1986–1990 ¶ 30,820 (1988); Order No. 497–A, *order on rehearing,* 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986–1990 ¶ 30,868 (1989); Order No. 497–B, *order extending sunset date,* 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. 1986–1990 ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date,* 57 FR 9 (January 2, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,934 (1991), *rehearing denied,* 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date,* 57 FR 58978 (December 14, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30.958 (December 4, 1992), Order No. 497–E, *order on rehearing and extending sunset date,* 59 FR 243 (January 4, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,987 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification,* 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date,* 59 FR 32884 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats. & Regs. 1991–1996 § 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing,* 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing,* 59 FR 65707, (December 21, 1994), 69 FERC ¶ 61,334 (December 14, 1994).

[3] Reporting Interstate Natural Gas Pipeline Marketing Affiliates on the Internet Order No. 599, 63 FR 43075 (August 12, 1998), FERC Stats. & Regs. 31,064 (1998).

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. PR95–18–001]**

### Duke Energy Intrastate Network, L.L.C; Notice of Filing

September 14, 1999.

Take notice that on May 3, 1999, Duke Energy Intrastate Network, L.L.C (DEIN) filed a notification of DEIN's election of rates under Section 311 of the Natural Gas Policy Act (NGPA), pursuant to Section 284.123(b)(1)(i)(A) of the Commission's Regulations. DEIN has included its Statement of Operating Conditions in the filing. DEIN has acquired a portion of Koch Midstream Services' transportation facilities in South Texas and will operate those facilities under Section 311(a)(2) of the NGPA.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission within twelve days of the date of this notice. The notification of election of rates and the Statement of Operating Conditions is on file with the Commission and is available for public inspection.

**Linwood A. Watson, Jr.**

*Acting Secretary.*

[FR Doc. 99–24629 Filed 9–21–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. MG99–24–000 and MG99–25–000]**

### K N Interstate Gas Transmission Co. and K N Wattenberg Transmission, L.L.C.; Notice of Filing

September 14, 1999.

Take notice that on August 24, 1999, K N Interstate Gas Transmission Co. (KNI) and K N Wattenberg Transmission, L.L.C. (KNW) filed revised standards of conduct under Order Nos. 497 *et seq.*,[1] Order Nos. 566 *et seq.*[2] and Order No. 599.[3]

KNI and KNW state that they served copies of the standards of conduct on all customers, interested parties and affected state commissioners.

Any person desiring to be heard or to protest said filings 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 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before September 29, 1999. 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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–24632 Filed 9–21–99; 8:45 am]

BILLING CODE 6717–01–M

[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats, & Regs. 1986–1990 ¶ 30,820 (1988); Order No. 497–A, *order on rehearing,* 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986–1990 ¶ 30,868 (1989); Order No. 497–B, *order extending sunset date,* 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. 1986–1990 ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date,* 57 FR 9 (January 2, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,934 (1991), *rehearing denied,* 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date,* 57 FR 58978 (December 14, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,958 (December 4, 1992); Order No. 497–E, *order on rehearing and extending sunset date,* 59 FR 243 (January 4, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,958 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification,* 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date,* 59 FR 32884 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing,* 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing,* 59 FR 65707 (December 21, 1994), 69 FERC ¶61,334 (December 14, 1994).

[3] Reporting Interstate Natural Gas Pipeline Marketing Affiliates on the Internet Order No. 599, 63 FR 43075 (August 12, 1998), FERC Stats. & Regs. ¶ 31,064 (1998).

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 137–002]**

### Pacific Gas & Electric Company; Notice of Meeting

September 16, 1999.

Take notice that there will be meetings of the Ecological Resources and Recreation subgroups of the Mokelumne Relicensing Collaborative Group on Wednesday, September 22, and Thursday, September 23, 1999, from 9:00 a.m. to 4:00 p.m. at the PG&E offices, 2740 Gateway Oaks Drive, in Sacramento, California. Expected participants need to give their names to David Moller (PG&E) at (415) 973–4696 so that they can get through security.

For further information, please contact Diana Shannon at (202) 208–7774.

**David P. Boergers,**

*Secretary.*

[FR Doc. 99–24620 Filed 9–21–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP99–615–000]**

### Petal Gas Storage Company; Notice of Application

September 16, 1999.

Take notice that on September 8, 1999, Petal Gas Storage Company (Petal), 229 Milam Street, Shreveport, Louisiana 71101, filed an application pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations to increase the storage capacity of its previously certificated underground, salt dome natural gas storage caverns in Forrest County, Mississippi. Specifically, Petal proposes to increase the working gas capacity of each of its two salt dome natural gas storage caverns from 3.2 Bcf to 5.0 Bcf all as more fully set forth in the application which is on file with the Commission and open to public inspection. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

Petal states that it proposes to increase the working gas capacity of Cavern 6 and Cavern 7 which were previously certificated by the Commission in Dockets CP93–69–000 and CP99–25–000. Petal states that Cavern 7 is currently under development while Cavern 6 is in-service and providing storage service. In the instant application Petal proposes to continue leaching Cavern 7 to expand the working gas capacity from the currently certificated 3.2 Bcf to a capacity of 5 Bcf. Petal states that once Cavern 7 has been developed to a working gas capacity of 5 Bcf, the cavern will be dewatered and the gas currently stored in Cavern 6 will be transferred to Cavern 7. Petal says that after all the stored natural gas has been transferred to Cavern 7, Cavern 6 will be expanded to provide capacity for 5 Bcf of working gas. In this way, existing service would not be interrupted.

Petal proposes to charge market based rates for service from the expanded caverns and requests waivers of various Commission regulations related to rate design, costs, revenues, expenses and income, and depreciation and depletion.

Any questions regarding this application should be directed to David L. Hayden, Petal Gas Storage Company, 229 Milam Street, Shreveport, Louisiana 71101 at (318) 677–5512.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 7, 1999, file with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the NGA (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 in any proceeding must file a motion to intervene in accordance with the Commission's rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for

court review of any such order. However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Section 7 of the NGA 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 the proposal 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 provide for, unless otherwise advised, it will be unnecessary for Petal to appear or to be represented at the hearing.

**David P. Boergers,**

*Secretary.*

[FR Doc. 99–24621 Filed 9–21–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP99–503–000]**

### Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 15, 1999.

Take notice that on September 10, 1999, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Revised Sheet No. 37A, with an effective date of October 11, 1999.

Transwestern states that the purpose of the filing is to modify Rate Schedule PNG of its Tariff to provide Transwestern the ability to contract for services on Pacific Gas & Electric (PG&E) Market Center for purposes of providing Park 'N Ride service on Transwestern.

Transwestern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 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 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–24622 Filed 9–21–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP99–462–001]**

### U–T Offshore System; Notice of Tariff Sheet Filing

September 14, 1999.

Take notice that on September 2, 1999, U–T Offshore System (U–TOS), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective August 1, 1999:

Sub Twelfth Revised Sheet No. 73
Sub Seventh Revised Sheet No. 73A
Sub Sixth Revised Sheet No. 73B

Such tariff sheets are being submitted to comply with the Office of Pipeline Regulation's August 26, 1999, Letter Order that accepted UTOS' tariff filing in compliance with Commission's Order No. 587–K in Docket No. RM96–1–011.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–24627 Filed 9–21–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP95–136–013]**

### Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

September 14, 1999.

Take notice that on September 9, 1999, Williams Gas Pipelines Central, Inc. (Williams), tendered for filing to become a part of its FERC Gas Tariff, Original Volume No. 1 the following tariff sheets to be effective November 1, 1999:

Tenth Revised Sheet No. 6
Thirteenth Revised Sheet No. 6A

Williams states that pursuant to Commission order issued August 30, 1999 and the Stipulation and Agreement filed June 14, 1999 in Docket No. RP95–136–012, Williams is filing actual tariff sheets to be effective November 1, 1999. The rates included on such tariff sheets reflect a prospective annual cost of service reduction of approximately $2.0 million.

Williams states that a copy of its filing was served on all parties on the official service list in this proceeding and on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–24628 Filed 9–21–99; 8:45 am]

**BILLING CODE 6717–01–M**

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EG99–200–000, et al.]**

## Energy Alternatives, Inc., LLC, et al.; Electric Rate and Corporate Regulation Filings

September 13, 1999.

Take notice that the following filings have been made with the Commission:

### 1. Energy Alternatives, Inc.

[Docket No. EG99–200–000]

Take notice that on September 10, 1999, Energy Alternatives, Inc. (Energy Alternatives) filed with the Federal Energy Regulatory Commission an amended application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Energy Alternatives, a Minnesota corporation, is a wholly-owned subsidiary of Midwest Energy Services, Inc., a Minnesota corporation, which is a wholly-owned subsidiary of Dakota Electric Association, a Minnesota cooperative corporation, which owns and operates an electric distribution system.

Energy Alternatives will own and operate generating facilities with a nominal capacity of 20 MW located in distribution substations near the cities of Lakeville, Miesville, and Hastings, Minnesota and in the townships of Byllesby and Castle Rock in Dakota County, Minnesota, consisting of ten 2 MW Caterpillar diesel reciprocating engine generator sets, five 480 volt/12,470 volt step up transformers, and associated circuit breakers. The facilities will be interconnected with the distribution system of Dakota Electric Association.

*Comment date:* October 4, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy.

### 2. CMS Marketing, Services & Trading Company

[Docket No. ER96–2350–019]

Take notice that on September 7, 1999, CMS Marketing, Services and Trading Company (CMS MST), tendered for filing an updated market power analysis in accordance with the order issued by the Federal Energy Regulatory Commission dated September 6, 1996 in Docket No. ER96–2350–000.

*Comment date:* September 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

### 3. Murphy Oil USA, Inc.

[Docket No. ER97–610–009]

Take notice that on September 1, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

### 4. Avista Corporation Avista Energy, Inc. Spokane Energy, LLC

[Docket Nos. ER99–1435–001, ER96–2408–015 and ER98–4336–004

Take notice that on September 7, 1999, Avista Corporation and its subsidiaries listed as Avista Energy, Inc., and Spokane Energy, LLC collectively tendered for filing an updated market analysis as required by the Commission's orders approving market based rates.

*Comment date:* September 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

### 5. Virginia Electric and Power Company

[Docket No. ER99–1886–000]

Take notice that on September 8, 1999, Virginia Electric and Power Company (Virginia Power) tendered for filing pursuant to Section 205 of the Federal Power Act, 16 U.S.C. Section 824d, an amendment to its February 22, 1999 and April 20, 1999 filings in the above referenced docket number. Virginia Power's filings pertain to a Service Agreement under the Company's Open Access Transmission Tariff with The Wholesale Power Group for Long Term Firm Point-to-Point Transmission Service.

Copies of this filing were served upon The Wholesale Power Group, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

*Comment date:* September 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

### 6. California Independent System Operator Corporation

[Docket No. ER99–1971–004]

Take notice that on September 8, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Notice of Implementation which specifies that the software required to implement the portions of Amendment No. 14 to the ISO Tariff relating to Inter-Scheduling Coordinator Trades of Ancillary Services will be in place for Ancillary Service bids submitted in the Day-Ahead Market on Wednesday, September 15, 1999 for Trading Day Thursday, September 16, 1999.

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

*Comment date:* September 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

### 7. Ameren Services Company

[Docket Nos. ER99–3972–000 and ER99–4047–000]

Take notice that on September 7, 1999, Ameren Services Company (ASC), the transmission provider, tendered for filing changes to its Transmission System Interconnection Agreements between ASC and Trigen-St. Louis Energy Corporation and Union Electric Development Corporation. ASC asserts

that the purpose of the changes are to correct minor errors in the Agreements.

*Comment date:* September 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

**8. Arizona Public Service Company**

[Docket No. ER99–4124–000]

Take notice that on August 19, 1999, Arizona Public Service Company (APS), tendered for filing an application for an order accepting its revised Market Rate Tariff and approving the Code of Conduct governing APS' relationship with its affiliate.

Copies of this filing have been served upon customers taking service under APS' Market Rate Tariff and the Arizona Corporation Commission.

*Comment date:* September 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

**9. Tampa Electric Company**

[Docket No. ER99–4211–000]

Take notice that on September 7, 1999, Tampa Electric Company (Tampa Electric) tendered for filing an executed service agreement with the Orlando Utilities Commission (OUC) under Tampa Electric's market-based sales tariff. The executed service agreement replaces the unexecuted service agreement with OUC that Tampa Electric filed in this docket on August 24, 1999.

Tampa Electric renews its request that the service agreement be made effective on July 25, 1999.

Copies of the filing have been served on OUC and the Florida Public Service Commission.

*Comment date:* September 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

**10. Fitchburg Gas and Electric Light Company**

[Docket No. ER99–4369–000]

Take notice that on September 3, 1999, Fitchburg Gas and Electric Light Company (Fitchburg), tendered for filing a service agreement between Fitchburg and Reliant Energy Services, Inc., for service under Fitchburg's Market-Based Power Sales Tariff. This Tariff was accepted for filing by the Commission on September 25, 1997, in Docket No. ER97–2463–000.

Fitchburg requests waiver of the 30-day period requirement and requests an effective date of June 1, 1999 for the service agreement.

*Comment date:* September 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

**11. Unitil Power Corp.**

[Docket No. ER99–4370–000]

Take notice that on September 3, 1999, Unitil Power Corp. (Unitil), tendered for filing a service agreement between Unitil and Reliant Energy Services, Inc. (Reliant), for service under Unitil's Market-Based Power Sales Tariff. This Tariff was accepted for filing by the Commission on September 25, 1997, in Docket No. ER97–2460–000.

Unitil requests a waiver of the 30-day filing period and requests an effective date of June 1, 1999, for the service agreement.

*Comment date*: September 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

**12. PJM Interconnection, L.L.C.**

[Docket No. ER99–4371–000]

Take notice that on September 3, 1999, PJM Interconnection, L.L.C. (PJM), tendered for filing amendments to the PJM Open Access Transmission Tariff (PJM Tariff) and the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (Operating Agreement) to address (1) compensation for generators that PJM requests to reduce output in emergencies, which will better enable PJM to manage voltage or other problems that it may experience during peak conditions; (2) modification of the determination of the hour at which annual zonal peaks occur for billing purposes in order properly to reflect curtailed loads; and (3) clarification of PJM's borrowing authority.

PJM requests a waiver of the Commission's 60 day notice requirement and an effective date of September 4, 1999, for the amendment addressing compensation for generators, and an effective date of November 3, 1999, which is sixty days after the date of this filing, for the other amendments.

Copies of this filing were served upon all PJM Members and the state electric utility regulatory commissions in the PJM Control Area.

*Comment date*: September 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

**13. Virginia Electric and Power Company**

[Docket No. ER99–4372–000]

Take notice that on September 3, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing the following:

1. Service Agreement for Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to TXU Energy Trading Company.

2. Service Agreement for Non-Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to TXU Energy Trading Company.

The foregoing Service Agreements are tendered for filing under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreements, Virginia Power will provide point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of September 3, 1999, the date of filing of the Service Agreements.

Copies of the filing were served upon TXU Energy Trading Company, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

*Comment date*: September 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

**14. Central Illinois Public Service Company**

[Docket No. ER99–4373–000]

Take notice that on September 3, 1999, Central Illinois Public Service Company (CIPS), tendered for filing the Wholesale Voluntary Curtailment Rider to the Service Agreement for Full Requirements Service between CIPS and Mt. Carmel Public Utility Company (Mt. Carmel). CIPS states that the Rider will allow Mt. Carmel and its retail customers to participate in a voluntary curtailment program similar to that applicable to its retail electric service customers.

CIPS has proposed to make the Rider effective on September 9, 1999.

*Comment date*: September 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

**15. UtiliCorp United Inc.**

[Docket No. ER99–4374–000]

Take notice that on September 3, 1999, UtiliCorp United, Inc. (UtiliCorp), tendered for filing service agreements with Basin Electric Power Cooperative for service under its Non-Firm Point-to-Point open access service tariff for its operating divisions, Missouri Public Service and WestPlains Energy-Kansas.

*Comment date*: September 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

**16. UtiliCorp United Inc.**

[Docket No. ER99–4375–000]

Take notice that on September 3, 1999, UtiliCorp United Inc. (UtiliCorp), tendered for filing service agreements with Basin Electric Power Cooperative

for service under its short-term firm point-to-point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

*Comment date*: September 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

**17. Commonwealth Edison Company**

[Docket No. ER99–4376–000]

Take notice that on September 3, 1999, Commonwealth Edison Company (ComEd), tendered for filing a Non-Firm Transmission Service Agreement with Edison Mission Marketing & Trading, Inc., (EMMT) and a Firm Transmission Service Agreement with Wisconsin Electric Power Company (WEPCO) under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of September 3, 1999, and accordingly, seeks waiver of the Commission's notice requirements.

Copies of this filing were served on EMMT and WEPCO.

*Comment date*: September 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

**18. South Carolina Electric & Gas Company**

[Docket No. ER99–4377–000]

Take notice that on September 3, 1999, South Carolina Electric & Gas Company (SCE&G), tendered for filing a service agreement establishing New Horizon Electric Cooperative as a customer under the terms of SCE&G's Negotiated Market Sales Tariff.

SCE&G requests an effective date of one day subsequent to the date of filing. Accordingly, SCE&G requests waiver of the Commission's notice requirements.

Copies of this filing were served upon New Horizon Electric Cooperative and the South Carolina Public Service Commission.

*Comment date*: September 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

**19. Central Illinois Light Company**

[Docket No. ER99–4378–000]

Take notice that on September 3, 1999, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, tendered for filing with the Commission a substitute Open Access Transmission Tariff to facilitate the retail access program initiated by the Illinois deregulation legislation.

CILCO requested an effective date of October 1, 1999.

Copies of the filing were served on all affected customers, and the Illinois Commerce Commission.

*Comment date*: September 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

**20. Virginia Electric and Power Company**

[Docket No. ER99–4382–000]

Take notice that on September 3, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing an assignment letter indicating that Phibro Power LLC (Phibro Power) will replace Phibro Inc. (PI) as the wholesale power customer in a Service Agreement dated October 18, 1995 and originally filed under the Company's Power Sales Tariff to Eligible Purchasers dated May 27, 1994. The original Service Agreement was approved by the FERC in Docket No. ER96–248–000 in a Letter Order dated December 8, 1995.

Virginia Power requests an effective date of September 3, 1999, the date of filing of the assignment letter.

Copies of this filing were served upon Phibro Power, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

*Comment date*: September 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

**21. Southern Company Services, Inc.**

[Docket No. ER99–4384–000]

Take notice that on September 8, 1999, Southern Company Services, Inc. filed with the Commission an initial Generator Backup Service Tariff on its own behalf and as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (the Southern Companies).

Southern Companies state that pursuant to the tariff, they will provide backup service for independent generators interconnecting with the transmission system of Southern Companies to provide for differences between scheduled generation and actual generation at a generator's facility.

Southern Companies have requested that the initial tariff be made effective as of September 7, 1999.

*Comment date*: September 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

**22. Maine Public Service Company**

[Docket No. ER99–4385–000]

Take notice that on September 7, 1999, Maine Public Service Company (Maine Public), tendered for filing an executed Service Agreement for short-term firm point-to-point transmission service under Maine Public's open access transmission tariff with Entergy Power Marketing Corp.

*Comment date*: September 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

**23. Maine Public Service Company**

[Docket No. ER99–4386–000]

Take notice that on September 7, 1999, Maine Public Service Company (Maine Public), tendered for filing an executed Service Agreement for non-firm point-to-point transmission service under Maine Public's open access transmission tariff with Entergy Power Marketing Corp.

*Comment date*: September 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

**24. Southern Indiana Gas and Electric Company**

[Docket No. ER99–4387–000]

Take notice that on September 7, 1999, Southern Indiana Gas and Electric Company (SIGECO) tendered for filing service agreements for firm and non-firm transmission service under Part II of its Transmission Services Tariff with Consumers Energy Company.

Copies of the filing were served upon each of the parties to the service agreement.

*Comment date*: September 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

**25. Southern Indiana Gas and Electric Company**

[Docket No. ER99–4388–000]

Take notice that on September 7, 1999, Southern Indiana Gas and Electric Company (SIGECO) tendered for filing the following agreements concerning the provision of electric service to Cargill-Alliant LLC, Duquesne Light Company, OGE Energy Resources, Inc., and Transalta Energy Marketing (U.S.) Inc., as umbrella service agreements under its market-based Wholesale Power Sales Tariff:

1. Wholesale Energy Service agreement, dated July 29, 1999, by and between Southern Indiana Gas and Electric Company and Cargill-Alliant LLC.

2. Wholesale Energy Service Agreement dated July 28, 1999, by and between Southern Indiana Gas and Electric Company and Duquesne Light Company.

3. Wholesale Energy Service Agreement, dated July 27, 1999, by and between Southern Indiana Gas and Electric Company and OGE Energy Resources, Inc.

4. Wholesale Energy Service Agreement, dated July 29, 1999, by and

between Southern Indiana Gas and Electric Company and Transalta Energy Marketing (U.S.) Inc.

*Comment date*: September 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

**26. Georgia Power Company**

[Docket No. ER99–4389–000]

Take notice that on September 7, 1999, Georgia Power Company tendered for filing a Memorandum of Understanding Regarding Application of the New Southern Companies Open Access Transmission Tariff Rates to the Revised and Restated Coordination Services Agreement by and among itself and Oglethorpe Power Corporation and Georgia System Operations Corporation.

*Comment date*: September 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

**27. Yadkin, Inc.**

[Docket No. ER99–4391–000]

Take notice that on September 8, 1999, Yadkin, Inc. (Yadkin) tendered for filing an umbrella service agreement for Firm Point-to-Point Transmission Service between Yadkin and itself under Yadkin's FERC Electric Tariff Original Volume No. 1—Open Access Transmission Tariff (OATT).

The service agreement provides for transmission service under Yadkin's OATT and is proposed to be effective June 27, 1999.

*Comment date*: September 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

**28. Southwest Power Pool, Inc.**

[Docket No. ER99–4392–000]

Take notice that on September 7, 1999, Southwest Power Pool, Inc. (SPP) tendered for filing changes to its open access transmission tariff (Tariff) intended to add network services, change the method for calculating the SPP's administrative charge, and make other changes to the Tariff. SPP also submitted a Membership Agreement intended to better define the rights and responsibilities of SPP and its members, and establish a disinterested Board of Directors for the SPP.

SPP requests an effective date of February 1, 2000 for these changes and January 1, 2000 for the Membership Agreement changes.

Copies of this filing were served upon members and customers of SPP, and on all affected state commissions.

*Comment date*: September 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

**29. Pacific Gas and Electric Company**

[Docket No. ER99–4393–000]

Take notice that on September 8, 1999, Pacific Gas and Electric Company (PG&E) tendered for filing proposed changes in rates for Sacramento Municipal Utility District (SMUD), to be effective July 1, 1999, developed using a rate adjustment mechanism previously agreed by PG&E and SMUD for PG&E Rate Schedule FERC Nos. 88, 91, 136 and 138.

Copies of this filing have been served upon SMUD and the California Public Utilities Commission.

*Comment date*: September 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

**30. Niagara Mohawk Power Corporation**

[Docket No. ER99–4395–000]

Take notice that on September 8, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between Niagara Mohawk and PP & L Energy Plus Co. This Transmission Service Agreement specifies that PP & L Energy Plus Co. has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow Niagara Mohawk and PP & L Energy Plus Co. to enter into separately scheduled transactions under which Niagara Mohawk will provide non-firm transmission service for PP & L Energy Plus Co. as the parties may mutually agree.

Niagara Mohawk requests an effective date of August 19, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon the New York State Public Service Commission and PP & L Energy Plus Co..

*Comment date*: September 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

**31. Niagara Mohawk Power Corporation**

[Docket No. ER99–4396–000]

Take notice that on September 8, 1999, Niagara Mohawk (Niagara Mohawk) tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between Niagara Mohawk and PP & L Energy Plus Co. This Transmission Service Agreement specifies that PP & L Energy Plus Co. has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow Niagara Mohawk and PP & L Energy Plus Co. to enter into separately scheduled transactions under which Niagara Mohawk will provide firm transmission service for PP & L Energy Plus Co. as the parties may mutually agree.

Niagara Mohawk requests an effective date of August 19, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon the New York State Public Service Commission and PP & L Energy Plus Co..

*Comment date*: September 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

**32. Illinois Power Company**

[Docket No. ER99–4397–000]

Take notice that on September 8, 1999, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which Tractebel Energy Marketing, Inc. will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of September 1, 1999.

*Comment date*: September 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

**33. Reliant Energy Etiwanda, LLC**

[Docket No. ER99–4398–000]

Take notice that on September 8, 1999, Reliant Energy Etiwanda, LLC (Reliant Etiwanda) tendered for filing an ''Addendum to Must-Run Service Agreement'' between Reliant Etiwanda and the California Independent System Operator Corporation (ISO), made as of June 1, 1999.

This addendum supplements Reliant Etiwanda's Must-Run Agreement, dated June 1, 1999, which was submitted for filing on April 13, 1999 in connection with the Offer of Settlement filed in Docket Nos. ER98–441–000, et al., on April 2, 1999.

Reliant Etiwanda has requested a waiver of the prior notice requirement, to permit the addendum to become effective as of June 1, 1999.

*Comment date*: September 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

**34. Tampa Electric Company**

[Docket No. ER99–4399–000]

Take notice that on September 8, 1999, Tampa Electric Company (Tampa Electric) tendered for filing a service agreement with Florida Power & Light Company (FPL) under Tampa Electric's market-based sales tariff.

Tampa Electric proposes that the service agreement be made effective on August 10, 1999.

Copies of the filing have been served on FPL and the Florida Public Service Commission.

*Comment date*: September 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

**35. Southern Company Services, Inc.**

[Docket No. ER99–4400–000]

Take notice that on September 8, 1999, Southern Company Services, Inc. (SCS), 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 Company), filed three unexecuted service agreements for long-term firm point-to-point transmission service between SCS, as agent for Southern Company, and Carolina Power & Light Company under the Open Access Transmission Tariff of Southern Company (FERC Electric Tariff, Original Volume No. 5). One such agreement provides for service from June 1, 1999 through May 31, 2000, and the other two agreements provide for service from June 1, 2000 through May 31, 2001.

*Comment date*: September 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest such 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 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 these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 99–24618 Filed 9–21–99; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER99–4401–000, et al.]**

## Hardee Power Partners Limited, et al.; Electric Rate and Corporate Regulation Filings

September 15, 1999.

Take notice that the following filings have been made with the Commission:

**1. Hardee Power Partners Limited**

[Docket No. ER99–4401–000]

Take notice that on September 9, 1999, Hardee Power Partners Limited (HPP), tendered for filing a service agreement with Florida Power & Light Company (FPL) under HPP's market-based sales tariff.

HPP proposes that the service agreement be made effective on August 10, 1999.

Copies of the filing have been served on FPL and the Florida Public Service Commission.

*Comment date:* September 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

**2. Ameren Services Company**

[Docket No. ER99–4402–000]

Take notice that on September 9, 1999, Ameren Services Company (ASC), tendered for filing Service Agreements for Non-Firm Point-to-Point Transmission Services between ASC and Aquila Energy Marketing Corporation and TXU Energy Trading Company (the parties). ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to the parties pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

*Comment date:* September 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

**3. Ameren Services Company**

[Docket No. ER99–4403–000]

Take notice that on September 9, 1999, Ameren Services Company (ASC), tendered for filing Service Agreements for Firm Point-to-Point Transmission Services between ASC and Aquila Energy Marketing Corporation and TXU Energy Trading Company (the parties). ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to the parties pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

*Comment date:* September 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

**4. Virginia Electric and Power Company**

[Docket No. ER99–4404–000]

Take notice that on September 9, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing the following:

1. Service Agreement for Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to Northern States Power Company.

2. Service Agreement for Non-Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to Northern States Power Company.

The foregoing Service Agreements are tendered for filing under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreements, Virginia Power will provide point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of September 9, 1999, the date of filing of the Service Agreements.

Copies of the filing were served upon Northern States Power Company, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

*Comment date:* September 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

**5. Virginia Electric and Power Company**

[Docket No. ER99–4405–000]

Take notice that on September 9, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service with Commonwealth Edison Company under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide firm point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of September 9, 1999, the date of filing the Service Agreement.

Copies of the filing were served upon Commonwealth Edison Company, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

*Comment date:* September 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

**6. Puget Sound Energy, Inc.**

[Docket No. ER99–4406–000]

Take notice that on September 9, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Public Service Company of New Mexico (PNM).

A copy of the filing was served upon PNM.

*Comment date:* September 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

**7. Puget Sound Energy, Inc.**

[Docket No. ER99–4407–000]

Take notice that on September 9, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Public Utility District No. 1 of Snohomish County (Snohomish).

A copy of the filing was served upon Snohomish.

*Comment date:* September 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

**8. Puget Sound Energy, Inc.**

[Docket No. ER99–4408–000]

Take notice that on September 9, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Powerex.

A copy of the filing was served upon Powerex.

*Comment date:* September 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

**9. Puget Sound Energy, Inc.**

[Docket No. ER99–4409–000]

Take notice that on September 9, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Public Utility District No. 1 of Chelan County (Chelan).

A copy of the filing was served upon Chelan.

*Comment date:* September 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

**10. Puget Sound Energy, Inc.**

[Docket No. ER99–4410–000]

Take notice that on September 9, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with PG&E Power Services Company (PG&E Power).

A copy of the filing was served upon PG&E Power.

*Comment date:* September 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

**11. Puget Sound Energy, Inc.**

[Docket No. ER99–4411–000]

Take notice that on September 9, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Public Utility District No. 2 of Grant County (Grant).

A copy of the filing was served upon Grant.

*Comment date:* September 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

**12. Puget Sound Energy, Inc.**

[Docket No. ER99–4412–000]

Take notice that on September 9, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Public Utility District No. 1 of Grays Harbor County (Grays Harbor).

A copy of the filing was served upon Grays Harbor.

*Comment date:* September 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

**13. Puget Sound Energy, Inc.**

[Docket No. ER99–4413–000]

Take notice that on September 9, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Portland General Electric Company (PGE).

A copy of the filing was served upon PGE.

*Comment date:* September 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

**14. Puget Sound Energy, Inc.**

[Docket No. ER99–4414–000]

Take notice that on September 9, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Public Service Company of Colorado (PSCO).

A copy of the filing was served upon PSCO.

*Comment date:* September 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

**15. Illinois Power Company**

[Docket No. ER99–4415–000]

Take notice that on September 9, 1999, Illinois Power Company, tendered for filing revisions to the rates and charges contained in its Open Access Transmission Tariff (OATT).

Copies of the filing were served upon Illinois Power's OATT customers, and the Illinois Commerce Commission.

*Comment date:* September 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

**16. New Century Services, Inc.**

[Docket No. ER99–4420–000]

Take notice that on September 9, 1999, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing an amendment to the Service Agreement under their Joint Open Access Transmission Service Tariff for Long-Term Firm Point-to-Point Transmission Service between the Companies and Southwestern Public Service Company—Wholesale Merchant Function.

*Comment date:* September 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

**17. Baltimore Gas and Electric Company**

[Docket No. ER99–4421–000]

Take notice that on September 9, 1999, Baltimore Gas and Electric Company (BGE), tendered for filing a Service Agreement with PP&L, under BGE's FERC Electric Tariff Original Volume No. 3 (Tariff). Under the tendered Service Agreement, BGE agrees to provide services pursuant to the provisions of the Tariff.

BGE requests an effective date of August 10, 1999, for the Service Agreements.

BGE states that a copy of the filing was served upon the Public Service Commission of Maryland.

*Comment date:* September 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest such 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 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 these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 99–24619 Filed 9–21–99; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

September 15, 1999.

a. *Type of Application:* Major License.

b. *Project No.:* P–2631–007.

c. *Date Filed:* August 31, 1999.

d. *Applicant:* International Paper Company.

e. *Name of Project:* Woronoco Hydroelectric Project.

f. *Location:* On the Westfield River in the Town of Russell, Hampden County, Massachusetts.

g. *File Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:*

Ted Lewellyn, P.E., International Paper Company, Paper Mill Road, Millers Falls, MA 01349, (413) 659–2337

Michael K. Chapman, Esq., International Paper Company, 6400 Poplar Avenue, Memphis, TN 38197, (901) 763–5888

Jon Christensen, Kleinschmidt Associates, 75 Main Street, Pittsfield, ME 04967, (207) 487–3328

i. *FERC Contact:* Allan Creamer (202) 219–0365.

j. *Comment Date:* 60 days from the filing date shown in paragraph (c).

k. *Description of Project:*

The proposed run-of-river project would consist of the following features: (1) two non-contiguous dam sections, with lengths of about 307 feet (North dam) and 351 feet (South dam), and a crest elevation of 229 feet NGVD; (2) a 655-foot-long earthen dike with a sheet steel core; (3) a 40-foot-wide by 15-foot-high intake structure, having trashracks with 1.25-inch clear bar spacing; (4) a 550-foot-long penstock; (5) a power house containing three Francis turbines and generating units, having an installed capacity of 2,700 kW; (6) a 43-acre impoundment that extends approximately 1.2 miles upstream; (7) an interim downstream fish passage facility; and (8) appurtenant facilities. The applicant estimates that the total average annual generation would be approximately 7,700 MWh.

l. With this notice, we are initiating consultation with the *MASSACHUSETTS STATE HISTORIC PRESERVATION OFFICER (SHPO),* as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 C.F.R., at § 800.4.

m. Pursuant to Section 4.32(b)(7) of 18 C.F.R. of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–24624 Filed 9–21–99; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application Tendered for Filing with the Commission and Soliciting Additional Study Requests

September 15, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No:* 2576–023 and 2597–018.

c. *Date filed:* August 31, 1999.

d. *Applicant:* Connecticut Light and Power Company.

e. *Name of project:* Housatonic River Project.

f. *Location:* The Falls Village, Bulls Bridge, Shepaug, Rocky River and Stephenson developments are located on the Housatonic River, 76.2 miles, 52.9 miles, 44.1 miles, 30.0 miles and 19.3 miles, respectively, from its mouth. The project is in the western portion of Connecticut in the counties of Fairfield, New Haven and Litchfield. Approximately 74 acres of federal land are within project boundaries.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)–825(r).

h. *Applicant Contact:* William J. Nadeau, Vice President, The Connecticut Light and Power Company, Post Office Box 270, Hartford, Connecticut 06141–0270, (860) 665–5315.

i. *FERC Contact:* Any questions on this notice should be addressed to James T Griffin, E-mail address *james.griffin@ferc.fed.us*, or telephone (202) 219–2799.

j. *Deadline for filing additional study requests:* November 1, 1999, all documents (original and eight copies) should be filed with: David P. Boegers, Secretary, Federal Energy Commission, 888 First Street, N.E., Washington, D.C. 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application is not ready for environmental analysis at this time.

l. *Description of the Project:* The combined projects consist of the following five developments.

1. The Falls Village Development consists of the following existing facilities: (1) a 300-foot-long, 14-foot-high concrete gravity dam with two spillways having a combined overflow length of approximately 280 feet, and a crest at elevation 631.5 feet National Geodetic Vertical Datum (NGVD); (2) an impoundment 3.8 miles long containing 1,135 acre-feet when at elevation 633.2 feet NGVD; (3) a dam-integral powerhouse with a total installed capacity of 9.0 megawatts (MW) producing approximately 39,894 megawatthours (MWh) annually; and (4)

a switchyard connected to the project via a 69 kilovolt (kV) interconnected transmission line.

2. The Bulls Bridge Development consists of the following existing facilities: (1) a 203-foot-long, 24-foot-high stone and concrete gravity dam with a dam crest of 354 feet NGVD; (2) a two mile long power canal; (3) a 156-foot-long, 17-foot-high rockfill gravity weir dam; (4) a 2.25 mile-long reservoir with an 1,800 acre-feet storage capacity, a surface area, which, at a normal elevation of 354 feet NGVD, occupies approximately 120 acres; (5) a powerhouse with a capacity of 7.2 MW, producing approximately 41,000 MWh annually; and (6) a 69kV line connecting the development to the Rocky River development.

3. The Rocky River Pumped Storage Development consists of the following existing facilities: (1) a 952-foot-long earth-filled core wall dam, a 2,500-foot-long earthen canal dike that forms the north bank of the power canal to the intake structure, six dikes, a dam crest elevation averaging 440.1 feet NGVD, and an intake canal of 3,190 feet in length; (2) a seven mile-long, Candlewood Lake reservoir with a 5,610 acre impoundment at 428.1 feet NGVD; (3) a powerhouse with a rated 31,000 kilowatts (kW) capacity averaging 14,238, 100 kilowatthours (kWh) per year; and (4) a development connection to the applicant's transmission system via the Rocky River-Carmel Hill 1813 line, the Rocky River-Bull Bridge 1555 line and the Rocky River-West Brookfield 1618 line.

4. The Shepaug Development consists of the following existing facilities: (1) a 1,412-foot, bedrock-anchored, concrete gravity dam having a crest elevation of 205.3 feet NGVD; (2) an impoundment, at maximum operational elevation level of 198.3 feet NGVD, occupying 1870 acres; (3) a powerhouse with a rated capacity of 37,200 kWh, with a 1997 production of 118,880 MWh; and (4) a development connection to the applicant's transmission system via the Shepaug-Bates 1622 line and the Shepaug-Stony Hill-West Brookfield 1887 line.

5. The Stevenson Development consists of the following existing facilities: (1) a 1,250-foot, bedrock-anchored, concrete gravity dam with a crest elevation of 98.3 feet NGVD, 696 feet of spillway and an integral powerhouse; (2) an impoundment occupying a surface area of 1,063 acres at 101.3 feet NGVD, which contains a storage volume of 2,650 acre-feet; (3) a powerhouse with a rated capacity of 30,500 kWh, with 1997 production of 92,448 Mwh; and (4) a development connection to the applicant's transmission system via several 115 kV transmission lines.

m. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

n. With this notice, we are initiating consultation with the State Historic Preservation Officer as required by §§ 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR, Part 800.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–24625 Filed 9–21–99; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

September 14, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Minor License.

b. *Project No.:* 11541–001.

c. *Date filed:* February 26, 1999.

d. *Applicant:* Atlanta Power Company, Inc.

e. *Name of Project:* Atlanta Power Station Hydroelectric Project.

f. *Location:* On the Middle Fork of the Boise River in the remote town of Atlanta, in Elmore County, in southern Idaho. The project occupies about 3.3 acres of land within the Boise National Forest, administered by the U.S. Forest Service.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Michael C. Creamer, ESQ., Givens Pursley & Huntley, 277 N. 6th Street, suite 200, P.O. Box 2720, Boise, ID 83701, (208) 342–6571.

i. *FERC Contact:* Any questions on this notice can be addressed to Gaylord W. Hoisington, E-mail address *gaylord.hoisington@ferc.fed.us*, or telephone (202) 219–2831.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedures require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of that document on that resource agency.

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time.

l. *Description of the Project:* The proposed project would consist of the existing Atlanta Power Station facilities located at the Forest Service's Kirby Dam, consisting of: (1) a penstock intake structure; (2) a powerhouse, containing a single generating unit with a capacity of 187 kilowatts; and (3) other appurtenances.

m. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be

filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–24630 Filed 9–21–99; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. PL99–3–000]**

## Certification of New Interstate Natural Gas Pipeline Facilities; Statement of Policy

Issued September 15, 1999.

Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, William L. Massey, Linda Breathitt, and Curt Hébert, Jr.

In the Notice of Proposed Rulemaking (NOPR) in Docket No. RM98–10–000 [1] and the Notice of Inquiry (NOI) in Docket No. RM98–12–000,[2] the Commission has been exploring issues related to the current policies on certification and pricing of new construction projects in view of the changes that have taken place in the natural gas industry in recent years.

In addition, on June 7, 1999, the Commission held a public conference in Docket No. PL99–2–000 on the issue of anticipated natural gas demand in the northeastern United States over the next two decades, the timing and the type of growth, and the effect projected growth will have on existing pipeline capacity. All segments of the industry presented their views at the conference and subsequently filed comments on those issues.

Information received in these proceedings as well as recent experience evaluating proposals for new pipeline construction persuade us that it is time for the Commission to revisit its policy for certificating new construction not covered by the optional or blanket certificate authorizations.[3] In particular the Commission's policy for determining whether there is a need for a specific project and whether, on balance, the project will serve the public interest. Many urge that there is a need for the Commission to authorize new pipeline capacity to meet the growing demand for natural gas. At the same time, others already worried about the potential for capacity turnback, have urged the Commission to be cautious because of concerns about the potential for creating a surplus of capacity that could adversely affect existing pipelines and their captive customers.

Accordingly, the Commission is issuing this policy statement to provide the industry with guidance as to how the Commission will evaluate proposals for certificating new construction. This should provide more certainty about how the Commission will evaluate new construction projects that are proposed to meet growth in the demand for natural gas at the same time that some existing pipelines are concerned about the potential for capacity turnback. In considering the impact of new construction projects on existing pipelines, the Commission's goal is to appropriately consider the enhancement of competitive transportation alternatives, the possibility of overbuilding, the avoidance of unnecessary disruption of the environment, and the unneeded exercise of eminent domain. Of course, this policy statement is not a rule. In stating the evaluation criteria, it is the Commission's intent to evaluate specific proposals based on the facts and circumstances relevant to the application and to apply the criteria on a case-by-case basis.

### I. Comments Received on the NOPR

In the NOPR the Commission explained that it wants to assure that its policies strike the proper balance between the enhancement of competitive alternatives and the possibility of over building. The Commission asked for comments on whether proposed projects that will establish a new right-of-way in order to compete for existing market share should be subject to the same considerations as projects that will cut a new right-of-way in order to extend gas service to a frontier market area. Also, in reassessing project need, the Commission said that it was considering how best to balance demonstrated market demand against potential adverse environmental impacts and private property rights in weighing whether a project is required by the public convenience and necessity.

The Commission asked commenters to offer views on three options: One option would be for the Commission to authorize all applications that at a minimum meet the regulatory requirements, then let the market pick winners and losers. Another would be for Commission to select a single project to serve a given market and exclude all other competitors. Another possible option would be for the Commission to approve an environmentally acceptable right-of-way and let potential builders compete for a certificate.

In addition, the Commission asked commenters to consider the following questions: (1) Should the Commission look behind the precedent agreement or contracts presented as evidence of market demand to assess independently the market's need for additional gas service? (2) Should the Commission apply a different standard to precedent agreements or contracts with affiliates than with non-affiliates? For example, should a proposal supported by affiliate agreements have to show a higher percentage of contracted-for capacity than a proposal supported by non-affiliate agreements, or, should all proposed projects be required to show a minimum percent of non-affiliate support? (3) Are precedent agreements primarily with affiliates sufficient to meet the statutory requirement that construction must be required by the public convenience and necessity, and,

[1] Notice of Proposed Rulemaking, Regulation of Short-term Natural Gas Transportation Services, 63 *Fed. Reg.* 42982, 84 FERC ¶ 61,087 (1998).

[2] Notice of Inquiry, Regulation of Interstate Natural Gas Transportation Services, 63 *Fed. Reg.* 42974, 84 FERC ¶ 61,087 (July 29, 1998).

[3] This policy statement does not apply to construction authorized under 18 CFR Part 157, Subparts E and F.

if so, (4) Should the Commission permit rolled-in rate treatment for facilities built to serve a pipeline affiliate? (5) Should the Commission, in an effort to check overbuilding and capacity turnback, take a harder look at proposals that are designed to compete for existing market share rather than bring service to a new customer base, and what particular criteria should be applied in looking at competitive applications versus new market applications? (6) Should the Commission encourage pre-filing resolution of landowner issues by subjecting proposed projects to a diminished degree of scrutiny where the project sponsor is able to demonstrate it has obtained all necessary right-of-way authority? (7) Should a different standard be applied to project sponsors who do not plan to use either federal or state-granted rights of eminent domain to acquire right-of-way?

*A. Reliance on Market Forces To Determine Optimal Sizing and Route for New Facilities*

PG&E, Process Gas Consumers (PGC), Tejas Gas, Washington Gas, Columbia, Market Hub Partners, and Ohio PUC agree that the Commission should continue to let the market decide which projects to pursue. PG&E states that the Commission should authorize all projects that meet minimum regulatory requirements, looking at whether the project will serve new or existing markets, the firmness of commitments and environmental and property rights issues. PGC urges the Commission to refrain from second guessing customers' decisions. Tejas suggests that the Commission rely on the market to the maximum extent; regulatory changes that affect risk/reward allocation will increase regulatory risk and deter new investment. Washington Gas suggests letting the market decide on new construction with market based rates subject only to environmental review and landowner concerns. Columbia comments that it would not be economically efficient to protect competitors from the competition created by new capacity. Market Hub Partners specifies that, when there is no eminent domain involved, the focus should be on competition, not protecting individual competitors from overbuilding. Ohio PUC supports authorizing all applications for new capacity certification which meet the minimum regulatory requirements. Ohio PUC does not support approving a single pipeline's application while excluding all others.

The Regulatory Studies Program of the Mercatus Center, George Mason University suggests allowing projects to be proposed with no certification requirements, but allowing competitors to challenge the need. Investors would be at risk for all investments. Tejas proposes holding pipelines at risk for reduced throughput, thereby avoiding shifting the risk to customers. On the issue of overbuilding, Millennium, Enron, PGC, Columbia, and Wisconsin PSC disagree with the presumption that overbuilding must be avoided. Millennium asserts that all competitive markets have excess capacity. Enron urges the Commission to be receptive to overbuilding in areas of rapid growth, difficult construction, and environmental sensitivity. PGC agrees that some capacity in excess of initial demand may make environmental and economic sense in that it will reduce the need for future construction, but argues that the pipelines be at risk for those facilities. Columbia alleges that the concern about overbuilding is misguided. Wisconsin PSC contends that concerns of overbuilding should not operate to limit the availability of competitive alternatives to customers currently without choices of pipeline provider. Wisconsin PSC believes the elimination of the discount adjustment mechanism and the imposition of reasonable at risk provisions for new construction will deter pipelines from overbuilding.

On the other hand, UGI recommends that overbuilding be minimized. UGI states that the Commission should ensure a reasonable fit between supply and demand. The Commission should limit certification of new projects to ones which demonstrate unmet demand or demand growth over 1–3 years.

Coastal stresses that competition should not be the only or primary factor in deciding the public convenience and necessity.

Amoco contends that, if the Commission chooses the right-of-way, it will in many cases have chosen the parties that will ultimately build the pipeline. Amoco urges the Commission not substitute its judgement for that of the marketplace unless there are overwhelming environmental concerns. Tejas also objects to the option of the Commission approving an environmentally acceptable right-of-way and letting potential builders compete for a certificate because it believes it would be difficult for the Commission to implement.

Colorado Springs supports the concept of having the Commission select a single project in a given corridor rather than letting the market pick winners and losers.

PGC and Ohio PUC recommend that the Commission authorize all construction applications meeting certain threshold requirements, leaving the market to decide winners and losers. PGC urge the Commission to facilitate construction of new pipelines that will increase the potential for gas flows. Under no circumstances should the Commission deny a certificate based on a complaint by an LDC or a competing pipeline that new construction will hurt their market position or ability to recover costs. The Commission should not afford protection to traditional suppliers or transporters by constraining the development of new pipeline capacity.

PGC believes that only in unusual situations, where insuperable environmental barriers cannot be resolved through normal mitigation measures, should the Commission select an acceptable right-of-way. Ohio PUC does not support approving a single pipeline's application while excluding all others. Ohio PUC recommends having market forces guide construction projects unless or until obvious shortcomings begin to emerge. In such instances, the option of designating a single right-of-way with competition for the certificate could be used to spur needed construction.

*B. Reliance on Contracts To Demonstrate Demand*

A number of parties commend that there is no reason to change the current policy regarding certificate need (AlliedSignal, Millennium, Southern Natural, Tejas, Williston, Columbia). National Fuel Gas Supply believes the Commission should keep shipper commitment as the test because it is more accurate than market studies. National Fuel Gas Supply further believes the Commission's present reliance on market forces to establish need, and its environmental review process, form the best approach to reviewing certificate applications. Foothills agrees, but states that a new, flexible regulatory structure for existing pipelines is needed. Indicated Shippers also wants to keep the current policy, but stresses that expedition in processing is needed to lower entry barriers.

Amoco, Consolidated Natural, and Columbia urged the Commission to continue requiring sufficient binding long-term contracts for firm capacity. Millennium and Tejas stated that there is no need to develop different tests for different markets. Columbia also argued that there is no need to look behind contracts. Williams argues that the Commission should not second guess contracts or make an independent market analysis. Williston alleges that

reviewing the firmness of private contracts is ineffectual and futile. Market Hub Partners cautions the Commission not to substitute its judgment for that of the marketplace.

PGC argues that there should be no change to current policy where construction affects landowners. Eminent domain is a necessary tool to delivering clean burning natural gas to growing markets; no individual landowners should be given a veto over pipeline construction. PGC adds that the absence of prefiling right-of-way agreements does not mean that a project is less good or necessary or should be treated more harshly. Southern Natural, Millennium, and National Fuel Gas Supply agree that no market preference should be given for projects that do not use eminent domain. National Fuel Gas Supply agrees that such a preference would tilt the power balance to landowners. Millennium argues that the Commission should not establish certificate preferences for pipelines that do not require eminent domain; such preferences are not needed because a pipeline that does not want to use eminent domain can already build projects under Section 311.

On the other hand, Amoco, El Paso/Tennessee, ConEd, and Wisconsin PSC recommend modifying the current policy. El Paso/Tennessee recommend that the Commission look behind all precedent agreements to see if real markets exist. ConEd suggests considering forecasts for market growth; if there is a disparity with the proposal, the Commission should look at all circumstances. Wisconsin PSC urges the Commission to consider market saturation and growth prospects by looking at market power (HHIs) and the degree of rate discounting in a market. Amoco suggests that the Commission analyze all relevant data. Peco Energy believes the current Commission policy, which provides for minimal market justification for authorizing construction of incremental facilities, coupled with its presumption in favor of rolled-in rate treatment, has contributed to discouraging existing firm shippers from embracing longer term capacity contracts.

Consolidated Natural recommends creating a settlement forum for market demand and reverse open season issues. Washington Gas urges the Commission to adopt an open entry, ''let the market decide'' policy. IPAA supports a need analysis focusing on the ability of existing capacity to handle projected demand. IPAA alleges that the overall infrastructure is already in place to supply current demand projections.

Some commenters support a sliding scale approach to determine need. ConEd states that the Commission should determine need on a case-by-case basis, using different standards for large or small projects. Enron advocates use of a sliding scale, requiring more market support for projects with more landowner and/or environmental impact. Enron supports requiring no market showing for projects using existing easements for mutually agreed upon easements. Enron also suggests, in addition to requiring that at least 25% of the precedent agreements supporting a project be with non-affiliates, that the Commission relax its market analysis if 75% or more of those agreements are with non-affiliates. Enron would require more market data for an affiliate-backed project. American Forest & Paper would allow negotiation of risk if there is no subsidy by existing customers. Sempra and UGI urge the Commission to look at whether projects serve identifiable, new or growing markets. NARUC states that each state is unique and that the Commission should consider those differences. Market Hub Partners believes that a project which is at risk, requires little or no eminent domain authority, and has potential to bring competition to a market that is already being served by pipelines and strong operators with market power should be expedited.

The development in recent years of certificate applicants' use of contracts with affiliates to demonstrate market support for projects has generated opposition from affected landowners and competitor pipelines who question whether the contracts represent real market demand. ConEd, Ohio PUC, and Enron believe that a different standard should be applied to affiliates. ConEd argues that the at risk condition is inadequate when a pipeline serves a market served by an affiliate; risk is shifted. Ohio PUC states that pipelines should shoulder the increased risk and that the Commission should look behind contracts with affiliates. Enron would require more market data for affiliate-backed projects and would require that all projects be supported by precedent agreements at least 25% of which are with non-affiliates.

Nevertheless, most of the commenters support applying the same standard to contracts for new capacity with affiliates as non-affiliates. Amoco, Coastal, Millennium, National Fuel, Southern Natural, Tejas, Texas Eastern, Columbia, Market Hub Partners, El Paso/Tennessee, and PGC all support applying the same standard to affiliates as non-affiliates. Market Hub argues that a contract is a contract; treating affiliates differently would be in the interest of incumbent monopolists. El Paso/Tennessee agree that affiliate precedent agreements are sufficient as long as they are supported by market demand. PGC agrees that the same standard should apply as long as the proposed capacity is offered on a non-discriminatory basis to all in an open season. Amoco makes an exception for marketing affiliates, arguing that they do not represent new demand. Columbia also makes an exception for affiliates that are created just to show market for a project.

Other parties also offered comments on affiliate issues. PGC recommends addressing affiliate issues on a case-by-case basis. Exxon support offering comparable deals to non-affiliates. If there is insufficient capacity, it should be prorated. AGA supports prohibiting discount adjustments connected with new construction by pipelines or affiliates. National Fuel Gas Supply and Tejas support permitting rolled-in rates for facilities to serve affiliates. PGC argues that there should be no presumption of rolled in rates for affiliates.

The commenters also express concern with the current policy's effect on existing pipelines and their captive customers when the Commission approves pipeline projects proposed to serve the same market. In those cases, they believe that need should be measured differently by, for example, assessing the impact on existing capacity or requiring a strong incremental market showing and more scrutiny of the net benefits. They urge the Commission to balance all the relevant factors before issuing a certificate. A number of parties argued that need should be measured differently when a project is proposed to serve an existing market. UGI urges requiring a strong market showing for such projects. Coastal proposes that the Commission fully integrate the standards announced by the courts [4] with its certificate construction policies, balancing all the relevant factors including the ability of the existing provider to provide the service. El Paso/Tennessee would require more scrutiny of the net benefit. Sempra would require that, prior to construction, all shippers be given the opportunity to turn back capacity. Similarly, Texas Eastern would require the pipeline to use unsubscribed capacity before construction (e.g., a reverse auction).

[4] *Citing* FPC v. Transcontinental Gas Pipeline Corp., 365 U.S. 1, 23 (1961) and Scenic Hudson Preservation Conference v. FERC, 354 F.2d. 608, 620 (2nd Cir. 1965).

Other commenters oppose a policy requiring a harder look at projects proposed to serve existing markets. They maintain that market demand for service in order to escape dependence on a dominant pipeline supplier should be accorded the same weight as demand by new incremental load growth. They contend that the benefits of competition and potentially lower gas prices for consumers should control over claims that an existing pipeline needs to be insulated from competition because its revenues may decrease. National Fuel Gas Supply, PGC, Florida Cities, Market Hub Partners, and Southern Natural in particular object to having different policies for new or existing pipelines. National Fuel Gas Supply contends that generally the policies on new construction and existing pipelines should match. PGC opposes any policy that protects incumbents by requiring a harder look at projects proposed to serve existing markets rather than new demand. Many existing markets have unmet demand. Likewise, Florida Cities is concerned that the NOPR is intended to elicit a new policy where the import and influence of competition is downplayed to minimize or eliminate the risk of unsubscribed capacity on existing pipelines. Florida Cities supports pipeline-on-pipeline competition as a primary factor in determining which new capacity projects receive certificate authority and are constructed. Florida Cities believes that additional pipeline competition would benefit customers and any generic policy that would decrease or inhibit pipeline competition would not be in the best interest of the consumers the Commission is obliged to protect. Market Hub Partners urges the Commission to attempt to limit market incumbents' ability to forestall competition by defeating the efforts of new market entrants to build or operate new capacity. Market Hub Partners contend that incumbents protest on the basis of project safety and environmental concerns when they are primarily concerned with their own welfare and market share. Southern Natural contends the NGA does not permit a rule disfavoring projects that enhance competitive alternatives. Taking a harder look at competitive proposals would effect a preference for monopoly, clearly not endorsed by the NGA or the Courts of Appeal.

Wisconsin Distributor Group believes that meaningful pipe-on-pipe competition can only exist where there are choices among or between pipelines and unsubscribed firm capacity exists. Wisconsin Distributor Group argues the Commission should view favorably new pipeline projects that propose to create competition by introducing an alternative pipeline to markets where no choices exist. Wisconsin Distributor Group contends the Commission's policy should not be driven by self-protective arguments but by the need for competitive alternatives. Wisconsin Distributor Group supports the Commission's analysis in Alliance and Southern because it considers the benefits of competition and potentially lower gas prices for consumers as controlling over claims that an existing pipeline needs to be insulated from competition because its revenues may decrease. Market demand for service in order to escape dependence on a dominant pipeline supplier should be accorded the same weight as demand by new incremental load growth.

UGI, Sempra, and El Paso/Tennessee would require assessing the impact on existing capacity. Sempra states that if existing rates are below the maximum rate, new capacity may not be needed. Sempra adds that the Commission should look at whether expansion capacity can stand on its own without rolled-in treatment. Texas Eastern believes the Commission must consider how best to use existing unsubscribed capacity and capacity that has been turned back to pipelines.

*C. The Pricing of New Facilities*

A number of commenters submit that the existing presumption in favor of rolled-in rates for pipeline expansions sends the wrong price signals with regard to pricing new construction. They urge the Commission to adopt policies such as incremental pricing for pipeline projects or placing pipelines at risk for recovery of the costs of construction. They submit that such a policy would reveal the true value of existing capacity and properly allocate costs and risks. A number of parties also raised issues concerning rate design in general, but the Commission is deferring for now consideration of those kinds of issues which also affect the Commission's policies for existing pipelines in order to focus on issues concerning the certification of new pipeline construction.

AGA, ConEd, and Michigan Consolidated stress the importance of ensuring the right price signals. AGA urges the Commission to adopt policies that reveal the true value of existing capacity. ConEd states that rate policies should send proper price signals by properly allocating costs and risks.

AGA contends that the Commission's certification policies should protect recourse shippers. AGA and BG&E recommend that the Commission ensure that pipelines are not able to impose the costs of new capacity or the costs of consequent unsubscribed existing capacity on recourse shippers. Amoco asserts pipelines should be at risk for unsubscribed capacity. Similarly, AGA and Philadelphia Gas Works urge the Commission to ensure that pipelines are at risk for unsubscribed capacity relating to construction projects by the pipeline or its affiliate. However, Tejas believes that treatment of any under recovery must address the unique circumstances of deepwater pipelines.

APGA argues that, if the Commission allows initial rates based on the life of the contract rather than the useful life of facilities, the Commission must at least require a uniform contract with the same terms and conditions for all customers involved in the expansion.

The Williams Companies recommend that all new capacity be subject to market-based rates. the Williams Companies argue that, for new capacity priced on an incremental basis rather than a rolled-in basis, competitive circumstances in the industry support the use of market-based rates and terms of service.

AlliedSignal contends depreciation should be based on the life of the facilities not the life of a contract. If the Commission were to promulgate a general rule, it should state that depreciation rates for pipeline facilities in rate and certificate cases should be set at 25 years unless factors are brought to the Commission's attention justifying a lesser or longer time period. NGSA believes that the Commission's current depreciation methodology is appropriate. NGSA also urges that the appropriate asset life of new facilities be determined when the facilities are constructed and adhered to for the life of the asset. On the other hand, the Williams Companies point out that market-based rates would negate the need for the Commission to approve depreciation rates.

Coastal believes pipelines should have the flexibility to address new facility costs in certificate applications and in rate cases. The Commission should not establish hard and fast rules as to how a facility should be treated in a pipeline's rates over its entire life. Rather, costs should be dealt with in accordance with Commission policies from time to time in pipeline rate cases.

Enron Pipelines contend that the rate treatment for capacity additions should continue to be determined on a case-by-case basis using the system benefits test.

Louisville contends that the Commission should address the question of whether its pricing policies

for new capacity provide appropriate incentives at the same time as it considers auctions and negotiated rates and services and that all of these issues should be the subject of a new NOPR.

PGC suggest that initial rates be based on a presumed level of contract commitment (e.g., 80–90%) so the pipeline bears the risks of uncommitted capacity but reaps a reward if it sells at undiscounted rates. Another option would be for the commission to put at risk only that portion of the proposed facilities for which the pipeline has not obtained firm contracts of a minimum duration. Where an existing pipeline constructs new facilities, PGC support the Commission's current policy favoring rolled-in rates if certain conditions are met.

Williston Basin argues that fixed rates for long-term contracts would create a relatively risk-free contract for shippers while creating a total-risk contract for pipelines.

Arkansas, IPAA, Indicated Shippers, National Fuel Gas Supply, NGSA, Peoples Energy, PGC, and the Williams Companies support the Commission's current policy with its presumption in favor of rolled-in pricing for new capacity only when the impact of new capacity is not more than a 5% increase to existing rates and results in system-wide benefits. AGA, Amoco, IPAA, Philadelphia Gas Works, PGC, and UGI recommend that the Commission more rigidly apply its pricing policy and more closely review claims pertaining to the 5% threshold test and/or system benefits. Nicor urges that pipelines should not be allowed to segment construction with the goal of falling below the 5% pricing policy threshold.

APGA and Consolidated Edison recommend that the Commission adopt a presumption of incremental pricing for pipeline certificate projects. APGA would allow limited exceptions such as when the project would lower rates to existing customers or when the benefits of the project would fully offset the costs of the roll-in. Koch Gateway and Pennsylvania Consumer Advocate also recommend incremental pricing for new capacity.

Arkansas and Brooklyn Union contend that pipelines should be at risk for the recovery of the costs of incremental facilities. Brooklyn Union urges the Commission to eliminate the presumption in favor of rolled-in pricing for new capacity and require pipelines to show the benefits of each new project are proportionate to the total rate increase sought.

El Paso/Tennessee recommend that only fully subscribed projects with revenues equaling or exceeding project costs and supported by demonstrated market need should be eligible for rolled-in rates. El Paso/Tennessee believe that projects intended to compete for existing market should not be eligible for rolled-in rates.

New York questions the 5% presumption for rolled-in pricing and argues that a move away from rolled-in pricing would create competitive markets for new pipeline construction.

AlliedSignal believes pipelines should be at risk for costs relative to new services prior to filing a new rate case. In the new rate case, the burden should be on the pipeline to justify the proper allocation of costs.

Amoco suggests that the pipeline and customer be allowed to enter into any agreement that does not violate existing regulations or statutory requirements, but they must explicitly apportion any risk between themselves.

The Illinois Commerce Commission believes this issue needs more research and should not be addressed until state regulators are consulted further.

Market Hub Partners and PGC contend that rolled-in rate treatment should not be granted for facilities solely or principally being constructed on the basis of affiliate precedent agreements. On the other hand, Millennium asserts that affiliates and non-affiliates should be treated alike with respect to rate design. Also, Southern Natural argues that the fact that an affiliate subscribed for capacity on new facilities cannot along preclude rolled-in pricing for those facilities; the Commission must leave to individual cases the issue of whether to price facilities on a rolled-in or incremental basis.

Nicor argues that the Commission cannot, in a competitive marketplace, evaluate the enhancements claimed by the pipeline to determine whether new construction should be incrementally priced or receive rolled-in rate treatment. Instead of imposing rolled-in rate treatment on the entire system, the Commission should allow individual ''old'' shippers to decide whether the supposed benefits are worth the costs.

Pipeline Transportations Customer Coalition contends the existing regulatory process does not reflect a reasonable risk-reward balance between industry segments, asserting that pipeline rates are too high given their relatively low risk exposure.

## II. Certificate Policy Goals and Objectives

The comments present a variety of perspectives and no clear consensus on a path the Commission should follow. Nevertheless, the staring point for the Commission's reassessment of its certificate policy is to define the goals and objectives to be achieved. An effective certificate policy should further the goals and objectives of the Commission's natural gas regulatory policies. In particular, it should be designed to foster competitive markets, protect captive customers and avoid unnecessary environmental and community impacts while serving increasing demands for natural gas. It should also provide appropriate incentives for the optimal level of construction and efficient customer choices.

Commission policy should give the applicant an incentive to file a complete application that can be processed expeditiously and to develop a record that supports the need for the proposed project and the public benefits to be obtained. Commission certificate policy should also provide an incentive for applicants to structure their projects to avoid, or minimize, the potential adverse impacts that could result from construction of the project.

The Commission intends the certificate policy introduced in this order to provide an analytical framework for deciding, consistent with the goals and objectives stated above, when a proposed project is required by the public convenience and necessity. In some respects this policy is not a significant change from the kind of analysis employed currently in certificate cases. By stating more explicitly the Commission's analytical framework, the Commission can provide applicants and other participants in certificate proceedings a better understanding of how the Commission makes its decisions. By encouraging applicants to devote more effort before filing to minimize the adverse effects of a project, the policy given them the ability to expedite the decisional process by working out contentious issues in advance. Thus, this policy will provide more certainty about the Commission's analytical process and provide participants in certificate proceedings with a framework for shaping the record that is needed by the Commission to expedite its decisional process.

## III. Evaluation of Current Policy

### *A. Current Policy*

Section 1(b) of the Natural Gas Act (NGA) gives the Commission jurisdiction over the transportation of natural gas in interstate commerce and the natural gas companies providing

that transportation.[5] Section 7(c) of the NGA provides that no natural gas company shall transport natural gas or construct any facilities for such transportation without a certificate of public convenience and necessity issued by the Commission.[6]

In reaching a final determination on whether a project will be in the public convenience and necessity, the Commission performs a flexible balancing process during which it weights the factors presented in a particular application. Among the factors that the Commission considers in the balancing process are the proposal's market support, economic, operational, and competitive benefits, and environmental impact.

Under the Commission's current certificate policy, an applicant for a certificate of public convenience and necessity to construct a new pipeline project must show market support through contractual commitments for at least 25 percent of the capacity for the application to be processed by the Commission. An applicant showing 10-year firm commitments for all of its capacity, and/or that revenues will exceed costs is eligible to receive a traditional certificate of public convenience and necessity.

An applicant unable to show the required level of commitment may still receive a certificate but it will be subject to a condition putting the applicant ''at risk.'' In other words, if the project revenues fail to recover the costs, the pipeline rather than its customers will be responsible for the unrecovered costs, the pipeline rather than its customers will be responsible for the unrecovered costs. Alternatively a project sponsor can apply for a certificate under subpart E of part 157 of the Commission's regulations for an optional certificate.[7] An optional certificate may be granted to an applicant without any market showing at all; however, in practice optional certificate applicants usually make some form of market showing. The rates for service provided through facilities constructed pursuant to an optional certificate must be designed to impose the economic risk of the project entirely on the applicant.

The Commission also has certificated projects that would serve no new market, but would provide some demonstrated system-benefit. Examples include projects intended to provide improved system reliability, access to new supplies, or more economic operations.

Generally, under the current policy, the Commission does not deny an application because of the possible economic impact of a proposed project on existing pipelines serving the same market or on the existing pipelines' customers. In addition, the Commission gives equal weight to contracts between an applicant and its affiliates and an applicant and unrelated third parties and does not look behind the contracts to determine whether the customer commitments represent genuine growth in market demand.[8]

Under section 7(h) of the NGA, a pipeline with a Commission-issued certificate has the right to exercise eminent domain to acquire the land necessary to construct and operate its proposed new pipeline when it cannot reach a voluntary agreement with the landowner.[9] In recent years, this has resulted in landowners becoming increasingly active before the Commission. Landowners and communities often object both to the taking of land and to the reduction of their land's value due to a pipeline's right-of-way running through the property. As part of its environmental review of pipeline projects, the Commission's environmental staff works to take these landowners' concerns into account, and to mitigate adverse impacts where possible and feasible.

Under the pricing policy for new facilities in Docket No. PL94–4–000,[10] the Commission determines, in the certificate proceeding authorizing the facilities' construction, the appropriate pricing for the facilities. Generally, the Commission applies a presumption in favor of rolled-in rates (rolling-in the expansion costs with the existing facilities' costs) when the cost impact of the new facilities would result in a rate impact on existing customers of five percent or less, and some system benefits would occur. Existing customers generally bear these rate increases without being allowed to adjust their volumes.

When a pipeline proposes to charge a cost-based incremental rate (establishing separate costs-of-service and separate rates for the existing and expansion facilities) higher than its existing generally applicable rates, the Commission usually approves the proposal. However, the Commission generally will not accept a proposed incremental rate that is lower than the pipeline's existing generally applicable Part 284 rate.

*B. Drawbacks of the Current Policy*

1. Reliance on Contracts To Demonstrate Demand

Currently, the Commission uses the percentage of capacity under long-germ contracts as the only measure of the demand for a proposed project. Many of the commenters have argued that this is too narrow a test. The reliance solely on long-term contracts to demonstrate demand does not rest for all the public benefits that can be achieved by a proposed project. The public benefits may include such factors as the environmental advantages of gas over other fuels, lower fuel costs, access to new supply sources or the connection of new supply to the interstate grid, the elimination of pipeline facility constraints, better service from access to competitive transportation options, and the need for an adequate pipeline infrastructure. The amount of capacity under contract is not a good indicator for all these benefits.

The amount of capacity under contract also is not a sufficient indicator by itself of the need for a project, because the industry has been moving to a practice of relying on short-term contracts, and pipeline capacity is often managed by an entity that is not the actual purchaser of the gas. Using contracts as the primary indicator of market support for the proposed pipeline project also raises additional issues when the contracts are held by pipeline affiliates. Thus, the test relying on the percent of capacity contracted does not reflect the reality of the natural gas industry's structure and presents difficult issues.

In addition, the current policy's preference for contracts with 10-year terms biases customer choices toward longer term contracts. Of course, there are other elements of the Commission's policies that also have this effect. However, eliminating a specific requirement for a contract of a particular length is more consistent with the Commission's regulatory objective to provide appropriate incentives for efficient customer choices and the optimal level of construction, without biasing those choices through regulatory policies.

Finally, by relying almost exclusively on contract standards to establish the market need for a new project, the current policy makes it difficult to articulate to landowners and

[5] 15 USC 717.

[6] 15 USC 717h.

[7] 18 CFR Part 157, Subpart E.

[8] *See, e.g.,* Transcontinental Gas Pipe Line Corp., 82 FERC ¶ 61,084 at 61,316 (1998).

[9] 15 USC 717f(h).

[10] *See* Pricing Policy for New and Existing Facilities Constructed by Interstate Natural Gas Pipelines, 71 FERC ¶ 61,241 (1995).

community interests why their land must be used for a new pipeline project.

All of these concerns raise difficult questions of establishing the public need for the project.

2. The Pricing of New Facilities

As the industry becomes more competitive the Commission needs to adapt its policies to ensure that they provide the correct regulatory incentives to achieve the Commission's policy goals and objectives. All of the Commission's natural gas policy goals and objectives are affected by its pricing policy, but directly affected are the goals of fostering competitive markets, protecting captive customers, and providing incentives for the optimal level of construction and efficient customer choice. The current pricing policy focuses primarily on the interests of the expanding pipeline and its existing and new shippers, giving little weight to the interests of competing pipelines or their captive customers. As a result, it no longer fits well with an industry that is increasingly characterized by competition between pipelines.

The current pricing policy sends the wrong price signals, as some commenters have argued, by masking the real cost of the expansions. This can result in overbuilding of capacity and subsidization of an incumbent pipeline in its competition with potential new entrants for expanding markets. The pricing policy's bias for rolled-in pricing also is inconsistent with a policy that encourages competition while seeking to provide incentives for the optimal level of construction and customer choice. This is because rolled-in pricing often results in projects that are subsidized by existing ratepayers. Under this policy the true costs of the project are not seen by the market or the new customers, leading to inefficient investment and contracting decisions. This in turn can exacerbate adverse environmental impacts, distort competition between pipelines for new customers, and financially penalize existing customers of expanding pipelines and of pipelines affected by the expansion.

Under existing policy, shippers' rates may change for a number of reasons. These include rolling-in of an expansion's costs, changes in the discounts given other customers, or changes in the contract quantities flowing on the system. As a customer's rates change in a rate case, it is generally unable to change its volumes, even though it may be paying more for capacity. This results in shippers bearing substantial risks of rate changes which they may be ill equipped to bear.

## III. The New Policy

### *A. Summary of the Policy*

As a result of the Commission's reassessment of its current policy, the Commission has decided to announce the criteria, set forth below, that it will use in deciding whether to authorize the construction of major new pipeline facilities. This section summarizes the analytical steps the Commission will use under this policy to balance the public benefits against the potential adverse consequences of an application for new pipeline construction. Each of these steps is described in greater detail in the later sections of this policy statement.

Once a certificate application is filed, the threshold question applicable to existing pipelines is whether the project can proceed without subsidies from their existing customers. As discussed below, this will usually mean that the project would be incrementally priced, if built by an existing pipeline, but there are cases where rolled in pricing would prevent subsidization of the project by the existing customers.[11]

The next step is determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the existing customers of the pipeline proposing the project, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline. These three interests are discussed in more detail below. This is not intended to be a decisional step in the process for the Commission. Rather, this is a point where the Commission will review the efforts made by the applicant and could assist the applicant in finding ways to mitigate the effects, but the choice of how to structure the project at this stage is left to the applicant's discretion.

If the proposed project will not have any adverse effect on the existing customers of the expanding pipeline, existing pipelines in market and their captive customers, or the economic interests of landowners and communities affected by the route of the new pipeline, then no balancing of benefits against adverse effects would be necessary. The Commission would proceed, as it does under current practice, to a preliminary determination or a final order depending on the time required to complete and environmental assessment (EA) or environmental impact statement (EIS) (whichever is required in the case).

If residual adverse effects on the three interests are identified, after efforts have been made to minimize them, then the Commission will proceed to evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission then proceed to complete the environmental analysis where other interests are considered. It is possible at this stage for the Commission to identify conditions that it could impose on the certificate that would further minimize or eliminate adverse impacts and take those into account in balancing the benefits against the adverse effects. If the result of the balancing is a conclusion that the public benefits outweigh the adverse effects then the next steps would be the same as for a project that had no adverse effects. That is, if the EA or EIS would take more than approximately 180 days then a preliminary determination could be issued, followed by the EA or EIS and the final order. If the EA would take less time, then it would be combined with the final order.

### *B. The Threshold Requirement—No Financial Subsidies*

The threshold requirement in establishing the public convenience and necessity for existing pipelines proposing an expansion project is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers.[12] This does not mean that the project sponsor has to bear all the financial risk of the project; the risk can be shared with the new customers in preconstruction contracts, but it cannot be shifted to existing customers. For new pipeline companies, without existing customers, this requirement will have no application.

The requirement that the project be able to stand on its own financially without subsidies changes the current pricing policy which has a presumption

[11] This policy does not apply to construction authorized under 18 CFR Part 157, Subparts E and F.

[12] Projects designed to improve existing service for existing customers, by replacing existing capacity, improving reliability or providing flexibility, are for the benefit of existing customers. Increasing the rates of the existing customers to pay for these improvements is not a subsidy. Under current policy these kinds of projects are permitted to be rolled in and are not covered by the presumption of the current pricing policy. Great Lakes Gas Transmission Limited Partnership, 80 FERC ¶61,105 (1997) (Pricing policy statement not applicable to facilities constructed solely for flexibility and system reliability).

in favor of rolled-in pricing. Eliminating the subsidization usually inherent in rolled-in rates recognizes that a policy of incrementally pricing facilities sends the proper price signals to the market. With a policy of incremental pricing, the market will then decide whether a project is financially viable. The commenters were divided on whether the Commission should change its current pricing policy. A number of commenters, however, urged the Commission to allow the market to decide which projects should be built, and this requirement is a way of accomplishing that result.

The requirement helps to address all of the interests that could be adversely affected. Existing customers of the expanding pipeline should not have to subsidize a project that does not serve them. Landowners should not be subject to eminent domain for projects that are not financially viable and therefore may not be viable in the marketplace. Existing pipelines should not have to compete against new entrants into their markets whose projects receive a financial subsidy (via rolled-in rates), and neither pipeline's captive customers should have to shoulder the costs of unused capacity that results from competing projects that are not financially viable. This is the only condition that uniformly serves to avoid adverse effects on all the relevant interests and therefore should be a test for all proposed expansion projects by existing pipelines. It will be the predicate for the rest of the evaluation of a new project by an existing pipeline.

A requirement that the new project must be financially viable without subsidies does not eliminate the possibility that in some instances the project costs should be rolled into the rates of existing customers. In most instances incremental pricing will avoid subsidies for the new project, but the situation may be different in cases of inexpensive expansibility that is made possible because of earlier, costly construction. In that instance, because the existing customers bear the cost of the earlier, more costly construction in their rates, incremental pricing could result in the new customers receiving a subsidy from the existing customers because the new customers would not face the full cost of the construction that makes their new service possible. The issue of the rate treatment for such cheap expansibility is one that always should be resolved in advance, before the construction of the pipeline.

Another instance where a form of rolling in would be appropriate is where a pipeline has vintages of capacity and thus charges shippers different prices for the same service under incremental pricing, and some customers have the right of first refusal (ROFR) to renew their expiring contracts. Those customers could be allowed to exercise a ROFR at their original contract rate except when the incremental capacity is fully subscribed and there are competing bids for the existing customer's capacity. In that case, the existing customer could be required to match the highest competing bid up to a maximum rate which could be either an incremental rate or a ''rolled-up rate'' in which costs for expansions are accumulated to yield an average expansion rate. Although the focus of this policy statement is the analysis for deciding whether new capacity should be constructed, it is important for the Commission to articulate the direction of its policy on pricing existing capacity where a pipeline has engaged in expansions. This will enable existing and potential new shippers to make appropriate decisions pre-construction to protect their interests either in the certificate proceeding or in their contracts with the pipeline.

This policy leaves the pipeline responsible for the costs of new capacity that is not fully utilized and obviates the need for ''at risk'' condition because it accomplishes the same purpose. Under this policy the pipeline bears the risk for any new capacity that is under-utilized, unless, as recommended by a number of commenters, it contracts with the new customers to share the risk by specifying what will happen to rates and volumes under specific circumstances. If the pipeline finds that new shippers are unwilling to share this risk, this may indicate to the pipeline that others do not share its vision of future demand. Similarly, the risks of construction cost over-runs should not be the responsibility of the pipeline's existing customers but should be apportioned between the pipeline and the new customers in their service contracts. Thus, in pipeline contracts for service on newly constructed facilities, pipelines should not rely on standard ''Memphis clauses'', but should reach agreement with new shippers concerning who will bear the risks of underutilization of capacity and cost overruns and the rate treatment for ''cheap expansibility.'' [13]

In sum, if an applicant can show that the project is financially viable without subsidies, then it will have established the first indicator of public benefit. Companies willing to invest in a project, without financial subsidies, will have shown an important indicator of market-based need for a project. Incremental pricing will also lead to the correct price signals for the new project and provide the appropriate incentive for the optimal level of construction. This can unnecessary adverse impacts on landowners or existing pipelines and their captive customers. Therefore, this will be the threshold requirement for establishing that a project will satisfy the public convenience and necessity standard.

*C. Factors To Be Balanced in Assessing the Public Convenience and Necessity*

Ideally, an applicant will structure its proposed project to avoid adverse economic, competitive, environmental, or other effects on the relevant interests from the construction of the new projects, and the Commission would be able to approve such projects promptly. Of course, elimination of all adverse effects will not be possible in every instance. When it is not possible, the Commission's policy objective is to encourage the applicant to minimize the adverse impact on each of the relevant interests. After the applicant efforts to minimize the adverse effects, construction projects that would have residual adverse effects would be approved only where the public benefits to be achieved from the project can be found to outweigh the adverse effects. Rather than relying only on one test for need, for Commission will consider all relevant factors reflecting on the need for the project. These might include, but would not be limited to, precedent agreements, demand projections, potential cost savings to consumers, or a comparison of projected demand with the amount of capacity currently serving the market. The objective would be for the applicant to make a sufficient showing for the public benefits of its proposed project to outweigh any residual adverse effects discussed below.

1. Consideration of Adverse Effects on Potentially Affected Interests

In deciding whether a proposal is required by the public convenience and necessity, the Commission will consider the effects of the project on all the affected interests; this means more than the interests of the applicant, the potential new customers and the general societal interests.

Depending on the type of project, there are three major interests that may be adversely affected the approval of major certificate projects, and that must be considered by the Commission.

[13] ''Memphis clause'' refers to an agreement that the pipeline may change the rate during the term of the contract by making rate filings under NGA section 4.

There are: the interest of the applicant's existing customers, the interests of competing existing pipelines and their captive customers, and the interests of landowners and surrounding communities. There are other interests that may need to be separately considered in a certificate proceeding, such as environmental interests.

Of course, not every project will have an impact on each interest identified. Some projects will be proposed by new pipeline companies to serve new markets, so that there will be no adverse effects on the interests of existing customers; other projects may be constructed so that there may be no adverse effect on landowner interests.

a. *Interests of existing customers of the pipeline applicants.* The interests of the existing customers of the expanding pipeline may be adversely affected if the expansion results in their rates being increased or if the expansion causes a degradation in service.

b. *Interests of existing pipelines that already serve the market and their captive customers.* Pipelines that already serve the market into which the new capacity would be built are affected by the potential loss of market share and the possibility that they may be left with unsubscribed capacity investment. The Commission need not protect pipeline competitors from the effects of competition, but it does have an obligation to ensure fair competition. Recognizing the impact of a new project on existing pipelines serving the market is not synonymous with protecting incumbent pipelines from the risk of loss of market share to a new entrant, but rather, is a recognition that the impact on the incumbent pipeline is an interest to be taken into account in deciding whether to certificate a new project. The interests of the existing pipeline's captive customers are slightly different from the interests of the pipeline. The interests of the captive customers of the existing pipelines are affected because, under the Commission's current rate model, they can be asked to pay for the unsubscribed capacity in their rates.

c. *Interests of landowners and the surrounding communities.* Landowners whose land would be condemned for the new pipeline right-of-way, under eminent domain rights conveyed by the Commission's certificate, have an interest as does the community surrounding the right-of-way. The interest of these groups is to avoid unnecessary construction, and any adverse effects on their property associated with a permanent right-of-way. In some cases, the interests of the surrounding community may be represented by state or local agencies. Traditionally, the interests of the landowners and the surrounding community have been considered synonymous with the environmental impacts of a project; however, these interests can be distinct. Landowner property rights issues are different in character from other environmental issues considered under the National Environmental Policy Act of 1969 (NEPA).[14]

2. Indicators of Public Benefit

To demonstrate that its proposal is in the public convenience and necessity, an applicant must show public benefits that would be achieved by the project that are proportional to the project's adverse impacts. The objective is for the applicant to create a record that will enable the Commission to find that the benefits to be achieved by the project will outweigh the potential adverse effects, after efforts have been made by the applicant to mitigate these adverse effects. The types of public benefits that might be shown are quite diverse but could include meeting unserved demand, eliminating bottlenecks, access to new supplies, lower costs to consumers, providing new interconnects that improve the interstate grid, providing competitive alternatives, increasing electric reliability, or advancing clean air objectives. Any relevant evidence could be presented to support any public benefit the applicant may identify. This is a change from the current policy which relies primarily on one test to establish the need for the project.

The amount of evidence necessary to establish the need for a proposed project will depend on the potential adverse effects of the proposed project on the relevant interests. Thus, projects to serve new demand might be approved on a lesser showing of need and public benefits than those to serve markets already served by another pipeline. However, the evidence necessary to establish the need for the project will usually include a market study. There is no reason for an applicant to do a new market study of its own in every instance. An applicant could rely on generally available studies by EIA or GRI, for example, showing projections of market growth. If one of the benefits of a proposed project would be to lower gas or electric rates for consumers, then the applicant's market study would need to explain the basis for that projection. Vague assertions of public benefits will not be sufficient.

Although the Commission traditionally has required an applicant to present contracts to demonstrate need, that policy, as discussed above, no longer reflects the reality of the natural gas industry's structure, nor does it appear to minimize the adverse impacts on any of the relevant interests. Therefore, although contracts or precedent agreements always will be important evidence of demand for a project, the Commission will no longer require an applicant to present contracts for any specific percentage of the new capacity. Of course, if an applicant has entered into contracts or precedent agreements for the capacity, it will be expected to file the agreements in support of the project, and they would constitute significant evidence of demand for the project.

Eliminating a specific contract requirement reduces the significance of whether the contracts are with affiliated or unaffiliated shippers, which was the subject of a number of comments. A project that has precedent agreements with multiple new customers may present a greater indication of need than a project with only a precedent agreement with an affiliate. The new focus, however, will be on the impact of the project on the relevant interests balanced against the benefits to be gained from the project. As long as the project is built without subsidies from the existing ratepayers, the fact that it would be used by affiliated shippers is unlikely to create a rate impact on existing ratepayers. With respect to the impact on the other relevant interests, a project built on speculation (whether or not it will be used by affiliated shippers) will usually require more justification than a project built for a specific new market when balanced against the impact on the affected interests.

3. Assessing Public Benefits and Adverse Effects

The more interests adversely affected or the more adverse impact a project would have on a particular interest, the greater the showing of public benefits from the project required to balance the adverse impact.The objective is for the applicant to develop whatever record is necessary, and for the commission to impose whatever conditions are necessary, for the Commission to be able to find that the benefits to the public from the project outweigh the adverse impact on the relevant interests.

It is difficult to construct helpful bright line standards or tests for this area. Bright line tests are unlikely to be flexible enough to resolve specific cases and to allow the Commission to take into account the different interests that

[14] 42 U.S.C. § 4321 *et seq.*

must be considered. Indeed, the current contract test has become problematic. However, the analytical framework described here should give applicants more certainty and sufficient guidance to anticipate how to structure their projects and develop the record to facilitate the Commission's decisional process.

Under this policy, if project sponsors, proposing a new pipeline company, are able to acquire all, or substantially all, of the necessary right-of-way by negotiation prior to filing the application, and the proposal is to serve a new, previously unserved market, it would not adversely affect any of the three interests. Such a project would not need any additional indicators of need and may be readily approved if there are no environmental considerations. Under these circumstances landowners would not be subject to eminent domain proceedings, and because the pipeline was new, there would be no existing customers who might be called upon to subsidize the project. A similar result might be achieved by an existing pipeline extending into a new unserved market by negotiating for a right-of-way for the proposed expansion and following the first requirement for showing need, financing the project without financial subsidies. It would avoid adverse impacts to existing customers by pricing its new capacity incrementally and it is unlikely that other relevant interests would be adversely affected if the pipeline obtained the right-of-way by negotiation.

It may not be possible to acquire all the necessary right-of-way by negotiation. However, the company might minimize the effect of the project on landowners by acquiring as much right-of-way as possible. In that case, the applicant may be called upon to present some evidence of market demand, but under this sliding scale approach the benefits needed to be shown would be less than in a case where no land rights had been previously acquired by negotiation. For example, if an applicant had precedent agreements with multiple parties for most of the new capacity, that would be strong evidence of market demand and potential public benefits that could outweigh the inability to negotiate right-of-way agreements with some landowners. Similarly, a project to attach major new gas supplies to the interstate grid would have benefits that may outweigh the lack of some right-of-way agreements. A showing of significant public benefit would outweigh the modest use of federal eminent domain authority in this example.

In most cases it will not be possible to acquire all the necessary right-of-way by negotiation. Under this policy, a few holdout landowners cannot veto a project, as feared by some commenters, if the applicant provides support for the benefits of its proposal that justifies the issuance of a certificate and the exercise of the corresponding eminent domain rights. The strength of the benefit showing will need to be proportional to the applicant's proposed exercise of eminent domain procedures.

Of course, the Commission will continue to do an independent environmental review of projects, even if the project does not rely on the use of eminent domain and the applicant structures the project to avoid or minimize adverse impacts on any of the identified interests. The Commission anticipates no change to this aspect of its certificate policies. However, to the extent applicants minimize the adverse impacts of projects in advance, this should also lessen the adverse environmental impacts as well, making the NEPA analysis easier. The balancing of interests and benefits that will precede the environmental analysis will largely focus on economic interests such as the property rights of landowners. The other interests of landowners and the surrounding community, such as noise reduction or esthetic concerns will continue to be taken into account in the environmental analysis. If the environmental analysis following a preliminary determination indicates a preferred route other than the one proposed by the applicant, the earlier balancing of the public benefits of the project against its adverse effects would be reopened to take into account the adverse effects on landowners who would be affected by the changed route.

In another example of the proportional approach, a proposal that may have adverse impacts on customers of another pipeline may require evidence of additional benefits to consumers, such as lower rates for the customers to be served. The Commission might also consider how the proposal would affect the cost recovery of the existing pipeline, particularly the amount of unsubscribed capacity that would be created and who would bear that risk, before approving the project. This evaluation would be needed to ensure consideration of the interests of the existing pipeline and particularly its captive customers. Such consideration does not mean that the Commission would always favor existing pipelines and their captive customers. For instance, a proposed project may be so efficient and offer substantial benefits, such as significant service flexibility, so that the benefits would outweigh the adverse impact on existing pipelines and their captive customers.

A number of commenters were concerned that the Commission might give too much weight to the impact on the existing pipeline and its captive customers and undervalue the benefits that can arise from competitive alternatives. The Commission's focus is not to protect incumbent pipelines from the risk of loss of market share to a new entrant, but rather to take the impact into account in balancing the interests. In such a case the evidence of benefits will need to be more specific and detailed than the generalized benefits that arise from the availability of competitive alternatives. The interests of the captive customers are slightly different from the interests of the incumbent pipeline. The captive customers are affected if the incumbent pipeline shifts to the captive customers the costs associated with its unsubscribed capacity. Under the Commission's current rate model captive customers can be asked to pay for unsubscribed capacity in their rates, but the Commission has indicated that it will not permit all costs resulting from the loss of market share to be shifted to captive customers.[15] Whether and to what extent costs can be shifted is an issue to be resolved in the incumbent pipeline's rate case, but the potential impact on these captive customers is a factor to be taken into account in the certificate proceeding of the new entrant.

In sum, the Commission will approve an application for a certificate only if the public benefits from the project outweigh any adverse effects. Under this policy, pipelines seeking a certificate of public convenience and necessity authorizing the construction of facilities are encouraged to submit applications designed to avoid or minimize adverse effects on relevant interests including effects on existing customers of the applicant, existing pipelines serving the market and their captive customers, and affected landowners and communities. The threshold requirement for approval, that project sponsors must be prepared to develop the project without relying on subsidization by the sponsor's existing customers, protects all of the relevant interests. Applicants also must submit evidence of the public benefits to be achieved by the proposed project such as contracts, precedent agreements, studies of projected demand in the

[15] El Paso Natural Gas Company, 72 FERC ¶ 61,083 (1995); Natural Gas Pipeline Company of America, 73 FERC ¶ 61,050 (1995).

market to be served, or other evidence of public benefit of the project.

## V. Conclusion

At a time when the Commission is urged to authorize new pipeline capacity to meet an anticipated increase in the demand for natural gas, the Commission is also urged to act with caution to avoid unnecessary rights-of-way and the potential for overbuilding with the consequent effects on existing pipelines and their captive customers. This policy statement is intended to provide more certainty as to how the Commission will analyze certificate applications to balance these concerns. By encouraging applicants to devote more effort in advance of filing to minimize the adverse effects of a project, the policy gives them the ability to expedite the decisional process by working out contentious issues in advance. Thus, this policy will provide more guidance about the Commission's analytical process and provide participants in certificate proceedings with a framework for shaping the record that is needed by the Commission to expedite its decisional process.

Finally, this new policy will not be applied retroactively. A major purpose of the policy statement is to provide certainty about the decisionmaking process and the impacts that would result from approval of the project. This includes providing participants in a certificate proceeding certainty as to economic impacts that will result from the certificate. It is important for the participants to know the economic consequences that can result before construction begins. After the economic decisions have been made it is difficult to undo those choices. Therefore, the new policy will not be applied retroactively to cases where the certificate has already issued and the investment decisions have been made.

By the Commission. Chairman Hoecker and Commissioners Breathitt and Hébert concurred with a separate statement attached. Commissioner Bailey dissented with a separate statement attached.

**David P. Boergers,**

*Secretary.*

## Policy Statement for Certification of New Interstate Natural Gas Pipeline Facilities

Docket No. PL99–3–000

**[Issued September 15, 1999]**

Hoecker, Chairman; Breathitt and Hébert, Commissioners, *concurring*;

Our intention is to apply this policy statement to any filings received by the Commission after July 29, 1998 (the issuance date of the Commission's Notice of Proposed Rulemaking regarding the Regulation of Short-term Natural Gas Transportation Services in Docket No. RM98–10–000 and Notice of Inquiry regarding Regulation of Interstate Natural Gas Transportation Services in Docket No. RM98–12–000), and not before.

James J. Hoecker,

*Chairman.*

Linda K. Breathitt,

*Commissioner.*

Curt L. Hébert,

*Commissioner.*

## Certification of New Interstate Natural Gas Facilities

[Docket No. PL99–3–000]

**[Issued September 15, 1999]**

Bailey, Commissioner, *dissenting.*

Respectfully, I will be dissenting from this policy statement.

The document puts forth the majority's statement of an analytical framework for use in certificate proceedings. Its goal is to give applicants and other participants in those proceedings a better understanding of how the commission makes its decisions. This is always a good thing to do. But ultimately, I cannot sign on to this statement as representative of my approach to certificate policy for several reasons.

First and foremost, the document purports that the policy outlined is not a significant departure from the kind of analysis used currently in certificate cases. I do not share this view. I know that it does depart from the way I currently look at certificate issues. For example, I cannot say that the sliding scale evaluation process and the weighing and balancing process described in the statement actually reflects the way I look at things. Further, the pricing changes announced are in fact significant departures from current practice. Thus, the document is as much about pricing policy change as it is about articulating an analytical approach to certification questions. I do not completely agree with the statements regarding pricing contained in this document.

The announced policy will now require that new projects meet a pricing threshold before work can proceed on the application—that is they should be incrementally priced and not subsidized by existing customers. The intent behind this is to enhance our certainty that the market is determining which projects come to the Commission.

I do not disagree with the idea that incremental pricing is consistent with the idea of allowing markets to decide. I also recognize that it can protect existing customers from subsidizing expansions as well as insulate existing pipelines form subsidized competition. However, I find the policy statement to be far too categorical in its approach. I am not persuaded that we should depart from our existing policy statement on pricing that we adopted in 1995.

There is too little recognition here that some types of construction projects are not designed solely for new markets or customers, that existing customers can benefit from some projects, and that rolled-in pricing may still be appropriate. Thus, while I can agree with some of the articulated goals such as pricing should allocate risk appropriately, and that if done properly it can assist in avoiding construction of excess capacity, I would not adopt a threshold requirement that virtually precludes use of rolled-in rates.

Finally, I am at a loss to explain the genesis of this particular outcome. I recognize that certificate policy issues have been problematic for a long time. In attempts to address these issues we have had conferences to explore need issues and we have requested comments on certificate issues in the pending gas Notice of Proposed Rulemaking in Docket No. RM98–10–1000 (84 FERC ¶ 61,087 (1998)) and the Notice of Inquiry in Docket No. RM98–12–000 (84 FERC ¶ 61,087 (1998)). The variety of views we have received in these efforts are summarized in the policy statement ad it candidly recognizes the lack of clear direction on what path the Commission should follow. Given this lack of industry consensus, I question the advisability of trying to adopt a generic approach at this time. I would prefer to weigh further the relative merits of those comments before embarking on an attempt to articulate a certificate policy.

**Vicky A. Bailey,**

*Commissioner.*

[FR Doc. 99–24617 Filed 9–21–99; 8:45 am]

BILLING CODE 6717–01–M

# ENVIRONMENTAL PROTECTION AGENCY

**[OPP–00597A; FRL–6384–4]**

## Proposed Test Guidelines; Extension of Comment Period

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; extension of comment period.

**SUMMARY:** On July 28, 1999, EPA issued a notice announcing the availability of

a combined chronic toxicity and carcinogenicity test guideline for the Series 870–Health Effects Test Guidelines for use in the testing of fibrous particles in the development of test data (OPPTS 870.8355). Natural and synthetic fibers are one group of substances that have been identified to be of potential health concern to humans. The comment period would have ended September 27, 1999. Due to the complexity of the proposed test guideline and the potential health concerns to humans, EPA has decided to extend the comment period by 45 days.

**DATES:** Comments, identified by the docket control number OPP–00597, must be received on or before November 12, 1999.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00597 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** *For general information contact*: Christine M. Augustyniak, Associate Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone numbers: (202) 554–1404 and TDD: (202) 554–0551; fax number: (202) 554–5603; e-mail address: TSCA-Hotline@epa.gov.

*For technical information contact*: David Lai, Risk Assessment Division (7403), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (202) 260–6222; fax number: (202) 260–1279; e-mail address: lai.david@epa.gov.

**SUPPLEMENTARY INFORMATION:**

## I. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who are or may be required to conduct testing of chemical substances under the Toxic Substances Control Act (TSCA), the Federal Food, Drug and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under ''FOR FURTHER INFORMATION CONTACT.''

## II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

A. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

You may also obtain copies of test guidelines from the EPA Internet Home Page by selecting ''Researchers and Scientists/Test Methods and Guidelines/OPPTS Harmonized Test Guidelines'' at http://www.epa.gov/epahome/research.htm.

B. *In person*. The Agency has established an official record for this action under docket control number OPP–00597. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

## III. How and to Whom Do I Submit Comments?

As described in Unit III.A. of the proposed test guideline notice of availability published in the **Federal Register** of July 28, 1999 (64 FR 40871) (FRL–6078–6), you may submit your comments through the mail, in person, or electronically. Please follow the instructions that are provided in the notice of availability. Do not submit any information electronically that you consider to be CBI. To ensure proper receipt by EPA, be sure to identify docket control number OPP–00597 in the subject line on the first page of your response.

## IV. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under ''FOR FURTHER INFORMATION CONTACT.''

## V. What Action is EPA Taking?

EPA is extending the comment period on the proposed test guideline for developing a combined chronic toxicity and carcinogenicity test guideline for use in the testing of respirable fibrous substances (OPPTS 870.8355). Natural and synthetic fibers are one group of substances that have been identified to be of potential health concern to humans. The background on the proposed test guideline can be found in the previous **Federal Register** notice of availability published on July 28, 1999 (64 FR 40871) (FRL–6078–6). A time extension of 45 days is being provided such that the comment period will now end on November 12, 1999.

## VI. Do Any Regulatory Assessment Requirements Apply to this Action?

No. This action is not a rulemaking, it merely extends the date by which public comments must be submitted to EPA on the notice of availability that previously published in the **Federal Register** of July 28, 1999 (64 FR 40871). For information about the applicability of the regulatory assessment requirements to the proposed test guideline, please refer to the discussion in Unit V. of that document.

## List of Subjects

Environmental protection, Chemical testing, Test guideline.

Dated: September 16, 1999.

**William H. Sanders, III**

*Director, Office of Pollution Prevention and Toxics.*

[FR Doc. 99–24697 Filed 9–21–99; 8:45 am]

BILLING CODE 6560–50–F

## FEDERAL MARITIME COMMISSION

### Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

*Agreement No.:* 202–010776–113
*Title:* Asia North America Eastbound Rate Agreement
*Parties:*
American President Lines, Ltd. and APL Co. Pte Ltd. (operating as a single carrier)
Hapag-Lloyd Container Linie GmbH
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Nippon Yusen Kaisha Line
Orient Overseas Container Line, Inc.
P&O Nedlloyd Limited
P&O Nedlloyd B.V.
Sea-Land Service, Inc.
*Synopsis:* The proposed modification would extend the current suspension of the agreement through May 1, 2000.

*Agreement No.:* 202–011677
*Title:* United States Australasia Agreement
*Parties:*
P&O Nedlloyd Limited
Contship Containerlines Limited
Compagnie Marseille Fret
Compagnie Generale Maritime S.A.
Australia-New Zealand Direct Line
Columbus Line
Wallenius Wilhelmsen Lines AS
*Synopsis:* The proposed agreement would authorize the parties to establish a conference in the trade from United States ports and points, to ports and points in Australia and New Zealand. The parties may agree upon rates, enter into service contracts, charter space from each other, and establish a volume-based pooling arrangement.

*Agreement No.:* 224–200563–009
*Title:* Oakland—Trans Pacific Marine Terminal Agreement
*Parties:*
City of Oakland: Board of Port Commissioners
Trans Pacific Container Corporation
*Synopsis:* The proposed amendment changes the definition of the contract year as well as the annual rental. The agreement continues to run through September 5, 2015.

*Agreement No.:* 224–201028–001
*Title:* Oakland—SSA Marine Terminal Agreement
*Parties:*
City of Oakland: Board of Port Commissioners
Stevedoring Services of America
*Synopsis:* The proposed amendment changes parts of the remuneration basis of the agreement. The agreement continues to run through June 30, 2007.

*Agreement No.:* 224–201075–001
*Title:* Oakland—Maersk Pacific Marine Terminal Agreement
*Parties:*
City of Oakland: Board of Port Commissioners
Maersk Pacific Ltd.
*Synopsis:* The proposed amendment changes the remuneration basis of the agreement and also accounts for changes arising from the joint service with Sea-Land Service, Inc. The agreement continues to run through March 31, 2003.

*Agreement No.:* 224–201085
*Title:* Oakland—Star Shipping Marine Terminal Agreement
*Parties:*
City of Oakland: Board of Port Commissioners
Star Shipping (USWC), Inc.
*Synopsis:* The proposed agreement provides for the non-exclusive use of certain parts of the Ninth Avenue Terminal. The agreement runs through September 30, 2001 but may be extended for three additional years on a year-to-year basis.

*Agreement No.:* 224–201086
*Title:* Oakland—Zim American Marine Terminal Agreement
*Parties:*
City of Oakland: Board of Port Commissioners
Zim-American Israeli Shipping Co., Inc.
*Synopsis:* The proposed agreement provides for the non-exclusive use of certain parts of the Charles P. Howard Terminal. The agreement runs through May 31, 2002.

*Agreement No.:* 224–201087
*Title:* Oakland—International Transportation Marine Terminal Agreement
*Parties:*
City of Oakland: Board of Port Commissioners
International Transportation Service, Inc.
*Synopsis:* The proposed agreement provides for the non-exclusive use of certain parts of Berth 25. The agreement runs through June 30, 2003 but may be extended for three additional five year periods.

Dated: September 17, 1999.

By order of the Federal Maritime Commission.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 99–24708 Filed 9–21–99; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediaries pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants:

Air Sea Containers, Inc., 2749 N.W. 82nd Avenue, Miami, FL 33122, Officers: Alan H. Bond, President (Qualifying Individual)

Interlog USA, Inc., 5402 Main Street NE, Fridley, MN 55421, Officers: James G. Taylor, President (Qualifying Individual) Donald B. Taylor, Treasurer

Jeong, G. Ju d/b/a Korea Express Washington, Inc., 7912 Yarnwood Ct. Springfield, VA 22153, Sole Proprietor: Jeong G. Ju, President (Qualifying Individual)

M & M Cargo Line, Inc., One Broadway, Suite 403, Elmwood Park, NJ 07407, Officers: Milton D'Souza, President (Qualifying Individual) Marti Aranha, Vice President

Multi Transport, Inc., 8422 N.W. 66th Street, Miami, FL 33166, Officers: Jaime Grullon, President (Qualifying Individual)

N.E.W.S. Transportation Co., Inc., d/b/a N.E.W.S. Express, 1535 W. 139th Street, Gardena, CA 90249, Officers:

Chul S. Yang, President (Qualifying Individual), Tae S. Chang, Secretary

R.T.W. Co. for Shipping and Trad, d/b/a J & M Shipping, 2455 S. Fern #1, Ontario, CA 91762, Partners: Yasser Mahfouz, Partner (Qualifying Individual), Salah Mahdi Jafar, Partner

Seaspeed Transport LLC, 1021 W. Arbor Vitae Street, Inglewood, CA 90301, Officers: Virginia Mercado, Vice President, (Qualifying Individual), Juliet Viray, Treasurer, Melissa Ajoc, Secretary, Ely Mercado, President

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Future Enterprises Incorporated d/b/a Langham Transport Services 7136 Zionsville Road, Indianapolis, IN 46268, Officers: Cathy Langham, President, Margaret Langham, Vice President, John Langham, Vice President, John Willman, Director of Ocean Development (Qualifying Individual)

Universal Express International 613 Hindry Avenue, Inglewood, CA 90301, Officers: Mike Mvdallal, President, Clemencia T. Hilvano, Vice President Ocean (Qualifying Individual)

Transportation Logistics Int'l., Inc., 811 Route 33, Freehold, NJ 07728 Officers: Michael Margolies, Chairman, Kathy Buonomo, Vice President (Qualifying Individual)

Ocean Freight Forwarders—Ocean Transportation Intermediary Applicants:

Rich Shipping (USA), Inc., 19191 South Vermont Avenue, #750, Torrance, CA 90520, Officers: Ling Wan, President, Benny Wong, Vice President (Qualifying Individual)

Trans-Border Global Freight Systems, Inc., 12 Wade Road, Latham, New York 12110 Officers: Martin B. Hellwig, President (Qualifying Individual), Matthew C. Spiegel, Vice President

Dated: September 17, 1999.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 99–24707 Filed 9–21–99; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL RESERVE SYSTEM

### Sunshine Act Meeting

**TIME AND DATE:** 11:00 a.m., Monday, September 27, 1999.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Lynn S. Fox, Assistant to the Board; 202–452–3204.

**SUPPLEMENTARY INFORMATION:** You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: September 17, 1999.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 99–24736 Filed 9–17–99; 4:10 pm]

BILLING CODE 6210–01–P

## GENERAL ACCOUNTING OFFICE

### Federal Accounting Standards Advisory Board

**AGENCY:** General Accounting Office.

**ACTION:** Notice of Rescheduled Meeting on October 4–5, 1999.

**SUMMARY:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that the Federal Accounting Standards Advisory Board will hold a meeting on Monday, October 4, and Tuesday, October 5, from 9:00 to 12:00 noon, in room 7C13, the Comptroller General's Briefing Room, of the General Accounting Office building, 441 G St., NW, Washington, DC. This meeting was postponed from September 16 and 17.

The purpose of the meeting is to discuss:

- National Defense PP&E.

—project plan for Phase 2
—SARS reporting; issues and options

- Direct Loan and Loan Guarantee Amendments.

—comments letters with summaries

- Other Matters such as Reporting on Indian Trust Funds in Department of the Interior Financial Reports.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

**FOR FURTHER INFORMATION CONTACT:** Wendy Comes, Executive Director, 441 G St., NW, Room 3B18, Washington, DC 20548, or call (202) 512–7350.

**Authority:** Federal Advisory Committee Act. Pub. L. No. 92–463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: September 17, 1999.

**Wendy M. Comes,**

*Executive Director.*

[FR Doc. 99–24677 Filed 9–21–99; 8:45 am]

BILLING CODE 1610–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Toxic Substances and Disease Registry

**[ATSDR–151]**

### Availability of Final Toxicological Profiles

**AGENCY:** Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

**ACTION:** Notice of availability.

**SUMMARY:** This notice announces the availability of four new final and six updated final toxicological profiles of priority hazardous substances comprising the tenth set prepared by ATSDR.

**FOR FURTHER INFORMATION CONTACT:** Ms. Loretta Norman, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 639–6322.

**SUPPLEMENTARY INFORMATION:** The Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99–499) amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 *et seq.*) by establishing certain requirements for ATSDR and the Environmental Protection Agency (EPA) with regard to hazardous substances which are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these statutory requirements is a mandate for the Administrator of ATSDR to prepare toxicological profiles for each substance included on the priority lists of hazardous substances. These lists identified 275 hazardous substances that ATSDR and EPA determined pose the most significant potential threat to

human health. The availability of the revised list of the 275 most hazardous substances was announced in the **Federal Register** on November 17, 1997 (62 FR 61332). For prior versions of the list of substances see **Federal Register** notices dated April 29, 1996 (61 FR 18744); April 17, 1987 (52 FR 12866); October 20, 1988 (53 FR 41280); October 26, 1989 (54 FR 43619); October 17, 1990 (55 FR 42067); October 17, 1991 (56 FR 52166); October 28, 1992 (57 FR 48801); and February 28, 1994 (59 FR 9486).

Notices (62 FR 55816) and (62 FR 55818) announcing the availability of the draft toxicological profiles for public review and comment were published in the **Federal Register** on October 28, 1997 with notice of a 90-day public comment period for each profile, starting from the actual release date. Following the close of the comment period, chemical-specific comments were addressed, and where appropriate, changes were incorporated into each profile. The public comments and other data submitted in response to the **Federal Register** notices bear the docket control numbers ATSDR–127 or ATSDR–128. This material is available for public inspection at the Division of Toxicology, Agency for Toxic Substances and Disease Registry, Building 4, Suite 2400, Executive Park Drive, Atlanta, Georgia, (not a mailing address) between 8:00 a.m. and 4:30 p.m., Monday through Friday, except legal holidays.

## Availability

This notice announces the availability of four new final and six updated final toxicological profiles comprising the tenth set prepared by ATSDR. The following toxicological profiles are now available through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, telephone 1–800–553–6847. There is a charge for these profiles as determined by NTIS.

| Toxicological profile | NTIS Order No. | CAS No. |
|---|---|---|
| Tenth Set: | | |
| 1. ALUMINUM | PB99–166613 | 007429–90–5 |
| ALUMINUM CHLORIDE | | 007446–70–0 |
| ALUMINUM CHLOROHYDRATE | | 001327–41–9 |
| | | 11097–68–0 |
| | | 4861–98–3 |
| ALUMINUM LACTATE | | 18917–91–4 |
| ALUMINUM HYDROXIDE | | 021645–51–2 |
| ALUMINUM OXIDE | | 001344–28–1 |
| ALUMINUM NITRATE | | 13473–90–0 |
| ALUMINUM PHOSPHATE | | 007784–30–7 |
| ALUMINUM PHOSPHIDE | | 020859–73–8 |
| ALUMINUM FLUORIDE | | 007784–18–1 |
| ALUMINUM SULFATE | | 010043–01–3 |
| 2. CADMIUM | PB99–166621 | 007440–43–9 |
| CADMIUM CARBONATE | | 000513–78–0 |
| CADMIUM CHLORIDE | | 010108–64–2 |
| CADMIUM OXIDE | | 01306–19–0 |
| CADMIUM SULFATE | | 010124–36–4 |
| CADMIUM SULFIDE | | 01306–23–6 |
| 3. CHLOROPHENOLS | PB99–166639 | 000088–06–2 |
| 2,3,5,6-TETRACHLOROPHENOL | | 000935–95–5 |
| 2,4,5-TRICHLOROPHENOL | | 000095–95–4 |
| 2,4,6-TRICHLOROPHENOL | | 000088–06–2 |
| 2-CHLOROPHENOL | | 000120–83–2 |
| 4-CHLOROPHENOL | | 000095–57–8 |
| 2,3,4,5-TETRACHLOROPHENOL | | 004901–51–3 |
| 2,3,4,6-TETRACHLOROPHENOL | | 000058–90–2 |
| 4. ETHYL BENZENE | PB99–166647 | 000100–41–4 |
| 5. FORMALDEHYDE | PB99–166654 | 000050–00–0 |
| 6. HEXACHLOROCYCLOHEXANE | PB99–166662 | 000608–73–1 |
| HEXACHLOROCYCLOHEXANE, ALPHA– | | 000319–84–6 |
| HEXACHLOROCYCLOHEXANE, BETA– | | 000319–85–7 |
| HEXACHLOROCYCLOHEXANE, DELTA– | | 000319–86–8 |
| HEXACHLOROCYCLOHEXANE, GAMMA– | | 000058–89–9 |
| 7. HEXACHLOROCYCLOPENTADIENE | PB99–166670 | 000077–47–4 |
| 8. HEXANE | PB99–166688 | 000110–54–3 |
| 9. HYDROGEN SULFIDE | PB99–166696 | 007783–06–4 |
| 10. LEAD | PB99–166704 | 007439–02–1 |

Dated: September 16, 1999.

**Georgi Jones,**

*Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.*

[FR Doc. 99–24640 Filed 9–21–99; 8:45 am]

BILLING CODE 4163–70–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Study Team for the Los Alamos Historical Document Retrieval and Assessment Project

The Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) announce the following meeting.

*Name:* Public Meeting of the Study Team for the Los Alamos Historical Document Retrieval and Assessment Project.

*Time and Date:* 4 p.m.–6 p.m., Tuesday, October 5, 1999.

*Place:* Fuller Lodge, Pajarito Room, 2132 Central Avenue, Los Alamos, New Mexico 87544, telephone 505/662–8403.

*Status:* Open to the public, limited only by space available. The meeting room accommodates approximately 100 people.

*Background:* Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) is given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, an MOU was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

*Purpose:* This Study Team is charged with locating, evaluating, cataloging, and copying documents that contain information about historical chemical or radionuclide releases from facilities at the Los Alamos National Laboratory (LANL) since its inception. The purpose of this meeting is to review the goals, methods, and schedule of the project; discuss the key role of interviews with current and former LANL employees; provide a forum for community interaction; and serve as a vehicle for members of the public to express concerns to CDC.

*Matters to be Discussed:* Agenda items include a presentation from the National Center for Environmental Health(NCEH), CDC, and/or its contractor, regarding the information-gathering project that recently began, and plans and methods for conducting interviews with active and retired employees. There will be time for public input, questions, and comments.

Agenda items are subject to change as priorities dictate.

*Contact Person for Additional Information:* Paul G. Renard, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, m/s F–35, Atlanta, Georgia 30341–3724, telephone 770/488–7040, fax 770/488–7044.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and ATSDR.

Dated: September 16, 1999.

**John C. Burckhardt,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 99–24639 Filed 9–21–99; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Request for Nominations for Members on Public Advisory Committees; Veterinary Medicine Advisory Committee

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is requesting nominations for members to serve on the Veterinary Medicine Advisory Committee (the Committee) in FDA's Center for Veterinary Medicine.

FDA has a special interest in ensuring that women, minority groups, and the physically challenged are adequately represented on advisory committees and, therefore, extends particular encouragement to nominations for appropriately qualified candidates from these groups.

**DATES:** No cutoff date is established for receipt of nominations.

**ADDRESSES:** All nominations for membership should be submitted to Barbara E. Leach (address below).

**FOR FURTHER INFORMATION CONTACT:** Barbara E. Leach, Center for Veterinary Medicine (HFV–15), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–5904.

**SUPPLEMENTARY INFORMATION:** FDA is requesting nominations for members to serve on the Committee. The function of the Committee is to review and evaluate available data concerning safety and effectiveness of marketed and investigational new animal drugs, feeds, and devices for use in the treatment and prevention of animal disease and increased animal production.

#### Criteria for Members

Persons nominated for membership on the Committee shall have adequately diversified experience that is appropriate to the work of the Committee in such fields as companion animal medicine, food animal medicine, avian medicine, microbiology, biometrics, toxicology, pathology, pharmacology, animal science, public health/epidemiology, minor species/minor use veterinary medicine, and chemistry. The specialized training and experience necessary to qualify the nominee as an expert suitable for appointment is subject to review, but may include experience in medical practice, teaching, and/or research relevant to the field of activity of the Committee. The term of office is 4 years.

#### Nomination Procedures

Any interested person may nominate one or more qualified persons for membership on the Committee. Nominations shall state that the nominee is willing to serve as a member of the Committee and appears to have no conflict of interest that would preclude Committee membership. A current copy of the nominee's curriculum vitae should be included. Potential candidates will be asked by FDA to provide detailed information concerning such matters as employment, financial holdings, consultancies, and research grants or contracts in order to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: September 13, 1999

**Linda A. Suydam,**

*Senior Associate Commissioner.*

[FR Doc. 99–24594 Filed 9–21–99; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 99N–4004]**

### Wallace Laboratories et al.; Withdrawal of Approval of 18 New Drug Applications and 44 Abbreviated New Drug Applications

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is withdrawing approval of 18 new drug applications (NDA's) and 44 abbreviated new drug applications (ANDA's). The holders of the applications notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

**EFFECTIVE DATE:** September 22, 1999.

**FOR FURTHER INFORMATION CONTACT:** Olivia A. Pritzlaff, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

**SUPPLEMENTARY INFORMATION:** The holders of the applications listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their request, waived their opportunity for a hearing.

| Application No. | Drug | Applicant |
|---|---|---|
| NDA 4–253 | Davitamin Tablets | Wallace Laboratories, 301B College Rd., East, Princeton, NJ 08540. |
| NDA 5–932 | 5% Aminosol | Abbott Laboratories, One Abbott Park Rd., Abbott Park, IL 60064–3500. |
| NDA 6–668 | Redisol (cyanocobalamin) Tablets and Injection. | Merck & Co., Inc., 5 Sentry Pkwy., East (BLA–10), Blue Bell, PA 19422. |
| NDA 7–842 | Flaxedil (gallamine triethiodide injection), 20 milligrams (mg)/milliter (mL). | Kendall Healthcare Products Co., 15 Hampshire St., Mansfield, MA 02048. |
| NDA 9–295 | Vibazine (buclizine hydrochloride) Tablets. | Pfizer Pharmaceuticals, 235 East 42d St., New York, NY 10017–5755. |
| NDA 10–460 | Preludin (phenmetrazine hydrocholoride) Tablets. | Boehringer Ingelheim Pharmaceuticals, Inc., 900 Ridgebury Rd., P.O. Box 368, Ridgefield, CT 06877. |
| NDA 10–639 | Hydeltrasol (prednisolone sodium phosphate ophthalmic solution) Sterile Ophthalmic Solution. | Merck & Co., Inc., P.O. Box 4, BLA–20, West Point, PA 19486. |
| NDA 11–612 | Daricon (oxyphenylcyclamine hydrochloride) Tablets. | Pfizer Pharmaceuticals. |
| NDA 11–752 | Preludin (phenmetrazine hydrochloride) Endurets. | Boehringer Ingelheim Pharmaceuticals, Inc. |
| NDA 17–497 | Synthetic Calcimar (calcitonin-salmon) for Injection. | Rhone-Poulenc Rorer Pharmaceuticals, Inc., 500 Arcola Rd.,P.O. Box 1200, Collegeville, PA 19426–0107. |
| NDA 18–208 | Pfi-Lith (lithium carbonate) Capsules. | Pfizer Pharmaceuticals. |
| NDA 18–237 | Calciparine (heparin calcium) Injection. | Sanofi Pharmaceuticals, Inc., 90 Park Ave., New York, NY 10019. |
| NDA 18–342 | Wellcovorin (leucovorin calcium) Tablets. | Glaxo Wellcome, Inc., 5 Moore Dr., P.O. Box 13398, Research Triangle Park, NC 27709. |
| NDA 18–499 | Lactated Ringer's and Dextrose Injection USP. | Miles, Inc., Pharmaceutical Div., 4th and Parker Sts., P.O. Box 1986, Berkeley, CA 94701. |
| NDA 18–933 | MVI-12 Powder | Astra USA, Inc., P.O. Box 4500, Westborough, MA 01581–4500. |
| NDA 19–498 | Parathar (teriparatide acetate) for Injection. | Rhone-Poulenc Rorer Pharmaceuticals, Inc. |
| NDA 20–841 | Lotemax (loteprednol etabonate ophthalmic suspension), 0.5% Ophthalmic Suspension. | Pharmos Corp., c/o Bausch & Lomb Pharmaceuticals, Inc., 8500 Hidden River Pkwy., Tampa, FL 33637. |
| NDA 50–762 | Trovan/Zithromax Compliance Pak (trovafloxacin mesylate/azithromycin for oral suspension). | Pfizer Pharmaceuticals. |
| ANDA 60–082 | Tetracyn (tetracycline) Capsules. | Pfizer, Inc., 235 East 42d St., New York, NY 10017–5755. |
| ANDA 60–290 | Tetracycline Hydro-chloride Capsules USP, 250 mg and 500mg. | Purepac Pharmaceutical Co., 200 Elmora Ave., Elizabeth, NY 07207. |
| ANDA 60–458 | Terramycin (oxytetracyclinewith polymyxin B sulfate) Topical Powder with Polymyxin B Sulfate. | Pfizer, Inc. |
| ANDA 60–586 | Terramycin (oxytetracycline) IV. | Do. |
| ANDA 60–595 | Terramycin (oxytetracycline) Syrup. | Do. |
| ANDA 60–731 | Bacitracin Neomycin-Polymyxin with Hydrocortisone Acetate Ophthalmic Ointment 1%. | Altana, Inc., 60 Baylis Rd., Melville, NY 11747. |
| ANDA 61–009 | Terra-Poly (oxytetracycline, polymyxin B sulfate) Vaginal Tablets. | Pfizer, Inc. |
| ANDA 61–010 | Terramycin (oxytetracycline) Tablets. | Do. |
| ANDA 61–277 | Penicillin G Potassium Tablets for Oral Solution USP. | Teva Pharmaceuticals, USA, 1510 Delp Dr., Kulpsville, PA 19443. |
| ANDA 61–841 | Terramycin (oxytetracycline) with Polymyxin B Sulfate Otic Ointment. | Pfizer, Inc. |
| ANDA 62–288 | Gentamicin Sulfate Injection, 40 mg/mL. | Bristol Laboratories, P.O. Box 4755, Syracuse, NY 13221–4755. |
| ANDA 62–289 | Gentamicin Sulfate Injection USP. | King Pharmaceuticals, Inc., 501 Fifth St., Bristol, TN 37620. |
| ANDA 62–598 | Neomycin Sulfate-Triamcinolone Acetonide Cream. | Savage Laboratories, Inc., Division of Altana Inc., 60 Baylis Rd., Melville, NY 11747. |
| ANDA 62–607 | Neomycin Sulfate-Triamcinolone Acetonide Ointment. | Pharmaderm, Division of Altana, Inc., 60 Baylis Rd.,Melville, NY 11747. |

| Application No. | Drug | Applicant |
|---|---|---|
| ANDA 70–656 | Dopamine Hydrochloride Injection USP, 40 mg/mL. | Abbott Laboratories. |
| ANDA 70–657 | Dopamine Hydrochloride Injection USP, 80 mg/mL. | Do. |
| ANDA 73–611 | Diphenhydramine Hydrochloride Cough Syrup, 12.5 mg/5 mL. | Cumberland-Swan, Inc., 1 Swan Dr., Smyrna, TN 37167. |
| ANDA 80–195 | Potassium Chloride Injection. | Miles, Inc. |
| ANDA 80–211 | Prednisolone Tablets, 5 mg. | Private Formulations, Inc., 460 Plainfield Ave., Edison, NJ 08818. |
| ANDA 80–830 | Vitamin A Capsules USP, 15 mg. | Del Ray Labs, Inc., 22–20th Ave., NW., Birmingham, AL 35215. |
| ANDA 83–021 | Sulfacetamide Sodium Ophthalmic Solution USP, 10%, 15%, and 30%. | AKORN, Inc., 1222 West Grand, Decatur, IL 62526. |
| ANDA 83–256 | Alcohol in Dextrose Injection USP, 5%/5%. | Baxter Healthcare Corp., Rte. 120 and Wilson Rd., Round Lake, IL 60073–0490. |
| ANDA 84–652 | Chlorotrianisene Capsules USP, 12 mg. | Banner Pharmacaps, 200730 Dearborn St., P.O. Box 2157, Chatsworth, CA 91313–2157. |
| ANDA 84–708 | Triamcinolone Tablets, 2 mg. | Roxane Laboratories, Inc., P.O. Box 16532, Columbus, OH 43216–6532. |
| ANDA 84–775 | Triamcinolone Tablets, 4 mg. | Teva Pharmaceuticals, USA. |
| ANDA 85–697 | Phendimetrazine Tartrate Tablets, 35 mg (pink). | Private Formulations, Inc. |
| ANDA 85–914 | Phendimetrazine Tartrate Tablets, 35mg. | Manufacturing Chemist, Inc., c/o Integrity Pharmaceutical Corp., 5767 Thunderbird Rd., Indianapolis, IN 46236. |
| ANDA 86–192 | Hydrochlorothiazide Tablets, 25 mg and 50 mg. | M. M. Mast & Co., 4152 Ruple Rd., Cleveland, OH 44121. |
| ANDA 86–217 | Chlordiazepoxide Capsules, 10 mg. | Do. |
| ANDA 86–259 | Trichlormethiazide, 4 mg. | Do. |
| ANDA 86–521 | Dextroamphetamine Sulfate Tablets, 5 mg. | Do. |
| ANDA 86–523 | Phenazine Capsules, 35 mg. | Do. |
| ANDA 86–524 | Phenazine Capsules, 35 mg. | Do. |
| ANDA 86–525 | Phenazine Capsules, 35 mg. | Do. |
| ANDA 86–787 | Sustac (nitroglcerin) Extended-release Oral Tablets, 10 mg. | Forest Laboratories, Inc., 909 Third Ave., New York, NY 10022–4731. |
| ANDA 87–255 | Quinidine Sulfate Tablets, 200 mg. | Solvay Pharmaceuticals, Inc., 901 Sawyer Rd., Marietta, GA 30062. |
| ANDA 87–229 | Nitrobon (nitroglycerin extended-release capsules) Capsules. | Inwood Laboratories, Inc., 909 Third Ave., New York, NY 10022–4731. |
| ANDA 87–305 | Phendimetrazine Tartrate Tablets, 35 mg. | M. M. Mast & Co. |
| ANDA 87–544 | Nitrobon (nitroglycerin extended-release capsules) Capsules. | Inwood Laboratories, Inc. |
| ANDA 87–917 | Theophylline Syrup, 80 mg/15 mL. | Ferndale Laboratories, Inc., 780 West Eight Mile Rd., Ferndale, MI 48220. |
| ANDA 89–577 | Hydrocortisone Sodium Succinate for Injection USP, 100 mg/mL. | Abbott Laboratories. |
| ANDA 89–578 | A-Hydrocort (Hydrocortisone Sodium Succinate for Injection USP), 250 mg/vial. | Do. |
| ANDA 89–579 | A-Hydrocort (Hydrocortisone Sodium Succinate for Injection USP), 500 mg/vial. | Do. |
| ANDA 89–580 | A-Hydrocort (Hydrocortisone Sodium Succinate for Injection USP), 1 gram/vial. | Do. |

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of the applications listed in the table in this document, and all amendments and supplements thereto, is hereby withdrawn, effective September 22, 1999.

Dated: September 8, 1999.

**Janet Woodcock,**

*Director, Center for Drug Evaluation and Research.*

[FR Doc. 99–24595 Filed 9–21–99; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Cardiovascular and Renal Drugs Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee:* Cardiovascular and Renal Drugs Advisory Committee.

*General Function of the Committee:* To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time:* The meeting will be held on October 14, 1999, 9 a.m. to 5:30 p.m.

*Location:* National Institutes of Health, Clinical Center, Bldg. 10, Jack Masur Auditorium, 9000 Rockville Pike, Bethesda, MD. Parking in the Clinical Center is reserved for Clinical Center patients and their visitors. If you must drive, please use an outlying lot such as Lot 41B. Free shuttle bus service is provided from Lot 41B to the Clincal Center every 8 eight minutes during rush hour and every 15 minutes at other times.

*Contact Person:* Joan C. Standaert, Center for Drug Evaluation and Research (HFD–110), Food and Drug Administration, 5630 Fishers Lane,

Rockville, MD 20857, 419–259–2511, or John M. Treacy, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12533. Please call the Information Line for up-to-date information on this meeting. Current information may also be accessed on the Internet at the FDA Website ''www.fda.gov''.

*Agenda:* On October 14, 1999, the committee will discuss acute coronary syndromes.

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 7, 1999. Oral presentations from the public will be scheduled on October 14, 1999, between approximately 9 a.m. and 10 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 7, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 13, 1999

**Linda A. Suydam,**

*Senior Associate Commissioner.*

[FR Doc. 99–24593 Filed 9–21–99; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

*Name of the Committee*: Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee.

*General Function of the Committee*: To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time*: The meeting will be held on October 4, 1999, 8 a.m. to 5 p.m.

*Location*: Parklawn Bldg., conference rooms D and E, 5600 Fishers Lane, Rockville, MD.

*Contact Person*: Elisa D. Harvey, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1180 or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12524. Please call the Information Line for up-to-date information on this meeting.

*Agenda*: On October 4, 1999, in the morning session, the committee will discuss issues for new barrier contraceptive devices such as premarket study design, prescription versus over-the-counter availability, and premarket versus postmarket studies. The following current guidance documents are available as references: (1) ''Testing Guidance for Male Condoms Made from New Material,'' (2) ''Guidance for Industry: Uniform Contraceptive Labeling,'' and (3) ''Premarket Testing Guidelines for Female Barrier Contraceptive Devices Also Intended to Prevent Sexually Transmitted Diseases.'' Single copies of these guidance documents are available to the public by contacting the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 1–800–638–2041 or by faxing your request to 301–443–8818 and requesting the document by shelf numbers 455, 1251, and 384, respectively. They are also available on the Internet using the World Wide Web at http://www.fda.gov/cdrh/ode/oderp455.html, http://www.fda.gov/cdrh/ode/contrlab.html, and http://www.fda.gov/cdrh/ode/384.pdf.

In the afternoon session, the committee will discuss clinical study requirements for new nonextirpative methods of treating uterine fibroids.

*Procedure*: On October 4, 1999, from 9 a.m. to 5 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 27, 1999. Oral presentations from the public will be scheduled between approximately 9:30 a.m. and 10 a.m. and between approximately 1:30 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal presentations should notify the contact person before September 27, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

*Closed Committee Deliberations*: On October 4, 1999, from 8 a.m. to 9 a.m., the meeting will be closed to permit the committee to hear and review trade secret and/or confidential commercial information regarding pending and future device issues. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

FDA regrets that it was unable to publish this notice 15 days prior to the October 4, 1999, Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee were available at this time, the Commissioner concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice. Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 17, 1999.

**Linda A. Suydam,**

*Senior Associate Commissioner.*

[FR Doc. 99–24711 Filed 9–17–99; 3:37 pm]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Psychopharmacologic Drugs Advisory Committee; Amendment of Notice

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the Psychopharmacologic Drugs Advisory Committee. This meeting was announced in the **Federal Register** of August 26, 1999 (64 FR 46687). The

amendment is being made to cancel the entire session on October 7, 1999. This meeting will be open to the public. There are no other changes.

**FOR FURTHER INFORMATION CONTACT:** Sandra L. Titus, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, or e-mail ''tituss@cder.fda.gov'', or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area) code 12544. Please call the Information Line for up-to-date information on this meeting.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of August 26, 1999 (64 FR 46687), FDA announced that a meeting of the Psychopharmacologic Drugs Advisory Committee would be held on October 7 and 8, 1999. On page 46687, beginning in the first column, the *Date and Time*, *Agenda*, and *Procedure* portions of this meeting are amended to read as follows:

*Date and Time*: The meeting will be held October 8, 1999, 8 a.m. to 4:30 p.m.

*Agenda*: On October 8, 1999, the committee will consider the safety and efficacy of new drug application 19–839/S–026, Zoloft®, (sertraline hydrochloride, Pfizer Pharmaceuticals) proposed to treat posttraumatic stress disorder.

*Procedure*: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 1, 1999. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 1, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Dated: September 13, 1999.

**Linda A. Suydam,**

*Senior Associate Commissioner.*

[FR Doc. 99–24597 Filed 9–21–99; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Advisory Committee on Special Studies Relating to the Possible Long–Term Health Effects of Phenoxy Herbicides and Contaminants (Ranch Hand Advisory Committee); Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee:* Advisory Committee on Special Studies Relating to the Possible Long–Term Health Effects of Phenoxy Herbicides and Contaminants (Ranch Hand Advisory Committee).

*General Function of the Committee:* To advise the Secretary and the Assistant Secretary for Health concerning its oversight of the conduct of the Ranch Hand study by the U.S. Air Force and provide scientific oversight of the Department of Veterans Affairs (VA) Army Chemical Corps Vietnam Veterans Health Study, and other studies in which the Secretary or the Assistant Secretary for Health believes involvement by the committee is desirable.

*Date and Time:* The meeting will be held on October 14 and 15, 1999, 8:30 a.m. to 5 p.m.

*Location:* Parklawn Bldg., 5600 Fishers Lane, conference rm. K, Rockville, MD.

*Contact Person:* Ronald F. Coene, Food and Drug Administration, 5600 Fishers Lane, rm. 16–53, Rockville, MD 20857, 301–827–6696, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12560. Please call the Information Line for up-to-date information on this meeting.

*Agenda:* The committee will receive an update from the Department of Veterans Affairs on the Army Chemical Corps Vietnam Veterans Health Study and will continue their review of the Air Force Health Study-Cycle 5, draft report.

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 7, 1999. Oral presentations from the public will be scheduled on October 15, 1999, between approximately ll a.m. to 12 m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 7, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 13, 1999.

**Linda A. Suydam,**

*Senior Associate Commissioner.*

[FR Doc. 99–24598 Filed 9–21–99; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[Document Identifier: HCFA–R–0296]**

### Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

**AGENCY:** Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this 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.

We are, however, requesting an emergency review of the Information collections referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We

are requesting an emergency review because the collection of this information is needed prior to the expiration of the normal time limits under OMB's regulations at 5 CFR, part 1320. The Agency cannot reasonably comply with the normal clearance procedures because public harm is likely to result because beneficiaries may not receive timely, accurate, complete, and useful notices which will enable them to make informed consumer decisions, with a proper understanding of their rights to a Medicare initial determination, their appeal rights in the case of payment denial, and how these rights are waived if they refuse to allow their medical information to be sent to Medicare. This information collection standardizes the requirements set forth under 42 CFR 484.10, currently approved under OMB number 0938–0365.

HCFA is requesting OMB review and approval of this collection by close of business 09/30/1999, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by close of business 9/29/1999. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

*Type of Information Collection Request:* New Collection;

*Title of Information Collection:* Home Health Advance Beneficiary Notices (HHABNs) and Supporting Regulations in 42 CFR 484.10;

*Form No.:* HCFA–R–0296 (OMB #0938–NEW);

*Use:* This program memorandum (PM) is intended to instruct Home Health Agencies (HHAs) with respect to their responsibility for providing proper written notice to beneficiaries in advance of furnishing what they believe to be noncovered care or of reducing or terminating ongoing care. These new instructions and notices apply where a physician has ordered home health care for a beneficiary but the HHA believes that Medicare will not pay for that care. They do not apply to situations where the physician will not order care, or where care is reduced or terminated in accordance with a physician's order. Medicare never pays for home health care that is not ordered by a physician. The instructions in the PM supersede current instructions in Medicare Intermediary Manual, Part 3 (MIM) § 3730.2 and in Home Health Agency Manual § 270. These new instructions are designed to ensure that beneficiaries receive timely, accurate, complete, and useful notices which will enable them to make informed consumer decisions, with a proper understanding of their rights to a Medicare initial determination, their appeal rights in the case of payment denial, and how these rights are waived if they refuse to allow their medical information to be sent to Medicare. It is essential that such notice be timely, readable and comprehensible, provide clear directions, and provide accurate and complete information about the services affected and the reason that Medicare denial of payment for those services is expected by the HHA. For this reason, new notices (the HHABNs) with very specific content and graphic design have been prepared and are attached as Exhibits 2–4 hereto, and must be used by all HHAs furnishing services to Medicare beneficiaries.

The model notices attached to the memorandum are designed to ensure HHAs inform beneficiaries in writing, in a timely fashion, about changes to their home health care, the fact that they may have to pay for care themselves if Medicare does not pay, the process they must follow in order to obtain an initial determination by Medicare and, if payment is denied, to file an appeal, and the fact that they waive those rights if they refuse to allow their medical information to be sent to Medicare. If the HHA expects payment for the home health services to be denied by Medicare, a beneficiary must be advised before home health care is initiated or continued, that in the HHA's opinion, payment probably will be required from him or her personally. These notices must be issued by the HHA each time, and as soon as the HHA makes the assessment that it believes Medicare payment will not be made. The HHABNs must be provided by HHAs according to these instructions in any case where a reduction or termination of services is to occur, or where services are to be denied before being initiated, except in any case in which a physician concurs in the reduction, termination, or denial of services. Failure to do so is a violation of the HHA Conditions of Participation in the Medicare Program, which are currently approved PRA requirements approved under OMB number 0938–0365, and may result in the HHA being held liable under the Limitation on Liability (LOL) provision.

These instructions for completion, provision, and effectuation of advance beneficiary notices by HHAs are to be used by RHHIs effective September 30, 1999. The model notices (HHABNs) must be used by providers and as required by the MIM, Part 3, § 3440 Establishing When Beneficiary is on Notice of Noncoverage.

*Completion of Model Home Health Advance Beneficiary Notices (HHABNs)* Model Notice Exhibit 1 of the PM is for instructional purposes only and includes guidance on the notice form. Model HHABNs, Exhibits 2–4, serve as notice to the beneficiary that the HHA believes that home health services are not covered in different situations. HHABN–1, Termination, is used when all home health services will be terminated. HHABN–2, Initiation, is used when the HHA expects that Medicare will not pay, even before services have been initiated. HHABN–3, Reduction, is used when ongoing home health services will be reduced (e.g., reduced in number, frequency, or for a particular subset of services, or otherwise). For any particular HHABN, the provider makes an original and two copies. (If you require a copy, one more will be made.) The provider gives, or where this is not possible mails, the original to the beneficiary (or the person acting on his or her behalf), sends the first copy to the beneficiary's physician, and keeps the second. When the beneficiary (or person acting on his or her behalf) is given a copy, he or she will return it to the provider with his or her signature and the date he or she signed the notice. If the beneficiary or the person acting on behalf of the beneficiary refused to sign the HHABN, the provider's copy should be annotated accordingly, indicating the circumstances and persons involved;

*Frequency:* On occasion;

*Affected Public:* Individuals or Households, Business or other for-profit, Not-for-profit institutions;

*Number of Respondents:* 188,326;

*Total Annual Responses:* 360,000;

*Total Annual Hours:* 60,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of Information requirements. However, as noted above, comments on these Information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, by close of business 09/29/1999:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167, Attn: Allison Herron Eydt, HCFA Desk Officer.

Dated: September 20, 1999.

**John P. Burke III,**

*HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.*

[FR Doc. 99–24845 Filed 9–20–99; 2:40 pm]

BILLING CODE 4120–03–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of November 1999.

*Name:* Advisory Committee on Training in Primary Care Medicine and Dentistry.

*Date and Time:* November 4, 1999; 8:30 a.m.–5:00 p.m.; November 5, 1999; 8:30 a.m.–4:00 p.m.

*Place:* Washington Plaza Hotel, 10 Thomas Circle, NW, Washington, DC 20005.

The meeting is open to the public.

*Purpose:* The Advisory Committee shall (1) provide advice and recommendations to the Secretary concerning policy and program development and other matters of significance concerning activities under section 747 of the Public Health Service (PHS) Act; and (2) prepare and submit to the Secretary, the Committee on Labor and Human Resources of the Senate, and the Committee on Commerce of the House of Representatives, a report describing the activities of the Advisory Committee, including findings and recommendations made by the Committee concerning the activities under section 747 of the PHS Act. The Advisory Committee will meet twice each year and submit its first report to the Secretary and the Congress by November 2001.

*Agenda:* Introduction of the 23 new members. Discussion of history and current status of programs and activities authorized under section 747 of the PHS Act. Discussion of the intent of the programs; goals for improving access, diversity and supply; focus of programs; project requirements; funding priorities; outcomes data; and the peer review process. Strategic planning for the Committee.

Anyone interested in obtaining a roster of members, minutes of the meeting, or other relevant information should write or contact Dr. Barbara Brookmyer, Deputy Executive Secretary, Advisory Committee on Training in Primary Care Medicine and Dentistry, Parklawn Building, Room 9A–27, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–1468, e-mail bbrookmyer@hrsa.gov.

Dated: September 15, 1999.

**Jane M. Harrison,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. 99–24599 Filed 9–21–99; 8:45 am]

BILLING CODE 4160–15–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

**Protection and Advocacy for Individuals With Mental Illness (PAIMI) Annual Program Performance Report (OMB No. 0930–0169, Revision)**

The Protection and Advocacy for Individuals with Mental Illness (PAIMI) Act, (42 U.S.C. Chapter 1114) authorized funds to support protection and advocacy services on behalf of individuals with mental illness and severe emotional disturbance who are at risk for abuse and neglect and other civil rights violations while under treatment in a residential facility. Under the PAIMI Act, formula grant awards are made to protection and advocacy (P&A) systems designated by the governors of the 50 states and 5 territories, and the District of Columbia to ensure that the rights of individuals with mental illness and severe emotional disturbance are not violated. The PAIMI Act requires P&A systems to file an annual report on their activities and accomplishments and to provide in the report information on such topics as, numbers of individuals served, types of complaints addressed, the number of intervention strategies used to resolve the presenting issues. The Act also requires that the P&A Advisory Council also submit an annual report that assesses the effectiveness of the services provided by P&A systems.

SAMHSA's Center for Mental Health Services (CMHS) is revising the PAIMI Annual Program Performance Report for the following reasons: (1) to make it consistent with the revised annual program report format used by the Administration on Developmental Disabilities, Administration on Children and Families; and, (2) to conform to the GPRA requirements that the reporting burden to the States be reduced. CMHS is making no revisions to the PAIMI Annual Advisory Council Report.

Revisions to the PAIMI Annual Program Performance Report include: (1) Deletion of financial expenditure and sub-contractor information, which P&A systems are required to submit annually to the SAMHSA Grants Management Office; (2) Deletion of items that are more appropriate for inclusion in the Guidance for Applicants (GFA), such as PAIMI program staff positions, by-laws and policies and procedures; (3) PAIMI staff, advisory council and governing board demographic information will be reduced to a comprehensive graph format; (4) All ''information not available'' statements will be deleted to ensure that P&A systems focus on gathering more accurate client data during the intake and referral process; (5) Sections such as, PAIMI program mechanisms for public comment, individual PAIMI clients, etc. will be reduced to a graph format similar to that approved by OMB for use by the Administration on Developmental Disabilities, Administration on Children and Families, which administers the Protection and Advocacy to the Developmentally Disabled (PADD) Program; (6) Case complaints and problems of the individuals served by the P&As will be modified to capture more accurate information on incidents of abuse, neglect and civil rights violations, such as the incidents of seclusion and restraint used in the emergency rooms of general hospitals on individuals with mental illness, co-occurring disorders and severe emotional disturbance, during transport

to and from a residential treatment facility, etc.; and, (7) Sections focused on the types of intervention strategies, public education and awareness/training activities used by the P&As on behalf of the clients served will be placed in a chart format. The revised format will be effective for the report due on January 1, 2001. The annual burden estimate is as follows:

| | Number of respondents | Number of responses per respondent | Hours per response | Total hour burden |
|---|---|---|---|---|
| Annual Program Performance Report | 56 | 1 | 26 | 1,456 |
| Advisory Council Report | 56 | 1 | 10 | 560 |
| Total | 112 | | | 2,016 |

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: September 15, 1999.

**Richard Kopanda,**

*Executive Officer, SAMHSA.*

[FR Doc. 99–24641 Filed 9–21–99; 8:45 am]

BILLING CODE 4162–20–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4520–N–02]**

## NOFA for Resident Opportunities and Self Sufficiency (ROSS) Program; Notice of Amendment

**AGENCY:** Office of Public and Indian Housing, HUD.

**ACTION:** Notice of amendment of Notice of Funding Availability (NOFA) for Resident Opportunities and Self Sufficiency (ROSS) Program.

**SUMMARY:** The Department of Housing and Urban Development (HUD) is amending the NOFA for the Resident Opportunities and Self Sufficiency (ROSS) Program published in the **Federal Register** of August 10, 1999 (64 FR 43530). The amendment expands the eligibility of applicants, extends the application due dates, and makes clear that all expiring Service Coordinator grants are being renewed. Applicants that have already applied under the August 10, 1999 NOFA do not need to reapply.

**DATES:** *Application Deadline:* Completed applications (one original and two copies) must be submitted by the time described in section I. of the August 10, 1999 ROSS NOFA on: November 22, 1999 for Resident Management and Business Development; November 22, 1999 for Capacity Building and/or Conflict Resolution; and December 21, 1999 for Resident Service Delivery Models. The application period for Service Coordinators grant renewals is open until all funds are awarded.

**ADDRESSES:** *Address for Submitting Applications:* By the application due date an original and one copy of the application must be received at the Grants Management Center (GMC); one copy must be received at the local Field Office with delegated public or assisted housing responsibilities attention: Director, Office of Public Housing, or, in the case of Indian Tribes/TDHEs, an original and one copy to ONAP, Denver Program Office, 1999 Broadway, Suite 3390, Denver, CO 80202. Applications, other than those from Tribes/TDHEs, should be sent to the GMC at the following address: Grants Management Center, Attention: Director, 501 School Street, S.W., Suite 800, Washington, DC 20024. A list of HUD Field Offices is included in the application kit for this NOFA.

*For Application Kits.* For an application kit and any supplemental information please call the PIH Information and Resource Center at 1–800–955–2232. Persons with hearing or speech impairments may call the Center's TTY number at 1–800-HUD–2209. The application kit also will be available on the Internet through the HUD web site at http://www.hud.gov. When requesting an application kit, please refer to ROSS and provide your name, address (including zip code), and telephone number (including area code).

**FOR FURTHER INFORMATION CONTACT:** For answers to your questions, you have several options. For ROSS and any of its funding categories, you may call the local HUD Field Office with delegated responsibilities over the pertinent housing agency/authority. Answers may also be obtained by calling the Public and Indian Housing Information and Resource Center at 1–800–955–2232. Information on this NOFA may also be obtained through the HUD web site on the Internet at http://www.HUD.gov.

**SUPPLEMENTARY INFORMATION:**

On August 10, 1999, at 64 FR 43530, HUD published the Resident Opportunities and Self Sufficiency (ROSS) Program NOFA (ROSS NOFA). The ROSS NOFA made funds available under three funding categories: Technical Assistance/Training Support for Resident Organizations (which has two subcategories: Resident Management and Business Development, and Capacity Building and/or Conflict Resolution) Resident Service Delivery Models, and Service Coordinators (Elderly/Disabled). This notice amends the ROSS NOFA requirements, as explained below. Applicants must still comply with all of the other application submission requirements as stated in the August 10, 1999 NOFA. Applicants that have already applied under the August 10, 1999 NOFA do not need to reapply.

### Technical Assistance/Training Support for Resident Organizations

The ROSS NOFA included provisions, at sections IV.(A)(3) and IV.(B)(3) that previous TOP grantees must demonstrate that they have spent at least 75 percent of any prior grant by the publication date of the ROSS NOFA. This requirement was to be used as a measure of an applicant's capacity, and to make funding more widely available by avoiding duplicate, overlapping funding. To make these sections consistent with the rest of the ROSS NOFA, from which similar 75 percent spending requirements are being removed, these provisions are being removed. Instead, for applicants under this category, the ROSS NOFA is being amended, at sections IV.(A)(9) and IV.(A)(8), to provide that based on the applicant's past experience and Field Office knowledge of the applicant's capacity to perform, the Field Office will determine whether or not the applicant is eligible for an award.

**Resident Service Delivery Models (RSDM)**

The August 10, 1999 ROSS Program NOFA provided, at paragraph V.(C)(3) for the RSDM funding category, that previous EDSS, TOP, or Service Coordinator grantees must demonstrate that they have spent at least 75 percent of any prior grant by the publication date of the ROSS NOFA. This requirement is being removed to expand the pool of eligible applicants.

**Service Coordinators for Elderly and Persons With Disabilities**

With respect to the Service Coordinators category, the PHA eligibility threshold of spending 75 percent of prior Service Coordinator or EDSS grants is removed. All PHAs with prior Service Coordinator grants may apply for renewal of their Service Coordinator grants. Conforming changes are made to section VI.(G) to remove a reference to 75%, and to section VI.(I) of the ROSS NOFA to say that grants will be renewed as applications are received. The last sentence in paragraph VI(I), which discusses how funds will be distributed to other funding categories if all funds are not awarded in the Service Coordinator funding category is also being removed. Since all Service Coordinator category funds will be awarded for Service Coordinator grants, this sentence is not necessary.

Accordingly, FR Doc. 99–20429, the Notice of Funding Availability for the Resident Opportunities and Self Sufficiency published in the **Federal Register** on August 10, 1999 (64 FR 43530) is amended as follows:

1. On page 43532, in the second column, paragraph IV.(A)(3) is revised to read as follows:

(3) *Eligible applicants.* Site-Based Resident Associations (RAs), City-Wide Resident Organizations (CWROs), and Tribes/TDHEs that partner with Tribal ROs and Tribal RMCs. If an RA is a beneficiary or recipient of proposed grant activities by a CWRO, then that RA cannot also apply under this category. Applications from a Tribe or TDHE must include a Memorandum of Understanding (MOU) (see section IV.(A)(8)(b), below, of this NOFA) with the Tribal RO or RMC.

2. On page 43535, in the first column, paragraph IV.(A)(9) is revised to read as follows:

(9) *Application Selection Process.* Applicants for Resident Management and Business Development grants are required to address application submission requirements, but are not required to address selection factors. Based on the applicant's past experience and Field Office knowledge of the applicant's capacity to perform, the Field Office will determine whether or not the applicant is eligible for an award. Eligibility will also be determined by applications that meet the threshold requirements of sections IV.(A)(8) and VII. of this NOFA. * * *

3. On page 43535, in the third column, paragraph IV.(B)(3)(d) is removed.

4. On page 43536, in the third column, paragraph IV.(B)(8) is revised to read as follows:

(8) *Application Selection Process.* Applicants for Conflict Resolution or Capacity Building grants are required to address application submission requirements but are not required to address selection factors. Applicants are required to include letters of support from the PHA or Tribe on behalf of RAs or Tribal ROs and RMCs to be served (see section IV.(B)(7)(f), above, of this NOFA). Based on the applicant's past experience and Field Office knowledge of the applicant's capacity to perform, the Field Office will determine whether or not the applicant is eligible for an award. Eligibility will also be determined by applications that meet the threshold requirements of sections IV.(B)(7) and VII. of this NOFA. * * *

5. On page 43537, in the third column, paragraph V.(C)(3) is removed, and paragraph V.(D)(4) is redesignated as paragraph V.(C)(3).

6. On page 43543, in the middle column, paragraph VI.(C)(2) is removed, and paragraph VI.(C)(3) is redesignated as paragraph VI.(C)(2).

7. On page 43543, in the third column, paragraph VI.(G)(2)(e) is removed, and paragraphs VI.(G)(2)(f), (g), (h), (i), (j), (k), (l), and (m), are redesignated as paragraphs VI.(G)(2)(e), (f), (g), (h), (i), (j), (k), and (l), respectively.

8. On page 43544, in the middle column, paragraph VI.(I) is revised to read as follows:

(I) *Application Selection Process.* Applicants for Elderly or Persons with Disabilities Service Coordinator grants are required to address application submission requirements, but are not required to address selection factors. To be eligible for funding, an application must meet the threshold requirements of sections VI.(H) and VII. of this NOFA, and submit all information required under this NOFA. HUD will renew expiring Service Coordinator grants for up to 12 months as applications are received until funds in this funding category are exhausted.

Dated: September 17, 1999.

**Harold Lucas,**

*Assistant Secretary, Office of Public and Indian Housing.*

[FR Doc. 99–24783 Filed 9–20–99; 11:18 am]

BILLING CODE 4210–33–P

## 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–016166

*Applicant:* Abed S. Radwan, Anchorage, AK

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–017288

*Applicant:* James L. Tyson, Doerun, GA

The applicant requests a permit to import the sport-hunted trophy of two 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–017224

Applicant: Martin A. Steiner, Granite Bay, CA

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–017234

*Applicant:* Zoological Society of San Diego, San Diego, CA

The applicant requests a permit to import one female captive-born Northern Douc Langur (*Pygathrix nemaeus nemaeus*) from the Zoological Garden Basel, Basel, Switzerland, for the purpose of enhancement of the survival of the species through conservation education and propagation.

PRT–017229

*Applicant:* University of North Florida, Jacksonville, FL

The applicant requests a permit to import preserved hatchling or egg specimens of: Green turtle (*Chelonia mydas*), up to 50s hatchlings and 25 undeveloped eggs; Hawksbill turtle (*Eretmochelys imbricata*), up to 50 hatchlings and 18 undeveloped eggs; Leatherback turtle (*Dermochelys coriacea*), up to 50 hatchlings, for scientific purposes.

PRT–691650

*Applicant:* U.S. Fish and Wildlife Service, Division of Law Enforcement, Arlington, VA

The applicant requests renewal of a permit to import and export any Endangered or Threatened species for the purpose of enhancement of the survival of the affected species through enhanced law enforcement capabilities.

The following applicants have applied for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR part 18).

PRT–017171

*Applicant:* Jerry Cotner, Richardson, TX

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

PRT–017419

*Applicant:* Dr. Darlene Ketten, Woods Hole Oceanographic Institute, Woods Hole, MA

*Permit Type:* Take and import for scientific research.

*Name and Number of Animals:* Dugong (*Dugong dugong*).

*Summary of Activity to be Authorized:* The applicant requests a permit to obtain 3 heads for the purpose of scientific research as part of study on how the structural elements of marine mammal ears contribute to underwater hearing.

*Source of Marine Mammals:* Dugongs obtained post-mortem in the Torres Straits, Australia.

*Period of Activity:* Up to 5 years, if issued.

PRT–017421

*Applicant:* Donald E. Lenig, Lancaster, PA

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted taken prior to April 30, 1994 from the Lancaster Sound polar bear population, Northwest Territories, Canada, for personal use.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

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, Rm 700, Arlington, Virginia 22203. Phone (703) 358–2104 or Fax (703) 358–2281.

Dated: September 17, 1999.

**Kristen Nelson,**

*Acting Chief, Branch of Permits, Office of Management Authority.*

[FR Doc. 99–24705 Filed 9–21–99; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Availability of Draft Habitat-Based Recovery Criteria for the Grizzly Bear (Ursus arctos horribilis) for Review and Comment

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Extension of comment period.

**SUMMARY:** In 64 FR 38464, July 16, 1999, we announced the availability for public review of draft habitat-based recovery criteria for the grizzly bear (*Ursus arctos horribilis*) in the Yellowstone Ecosystem. Final habitat-based recovery criteria will be appended to the Grizzly Bear Recovery Plan. We solicited review and comment from the public on this draft information until September 14, 1999. This notice extends the comment period for 45 days, until October 30, 1999.

**DATES:** Comments on the draft habitat-based recovery criteria must be received on or before October 30, 1999, to ensure that they will be considered when we finalize the criteria.

**ADDRESSES:** Persons wishing to review the draft habitat-based recovery criteria may obtain a copy by contacting the Grizzly Bear Recovery Coordinator, U.S. Fish and Wildlife Service, University Hall, Room 309, University of Montana, Missoula, Montana 59812. Written comments and materials regarding this information should be sent to the Recovery Coordinator at the address given above. Comments may also be submitted by e-mail to: FW6__grizzly@fws.gov. Please include the ''Habitat Criteria'' in the subject line of your message. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Dr. Christopher Servheen, Grizzly Bear Recovery Coordinator (see **ADDRESSES** above), at telephone (406) 243–4903.

**Authority:** The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 15, 1999.

**Terry Terrell,**

*Regional Director, Denver, Colorado.*

[FR Doc. 99–24532 Filed 9–21–99; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Availability of Draft Habitat Conservation Plan, Receipt of Application for; and Intent To Issue, Incidental Take Permit for Installation of a 2,500-foot Television Coaxal Cable on Private Property in Garfield County, UT

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of Availability, Receipt of Application for, and Intent to Issue Permit.

**SUMMARY:** South Central Utah Telephone Association (Applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Applicant has been assigned permit number TE–017010. The request permit, which is for a period of 1 year, would authorize incidental take of the threatened Utah prairie dog (*Cynomys parvidens*). The proposed take would occur as a result of installation of a 2,500-feet television coaxal cable on a privately-owned

parcel of land located within Garfield County, Utah.

The Service has determined that issuance of the incidental take permit meets the criteria for a categorical exclusion under the requirements of the National Environmental Policy Act, and that there is consequently no necessity for the development of an Environmental Assessment. The Applicant has prepared a Habitat Conservation Plan as part of the incidental take permit application. A determination of whether jeopardy to the species will occur and/or issuance of the incidental take permit, will not be made before 30 days from the date of publication of this notice. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

**DATES:** Written comments on the permit application must be received on or before October 22, 1999.

**ADDRESSES:** Persons wishing to review the permit application and/or Habitat Conservation Plan may obtain a copy by writing to the Assistant Field Supervisor, Utah Ecological Services Field Office, U.S. Fish and Wildlife Service, 145 East 1300 South Street, Suite 404, Salt Lake City, Utah 84115. Documents will be available for public inspection by written request, or by appointment only, during business hours (8:00 a.m. to 4:30 p.m.) at the above address.

Written data or comments concerning the permit application should be submitted to the Assistant Field Supervisor, Utah Ecological Services Field Office, U.S. Fish and Wildlife Service, Salt Lake City, Utah (see **ADDRESSES** above). Please refer to permit number TE–017010 in all correspondence regarding these documents.

**FOR FURTHER INFORMATION CONTACT:** David McGillivary, Assistant Field Supervisor or Ted Owens, Wildlife Biologist, at the above U.S. Fish and Wildlife Service office in Salt Lake City, Utah (see **ADDRESSES** above) (telephone: (801) 524–5001, facsimile: (801) 524–5021).

**SUPPLEMENTARY INFORMATION:** Section 9 of the Act prohibits the ''taking'' of any threatened or endangered species, such as the threatened Utah prairie dog. However, the Service, under limited circumstances, may issue permits to take threatened or endangered wildlife species when such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened and endangered species are at 50 CFR 17.22.

**Applicant**

The Applicant plans to install a 2,500-foot television coaxal cable within a 10-foot right-of-way across private land parallel to State Route 12 near the junction of U.S. Highway 89 and State Route 12 (Red Canyon Junction), approximately 8 miles southeast of the town of Panguitch, Garfield County, Utah. The cable installation will provide television cable services to the local residents, motels, and recreational vehicle campgrounds located in the area. The installation will impact approximately 0.133 acre of occupied Utah prairie dog habitat, and the Applicant foresees an incidental take of a maximum of four (4) Utah prairie dogs as a result of direct mortality during installation. The Applicant proposes to minimize impacts to Utah prairie dogs through conducting a preconstruction information meeting for construction personnel and through minimization of the cable installation's footprint and the time spent working in occupied Utah prairie dog habitat. The Applicant proposes to compensate for the habitat disturbance resulting from cable installation by payment of $900 per care for each acre impacted, to be used for public land management actions for Utah prairie dog conservation and to implement recovery actions for conservation of the Utah prairie dog, through contribution to the Utah Prairie Dog Conservation Fund, managed by the National Fish and Wildlife Foundation.

A no-action alternative to the proposed action was considered, consisting of foregoing the installation of the 2,500 television cable in Utah prairie dog habitat. The no-action alternative was rejected for reasons including loss of use of private property, resulting in significant economic loss to the Applicant.

**Authority:** The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq*).

Dated: September 9, 1999.

**Terry Terrell,**

*Deputy Regional Director, Fish and Wildlife Service, Denver, Colorado.*

[FR Doc. 99–24684 Filed 9–21–99; 8:45 am]

BILLING CODE 4310–55–M

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Issuance of Permit for Marine Mammals

On May 13, 1999 a notice was published in the **Federal Register**, Vol.64, No.92, page 25899, that an application had been filed with the Fish and Wildlife Service by Ferris State University, MI, for a permit (PRT–838026) to import one donated, taxidermied polar bear (*Ursus maritimus*) for the purpose of public display.

Notice is hereby given that on August 16, 1999, 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.

On, July 19, 1999 a notice was published in the **Federal Register**, Vol.64, No.137, page 38687, that an application had been filed with the Fish and Wildlife Service by Toledo Zoological Gardens, Toledo, OH, for a permit (014704) to import one live, captive-born female polar bear (*Ursus maritimus*) for the purpose of public display and scientific study.

Notice is hereby given that on September 10, 1999, 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, Rm 700, Arlington, Virginia 22203. Phone (703) 358–2104 or Fax (703) 358–2281.

Documents and other information submitted with the application 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 above address within 30 days of the date of publication of this notice.

Dated: September 17, 1999.

**Kristen Nelson,**

*Acting Chief, Branch of Permits, Office of Management Authority.*

[FR Doc. 99–24706 Filed 9–21–99; 8:45 am]

BILLING CODE 4310–55–P

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Aquatic Nuisance Species Task Force Western Regional Panel Meeting

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces a meeting of the Western Regional Panel Committee. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION.**

**DATES:** The Panel will meet from 8:00 p.m. to 5:00 p.m., on Tuesday, October 5, 1999, and 8:00 am to 12:00 noon on Wednesday, October 6, 1999.

**ADDRESSES:** The meeting will be held at the Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas.

**FOR FURTHER INFORMATION CONTACT:** Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force at 703–358–2308 or by e-mail at: sharon__gross@fws.gov.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Aquatic Nuisance Species Task Force Western Regional Panel Committee. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

The Panel, comprised of representatives from Federal, State, and local agencies and from private environmental and commercial interests, provides the following:

1. Identifies priorities for the Western Region with respect to aquatic nuisance species;
2. Makes recommendations to the Task Force regarding an education, monitoring (including inspection), prevention, and control program to prevent the spread of the zebra mussel west of the 100th Meridian;
3. Coordinates with other aquatic nuisance species program activities in the Western region;
4. Develops an emergency response strategy for Federal, State, and local entities for stemming new invasions of aquatic nuisance species; and
5. Provides advice to public and private individuals and entities concerning methods of preventing and controlling aquatic nuisance species.

The topics of this meeting will be to review Panel activities for the past year and develop priorities for the coming year, develop plans to implement priority actions, and provide updates of ongoing activities.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 851, North Fairfax Drive, Arlington, Virginia 22203–1622, and will be available for public inspection during business hours, Monday through Friday.

Dated: September 16, 1999.

**Rowan Gould,**

*Co-Chair, Aquatic Nuisance Species Task Force, Acting Assistant Director—Fisheries.*

[FR Doc. 99–24634 Filed 9–21–99; 8:45 am]

BILLING CODE 4310–55–M

## DEPARTMENT OF THE INTERIOR

### Geological Survey

### National Satellite Land Remote Sensing Data Archive Advisory Committee; Committee Meeting

**AGENCY:** U.S. Geological Survey, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to Public Law 92–463, the National Satellite Land Remote Sensing Data Archive (NSLRSDA) Advisory Committee will meet at the U.S. Geological Survey (USGS) Earth Resources Observation Systems (EROS) Data Center (EDC) near Sioux Falls, South Dakota. The Committee, comprised of 15 members from academia, industry, government, information science, natural science, social science, and policy/law, will provide the USGS, EDC management with advice and consultation on defining and accomplishing the NSLRSDA's archiving and access goals to carry out the requirements of the Land Remote Sensing Policy Act; on priorities of the NSLRSDA's tasks; and, on issues of archiving, data management, science, policy, and public-private partnerships.

Topics to be reviewed and discussed by the Committee include determining the content of and upgrading the basic data set as identified by the Congress; metadata content and accessibility; product characteristics, availability, and delivery; and, archiving, data access, and distribution policies.

**DATES:** October 20–22, 1999, commencing at 8:30 a.m. October 20 and adjourning at 12 noon on October 22.

**CONTACT:** Mr. Thomas M. Holm, Acting Chief, Data Services Branch, U.S. Geological Survey, EROS Data Center, Sioux Falls, South Dakota, 57198 at (605) 594–6142 or email at *holm@edcmail.cr.usgs.gov*.

**SUPPLEMENTARY INFORMATION:** Meetings of the National Satellite Land Remote Sensing Data Archive Advisory Committee are open to the public. Previous Committee meeting minutes are available for public review at *http://edc.usgs.gov/programs/nslrsda/advcomm.html*.

Dated: September 15, 1999.

**Ernest B. Brunson,**

*Acting Associate Chief of Operations, National Mapping Division.*

[FR Doc. 99–24683 Filed 9–21–99; 8:45 am]

BILLING CODE 4310–47–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AK–962–1410–00–P; AA–72079]**

### Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(h)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(1), and Sec. 207(e) of Pub. L. 100–383, will be issued to The Aleut Corporation. The lands involved are in the vicinity of Attu Island, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Anchorage Daily News*. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision shall have until October 22, 1999 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

**Sherri D. Belenski,**

*Land Law Examiner, Branch of ANCSA Adjudication.*

[FR Doc. 99–24642 Filed 9–21–99; 8:45 am]

BILLING CODE 4310–$$–P

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decrees Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on August 31, 1999, a proposed consent decree in *United States* v. *Charles L. Guyton, et al.*, Civil Action No. 99CV223, was

lodged with the United States District Court for the Eastern District of Virginia.

In this action, the United States sought recovery under Section 107 of CERCLA of in excess of $2.7 million in response costs incurred as well as costs to be incurred by the United States in response to the release or threatened release of hazardous substances at the C&R Battery Company, Inc. Superfund Site (''Site''), located in Chesterfield, Virginia. The Consent Decree will resolve the claims against three of the defendants, Ricky Wharton T/A Wharton Enterprises, Divid Cunningham T/A Battery Barn and Battery Barn of Virginia, Inc., for the payment, aggregate, of $25,757.56 to the United States. The Consent Decree contains a covenant not to sue by the United States under Section 107 of CERCLA. The Consent Decree will not resolve the United States' claims against the remaining defendant, Charles L. Guyton, who was the operator of the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Charles L. Guyton, et al.*, DOJ Ref. #90–11–2–692/2.

The proposed consent decree may be examined at the Office of the United States Attorney, Eastern District of Virginia, Richmond Division, 600 E. Main Street, Suite 1800, Richmond, VA, 23219; at U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029; and at the Consent Decree Library, 1120 G. Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $46.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 99–24604 Filed 9–21–99; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—CommerceNet Consortium, Inc.

Notice is hereby given that, on May 11, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), CommerceNet Consortium, Inc. (the ''Consortium'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Baltimore, Inc., Plano, TX; Bow Street Software, Portsmouth, NH; Boston Consulting Group, Inc., Boston, MA; Computer Literacy, Sunnyvale, CA; Progress Software, Bedford, MA; and Fatbrain.com, Sunnyvale, CA have joined the Consortium as Core members. Intelisys Electronic Commerce LLC, New York, NY has joined the Consortium as a Portfolio member. Also, Emerge Consulting, Palo Alto, CA; E-Forex, Brisbane, CA; CNAPro, New York, NY; Fujitsu Limited-Japan, Tokoyo, Japan; nCiper Limited, Cambridge, United Kingdom; Fruit of the Loom, Bowling Green, KY; and Bay Networks, Santa Clara, CA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CommerceNet Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On June 13, 1994, CommerceNet Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 31, 1994 (59 FR 45012).

The last notification was filed with the Department on April 29, 1999. A notice has not yet been published in the **Federal Register**.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 99–24606 Filed 9–21–99; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—CommerceNet Consortium, Inc.

Notice is hereby give that, on April 29, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), CommerceNet Consortium, Inc. (the ''Consortium'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, TSI Software, Wilton, CT; Roundstone Group, Westwood, MA; and Infoseek, Sunnyvale, CA have joined the Consortium as Core members. Also, Mitsubishi Electronics America, Inc., Sunnyvale, CA; V-One Corporation, Germantown, MD; Internet Shopping Directory, Inc., Incline Village, NV; and Mitsubishi International Corp., Palo Alto, CA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CommerceNet Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On June 13, 1994, CommerceNet Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 31, 1994 (59 FR 45012).

The last notification was filed with the Department on March 31, 1999. A notice has not yet been published in the **Federal Register**.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 99–24607 Filed 9–21–99; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Digital Imaging Group

Notice is hereby given that, on March 8, 1999, pursuant to Section 6(a) of the

National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Digital Imaging Group has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Elysium Ltd. Crowborough, East, United Kingdom; Fonecom, San Diego, CA; IXLA, Ltd, San Jose, CA; LizardTech, Inc., Seattle, WA; LuRa Tech, Berlin, Germany; Norwegian University of Science and Technology, Trundheim, Norway; Octalis, Louvain-la-Neuve, Belgium, Panoptic Vision, Boulder, CO; Societe des Auteurs et Compositeurs, Paris, France; and Netimage, Gargilesse, France have been added as parties to this venture. Also, Jiro (formerly PrintPaks, Inc.), Portland, OR; Koyosha Graphics of America, Inc., San Francisco, CA; PhotoDisc, Inc., Seattle, WA; PhotoSpin, Inc., Rolling Hills Estates, CA; Pictra, Inc., Sunnyvale, CA; PictureWorks Technology, Inc., Danville, CA; SanDisk Corporation, Sunnyvale, CA; and Storm Technology, Inc., Mountain View, CA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Digital Imaging Group intends to file additional written notification disclosing all changes in membership.

On September 25, 1997, Digital Imaging Group filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 10, 1997 (62 FR 60530).

The last notification was filed with the Department on December 16, 1998. A notice has not yet been published in the **Federal Register**.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 99–24611 Filed 9–21–99; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Gas Utilization Research Forum (''GURF'')

Notice is hereby given that, on February 2, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Gas Utilization Research Forum (''GURF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Phillips Petroleum Company, Bartlesville, OK has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Gas Utilization Research Forum (''GURF'') intends to file additional written notification disclosing all changes in membership.

On December 19, 1990, Gas Utilization Research Forum (''GURF'') filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 16, 1991 (56 FR 1655).

The last notification was filed with the Department on July 6, 1998. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 31, 1998 (63 FR 72331).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 99–24605 Filed 9–21–99; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Inter Company Collaboration for AIDS Drug Development

Notice is hereby given that, on June 29, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4310 *et seq.* (''the Act''), Inter Company Collaboration for AIDS Drug Development (the ''Collaboration'') has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, although no changes have been made in the membership of the Collaboration, Collaboration member Astra AB of Sweden merged with Zeneca Group PLC of the United Kingdom to form AstraZeneca PLC, a United Kingdom public limited company. In addition, Collaboration member Agouron Pharmaceuticals, Inc. of La Jolla, California has become a wholly owned subsidiary of Warner-Lambert Company of Morris Plains, New Jersey.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Inter Company Collaboration for AIDS Drug Development intends to file additional written notification disclosing all changes in membership.

On May 27, 1993, Inter Company Collaboration for AIDS Drug Development filed its original notification to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 6, 1993 (58 FR 36223).

The last notification was filed with the Department on November 30, 1998. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 29, 1999 (64 FR 4707).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 99–24609 Filed 9–21–99; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—International Business Machines Corporation and the Santa Curz Operation, Inc. Cooperative Development

Notice is hereby given that, on January 22, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), International Business Machines

Corporation and The Santa Cruz Operation, Inc. have filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provision limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are International Business Machines Corporation, Armonk, NY; and The Santa Cruz Operation, Inc., Santa Cruz, CA. The nature and objectives of the venture are to cooperatively develop and enhance UNIX operating systems designed to operate on the 32-bit and 64-bit Intel architecture platforms to enable innovative new open systems computer technologies and products more rapidly and efficiently than either party could achieve independently. Each party may market such jointly developed products.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 99–24610 Filed 9–21–99; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Motorola/Jabil Circuits

Notice is hereby given that, on March 30, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Motorola, Inc. has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b)of the Act, the identities of the parties are Auburn University, Auburn, AL; Jabil Circuit, Inc., San Jose, CA; Loctite Corporation, Rocky Hill, CT; and Motorola, Inc., Schaumburg, IL. The nature and objectives of the venture are to engage in a collaborative effort of limited duration to gain further knowledge and understanding of, and develop new materials and technology for, integrated-circuit fabrication facilities using conventional surface mount technology to handle new ''direct chip attach'' components, enabling more efficient production of these high performance devices.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 99–24608 Filed 9–21–99; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

**[INS No. 1998–99]**

**RIN 1115–AF50**

### Advance Notice of Expansion of Expedited Removal to Certain Criminal Aliens Held in Federal, State, and Local Jails

**AGENCY:** Immigratnion and Naturalization Service, Justice.

**ACTION:** Advance notice with request for comments.

**SUMMARY:** This notice advises the public that the Immigration and Naturalization Service (Service) intends to apply the expedited removal provision of section 235(b)(1) of the Immigration and Nationality Act (Act) on a pilot basis to certain criminal aliens being held in three correctional facilities in the State of Texas. This action will not become effective until the Service evaluates and addresses public comments and informs the public by notice in the **Federal Register** when the expedited removal provisions will be implemented. This pilot program will last for a period of 180 days, and will be followed with an evaluation of the program. The Service believes that implementing the expedited removal provisions to person who have been found by a Federal judge to be guilty of illegal entry and are serving short criminal sentences will result in removal of those criminal aliens faster than can be achieved under ordinary removal proceedings. This will ensure prompt immigration determinations in those cases and consequently will save Service detention space and immigration judge and trial attorney resources, while at the same time protecting the righ5ts of the individuals affected.

**DATES:** Comments must be submitted on or before November 22, 1999.

**ADDRESSES:** Please submit written comments, **original and two copies,** to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW, Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS No. 1998–99 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

**FOR FURTHER INFORMATION CONTACT:** Isabelle Chewning, Detention and Deportation Officer, Immigration and Naturalization Service, 801 I Street NW, Suite 800, Washington, DC 20536, telephone (202) 616–7797, or Melinda Clark, Detention and Deportation Officer, Immigration and Naturalization Service, 425 I Street NW, Room 3214, Washington, DC 20536, telephone (202) 514–1986.

**SUPPLEMENTARY INFORMATION:**

#### What is the expedited removal program?

Under section 235(b)(1) of the Immigration and Nationality Act (Act), as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), certain aliens who are inadmissible to the United States under sections 212(a) (6) (C) or 212(a) (7) of the Act are not entitled to a formal removal hearing before an immigration judge under section 240 of the Act. Instead, these aliens are subject to an expedited removal order issued by an immigration officer. Sections 212(a) (6) (C) and 212(a) (7) are the grounds of inadmissibility which cover aliens who seek or have sought to procure a visa, other documentation, or admission to the United States or other benefits under the Act by fraud or misrepresentation or who arrive without proper entry documents.

On March 6, 1997, the Department of Justice issued implementing regulations which apply the expedited removal provisions of section 235(b)(1) of the Act to certain aliens arriving in the United States on or after April 1, 1997. (See 62 FR 10312).

#### To whom Will the Section 235(b) (1) Expedited Removal Provisions Be Applied?

Section 235(b) (1) (A) (iii) of the Act permits the Attorney General, in her sole and unreviewable discretion, to designate certain other aliens to whom the expedited removal provisions may be applied even though they are not arriving in the United States. Specifically, the Attorney General may apply the expedited removal provisions to any or all aliens who have not been admitted or paroled into the Untied States and who have been physically present for less than 2 years prior to the date of the determination of inadmissibility. By publication of this notice, the Attorney General is exercising her discretionary authority to apply the provisions of the expedited removal to certain alien who:

(i) Have been convicted of illegal entry into the United States under 8 U.S.C. 1325(a) (1) or (2) (section 275 of the Act) if the court record establishes the time, place, and manner of entry;

(ii) Have not been admitted or paroled into the United States and who have been physically present for less than 2 years prior to the date of the determination of inadmissibility; and

(iii) Are serving criminal sentences in the Big Spring Correction Center, Eden Detention Center, or Reeves County Bureau of Prisons Contract Facility.

**Under What Authority Is the Immigration and Naturalization Service Taking This Action?**

In addition to the statutory authority contained in section 235(b)(1)(A)(iii) of the Act, the expedited removal provisions contained in the Service's regulations at 8 CFR 235.3(b)(1)(ii) provides as follows:

(ii) As specifically designated by the Commissioner, aliens who arrive in, attempt to enter, or have entered the United States without having been admitted or paroled following inspection by an immigration officer at a designated port-of-entry, and who have not established to the satisfaction of the immigration officer that they have been physically present in the United States continuously for the 2-year period immediately prior to the date of determination of inadmissibility. The Commission shall have the sole discretion to apply the provisions of section 235(b)(1) of the Act, at any time, to any class of aliens described in this section. The Commissioner's designation shall become effective upon publication of a notice in the **Federal Register**. However, if the Commissioner determines, in the exercise of discretion, that the delay caused by publication would adversely affect the interests of the United States or the effective enforcement of the immigration laws, the Commissioner's designation shall become effective immediately upon issuance, and shall be published in the **Federal Register** as soon as practicable thereafter. When these provisions are in effect for aliens who enter without inspection, the burden of proof rests with the alien to affirmatively show that he or she has the required continuous physical presence in the United States. Any absence from the United States shall serve to break the period of continuous physical presence. An alien who was not inspected and admitted or paroled into the United States but who establishes that he or she has been continuously physically present in the United States for the 2-year period immediately prior to the date of determination of inadmissibility shall be detained in accordance with section 235(b)(2) of the Act for a proceeding under section 240 of the Act.

Because the regulation provides the authority to apply expedited removal to aliens affected by this pilot program, the Service is not amending its regulation, but it is announcing the pilot program through this notice and a subsequent notice after receiving public comment.

**Why Is This Action Being Taken?**

The Service identifies and processes thousands of criminal aliens for removal each year while they are incarcerated in Federal, State, and local jails and correctional facilities. There are several programs and methods in place to accomplish this task. Most notable is the Institutional Removal Program (IRP), whereby immigration officers are stationed at specific Federal and State correctional facilities to process aliens for removal proceedings, which are conducted at that site by Immigration Judges before their release from criminal custody. If found removable, the aliens can then be removed from the country immediately upon completion of their sentence, without the Service incurring additional detention costs to house them during their removal proceedings. Many of the aliens incarcerated in certain IRP facilities have been convicted of illegal entry under 8 U.S.C. 1325 (section 275 of the Act), often initiated after the alien has committed multiple illegal entries. Many are given relatively short sentences that make it difficult to complete removal proceedings before an immigration judge prior to the completion of their sentences. Since these aliens have been convicted of illegal entry, the court records and documentation in the file will clearly establish the time, place, and manner of entry, thereby establishing eligibility for expedited removal. Under this pilot program, therefore, expedited removal will only be applied where the Federal Courts have affirmatively determined that the alien falls within the illegal entry criteria for expedited removal.

**Will the Program Be Expanded to all Federal, State, and Local Jails and Correctional Facilities?**

No. This pilot program will be limited to the following IRP facilities: Big Spring Correction Center, Eden Detention Center, and Reeves County Bureau of Prisons Contract Facility. This limitation will permit the Service to provide thorough training to all officers involved in the process, to monitor the procedures being followed, and to evaluate the effectiveness of the pilot program for possible application to other IRP facilities.

**Will Expedited Removal Be Applied to all Criminal Aliens Detained at These Sites?**

No. The Service intends to apply the expedited removal provisions only to those aliens convicted of illegal entry who have not previously been removed, provided the court records explicitly established the time, place, and manner of entry, and that the alien has not been admitted or paroled into the United States and has not been physically present continuously for the 2-year period immediately prior to the date of the determination of inadmissibility.

Those aliens who have reentered the United States illegally after having been previously ordered removed from the United States will continue to be subject to reinstatement of the prior order of removal under section 241(a)(5) of the Act. The Service will also continue to apply the existing procedures under section 238 of the Act for removal of most aliens convicted of an aggravated felony.

**What Does the Service Expect To Achieve Through This Pilot Program?**

The Service expects the pilot program to demonstrate a greater efficiency in processing criminal aliens who meet the statutory criteria for expedited removal, but who may not be eligible for other existing programs or could not be as promptly removed under the IRP. In addition, many of the relatively routine cases that fall within the statutory criteria for expedited removal but are currently being heard by immigration judges in the IRP could be processed under expedited removal, and the administrative resources and detention costs currently expended on these cases could be applied to other IRP cases or to other detained cases. The increased volume of illegal entries and the increasing number of criminal aliens being apprehended and identified have resulted in a critical shortage of Service detention space in recent months. This shortage necessitates that the Service explore further appropriate means to achieve the most efficient use of limited Service detention space. The Service is confident that the experience it has gained since the implementation of the expedited removal program at ports-of-entry on April 1, 1997, will enable it to successfully pilot a very limited expansion of the program in a manner that is both effective and fair.

**How Will the Service Ensure That an Alien Placed in the Expedited Removal Program Will Not Be Subjected to Persecution or Torture Upon Removal From the United States?**

Service regulations provide that any alien who indicates either an intention to apply for asylum, withholding of removal under section 241(b)(3) of the Act, or protection under the Convention Against Torture, or expresses a fear of persecution, torture, or other harm shall be referred for an interview by an asylum officer to determine whether the alien has a credible fear. The Form I–867A and I–867B currently used by the officers who process aliens under the expedited removal program, in accordance with the statutory requirement at section 235(b)(1)(B)(iv) of the Act, carefully explains to all aliens in expedited removal proceedings the alien's right to a credible fear interview. The forms also require that the officer determine whether the alien has any reason to fear harm if returned to his or her country. This form will also be used for aliens subject to expedited removal under this pilot program. Additionally the training to be provided to other officers who will administer the program will emphasize the need to be alert for any verbal or non-verbal indications that the alien may be afraid to return to his or her homeland.

Once an alien is referred to an asylum officer for a credible fear interview, he or she has a right to consultation with a person of the alien's choosing, and a right to review by an immigration judge of any negative credible fear determination. Aliens found to have a credible fear are then placed into ordinary removal proceedings before an immigration judge where they may apply for asylum and withholding of removal.

**How Does the Effect of an Expedited Removal Order Issued by an Immigration Officer Differ From the Effect of a Final Removal Order Issued by an Immigration Judge Under Section 240 of the Act?**

Regardless of whether the final order is issued by an immigration judge or the Board of Immigration Appeals under section 240 of the Act or by an immigration officer under section 235(b)(1) of the Act, the consequences are the same. The alien is prohibited from returning to the United States without advance permission for the period of time specified in section 212(a)(9) of the Act. Where proceedings are initiated other than upon the alien's arrival in the United States, the alien ordered removed is inadmissible for a period of 10 years (or 20 years in the case of a second or subsequent removal). If the alien should illegally reenter the United States, he or she is subject to reinstatement of removal under section 241(a)(5) of the Act and to civil and criminal penalties contained in the Act and in other Federal statutes.

**How Will the Service Evaluate the Integrity, Productivity and Effectiveness of This Program?**

The Service intends to monitor the process carefully and will conduct an evaluation of the program upon the termination of the pilot program after 180 days have elapsed. The Service will regularly conduct reviews of a sampling of expedited removal cases processed at the selected facilities. The files will be reviewed to ensure that all procedures are properly followed, especially those procedures designed to protect the rights of the aliens involved. This is the same process used by the Service for monitoring port-of-entry expedited removal cases. The Service will also conduct site visits to conduct follow-up training and on-site monitoring. The Service will also monitor statistics pertaining to the number of aliens removed through this program.

**Why Is the Service Soliciting Public Comments on This Notice?**

While not required under the Administrative Procedures Act, the Service is interested in receiving comments from the public on all aspects of the expedited removal program, but especially on the effectiveness of the program, problems envisioned by the commenters, and suggestions on how to address those problems. We believe that, by maintaining a dialogue with interested parties, the Service can ensure that the program remains effective in combating and deterring illegal entry whole at the same time protecting the rights of the individuals affected.

**When Will These Actions Begin and How Long Will It Last?**

After evaluating and addressing the public comments, the Service will inform the public by notice in the **Federal Register** 30 days prior to the pilot program's implementation. The program will remain in effect for 180 days.

Dated: September 14, 1999.

**Doris Meissner,**

*Commissioner, Immigration and Naturalization Service.*

[FR Doc. 99–24385 Filed 9–21–99; 8:45 am]

BILLING CODE 4410–10–M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–73]**

## General Electric Company; Notice of Consideration of Application for Renewal of Facility License

The United States Nuclear Regulatory Commission (the Commission) is considering renewal of Facility License No. R–33, issued to the General Electric Company (the licensee) for operation of the General Electric Nuclear Test Reactor located on the Vallecitos Nuclear Center in Sunol, California.

The renewal would extend the expiration date of Facility License No. R–33 for twenty years from date of issuance, in accordance with the licensee's timely application for renewal dated September 30, 1997, as supplemented on November 20, 1997, and June 18, and August 23, 1999.

Prior to a decision to renew the license, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

Within thirty days of publication of this notice, the licensee may file a request for a hearing with respect to renewal of the subject facility 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. If a request for a hearing or petition for leave to intervene is filed within the time prescribed above, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the

following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. 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 and the 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.

A request for a hearing or a petition for leave to intervene must be filed with Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC within the time prescribed above. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325–6000 (in Missouri 1-(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Ledyard B. Marsh: petitioner's name and telephone number; date petition was mailed; General Electric Company Nuclear Test Reactor; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Benton M. Murray, V18, General Electric Company, Vallecitos Nuclear Center, 6705 Vallecitos Road, Sunol, CA 94586.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for renewal dated September 30, 1997, as supplemented on November 20, 1997, and June 18, and August 23, 1999, which is available for public inspection at the Commission's Public Document Room at 2120 L Street, NW, Washington, DC

Dated at Rockville, Maryland, this 16th day of September 1999.

For the Nuclear Regulatory Commission.

**Thomas Koshy,**

*Acting Chief, Events Assessment, Generic Communications and Non-Power Reactors Branch, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.*

[FR Doc. 99–24669 Filed 9–21–99; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–151]**

## University of Illinois at Urbana-Champaign; University of Illinois at Urbana-Champaign Advanced Triga Research Reactor Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a license amendment to Facility License No. R–115, issued to the University of Illinois at Urbana-Champaign (UIUC or the licensee), for decommissioning of the UIUC Advanced TRIGA Research Reactor, located on the UIUC campus in Urbana, Champaign County, Illinois.

### Environmental Assessment

*Identification of Proposed Action*

The proposed action is approval of the licensee's SAFSTOR decommissioning plan. UIUC submitted their decommissioning plan in accordance with 10 CFR 50.82(b) for the UIUC Advanced TRIGA Research Reactor located in the Nuclear Reactor Laboratory (NRL). The reactor (1.5 MW thermal power) was permanently shut down on August 9, 1998. The licensee applied for a possession-only license amendment on October 5, 1998. By License Amendment No. 10 issued on April 12, 1999, the NRC removed the authority to operate the reactor and authorized possession of the residual radioactive materials.

The proposed decommissioning plan would place the NRL and reactor into safe storage until at least 2009 because this date is the soonest the Department of Energy can accept fuel from the UIUC. Domestic spent nuclear fuel receipts at the Idaho National Engineering and Environmental Laboratory have been severely constrained because of a settlement agreement of a lawsuit concerning spent nuclear fuel and nuclear waste. The only fuel storage option the licensee has is to maintain fuel in storage at the NRL. Decontamination and dismantlement activities cannot begin until fuel is removed from the NRL. The licensee has chosen the SAFSTOR option of decommissioning. SAFSTOR is the alternative in which the facility is placed and maintained in a condition that allows the facility to be safely stored and subsequently decontaminated to levels that permit release for unrestricted use. SAFSTOR consists of a short period of preparation for safe storage, a variable safe storage

period of continuing care consisting of security, surveillance, and maintenance, and ends with a period of deferred decontamination. The regulations in 10 CFR 50.82(b)(4)(i) allow the NRC staff to give consideration to an alternative which provides for delayed completion of decommissioning only when necessary to protect the public health and safety. The regulations give factors to be considered in evaluating an alternative which provides for delayed completion of decommissioning. One of these factors is the unavailability of waste disposal capacity. The inability of the licensee to dispose of the spent reactor fuel falls under this factor. The licensee will submit an updated decommissioning plan for NRC review and approval after fuel has been removed from the NRL.

The decommissioning plan describes maintaining the facility in a safe storage condition. Fuel will be stored in approved storage racks in the Bulk Shielding Facility, which is a tank of water that is part of the reactor biological shield but is separate from the reactor tank. The licensee plans to maintain a regular surveillance schedule at the facility during the SAFSTOR period. The licensee will continue with their current health physics program and the approved emergency plan, security plan and operator requalification plan during the SAFSTOR period.

A ''Notice and Solicitation of Comments Pursuant to 10 CFR 20.1405 and 10 CFR 50.82(b)(5) Concerning Proposed Action to Decommission University of Illinois at Urbana-Champaign University of Illinois Advanced TRIGA Research Reactor'' was published in the **Federal Register** on June 14, 1999 (64 FR 31882), and in the Champaign News-Gazette on June 13, 1999. There were no comments received on the proposed action.

The proposed action is in accordance with the licensee's application for amendment dated November 13, 1998, as supplemented by letters dated May 11 and August 3, 1999.

*The Need for the Proposed Action*

The proposed action is necessary because of the UIUC's decision to cease operations permanently. As specified in 10 CFR 50.82, any licensee may apply to the NRC for authority to surrender a license voluntarily and to decommission the affected facility. Once the licensee permanently ceases operation, 10 CFR 50.82(b)(1) requires the licensee to make application for license termination within two years following permanent cessation of operations, and in no case later than one year prior to expiration of the operating license. UIUC is planning to place the facility into safe storage until such time that the Department of Energy can accept the fuel from the facility. After the fuel is removed, the licensee will continue with decommissioning activities. UCIC is planning to use the area that would be released for unrestricted use for other academic purposes.

*Environmental Impact of the Proposed Action*

The Commission has completed its evaluation of the proposed action and concludes that the radiological effects of maintaining the facility in a condition of safe storage will be minimal because fuel will be stored in approved storage locations under the restrictions of the facility license. In accordance with the conditions of the technical specifications, the licensee will conduct weekly physical surveillance of the facility to confirm that the fuel and facility are in a condition of safe storage and to ensure proper system performance. The licensee will continue surveillance of primary water quality, radiation monitoring systems, the ventilation system and fuel inspection. Likewise, the licensee will continue with their current health physics program, approved emergency plan, security plan and operator requalification plan. Any solid or liquid wastes generated during the storage period will be disposed of in accordance with the regulations. With the termination of reactor operations, effluents released from the site will probably decrease. No new postulated accidents have been identified during the safe storage period that would have greater radiological impact than previously evaluated accidents. The UIUC estimates that the typical dose commitment to a member of the public at the site boundary will continue to be less than 2 mrem per year as has been reported in annual reports from the licensee. The UIUC estimates that the typical occupational dose commitment to members of the staff will continue to be less than 50 mrem per year per person during the SAFSTOR period.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

*Alternatives to the Proposed Action*

The only two alternatives to the proposed action for the UCIC Advanced TRIGA reactor are ENTOMB and no action. ENTOMB is the alternative in which radioactive contaminates are encased in a structurally long-lived material, such as concrete, the entombed structure is appropriately maintained and continued surveillance is carried out until the radioactivity decays to a level permitting release of the property for unrestricted use.

The ENTOMB alterative could not be put into place until the fuel has been removed from the facility. However, the UIUC wants to use the space that will become available for other academic purposes and would enter into the decommissioning activities soon after fuel is removed from the facility. The alternative of not decommissioning reactors was rejected in the ''Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities,'' NUREG–0586. The no action alternative would leave the facility in its present configuration. Denial of the application would result in no change in current environmental impacts.

The environmental impacts of the proposed action and the alternative actions are similar.

*Alternative Use of Resources*

The action does not involve the use of resources different from those previously committed for construction and operation of the UIUC Advanced TRIGA reactor.

*Agencies and Persons Consulted*

In accordance with its stated policy, on August 20, 1999, the staff consulted with the State of Illinois official, F. Niziolek of the Illinois Department of Nuclear Safety (IDNS), regarding the environmental impact of the proposed action. The state official stated that the IDNS chooses not to provide any comments on the proposed action.

**Finding of No Significant Impact**

On the basis of 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 this proposed action, see the licensee's letter dated November 13, 1998, as supplemented by letters dated May 11 and August 3, 1999. These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, D.C. 20003–1527.

Dated at Rockville, Maryland, this 16th day of September 1999.

For the Nuclear Regulatory Commission.

**Thomas Koshy,**

*Acting Chief, Events Assessment, Generic Communications and Non-Power Reactors Branch, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.*

[FR Doc. 99–24668 Filed 9–21–99; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Materials and Metallurgy; Postponed

A meeting of the ACRS Subcommittee on Materials and Metallurgy scheduled to be held on September 22, 1999, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland has been postponed due to the unavailability of a staff document. Notice of the meeting was published in the **Federal Register** on Friday, September 3, 1999 (64 FR 48439). Rescheduling of this meeting will be announced in a future **Federal Register** Notice.

Further information contact: Mr. Noel F. Dudley, cognizant ACRS staff engineer, (telephone 301/415–6888) between 7:30 a.m. and 4:15 p.m. (EDT).

Dated: September 16, 1999.

**Richard P. Savio,**

*Associate Director for Technical Support, ACRS/ACNW.*

[FR Doc. 99–24666 Filed 9–21–99; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Nuclear Regulatory Commission.

**DATES:** Weeks of September 20, 27, October 4, 11, *and* 18, 1999.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**MATTERS TO BE CONSIDERED:**

*Week of September 20*

Tuesday, September 21

9:25 a.m.—Affirmation Session (Public Meeting) (if needed)

9:30 a.m.—Briefing by DOE on Draft Environmental Impact Statement (DEIS) for a Proposed HLW Geologic Repository (Public Meeting)

Wednesday, September 22

9:00 a.m. Meeting on Center for Strategic and International Studies Report, ''The Regulatory Process for Nuclear Power Reactors—a Review'' (Public Meeting)

*Week of September 27—Tentative*

There are no meetings scheduled for the Week of September 27.

*Week of October 4—Tentative*

There are no meetings scheduled for the Week of October 4.

*Week of October 11—Tentative*

Thursday, October 14

11:30 a.m.—Affirmation Session (Public Meeting) (if needed)

*Week of October 18—Tentative*

Thursday, October 21

9:30 a.m.—Briefing on Part 35—Rule on Medical Use of Byproduct Material (Contact: Cathy Haney, 301–415–6825) (SECY–99–201, *Draft Final Rule—10 CFR Part 35, Medical Use of Byproduct Material*, is available in the NRC Public Document Room or on NRC web site at ''www.nrc.gov/NRC/COMMISSION/SECY/index.html''. Download the *zipped version* to obtain all attachments.)

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. *Contact Person for More Information:* Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: September 17, 1999.

**William M. Hill, Jr.,**

*SECY Tracking Officer, Office of the Secretary.*

[FR Doc. 99–24682 Filed 9–17–99; 2:03 pm]

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## NUCLEAR REGULATORY COMMISSION

### Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

**I. Background**

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from August 28, 1999, through September 10, 1999. The last biweekly notice was published on September 8, 1999 (64 FR 48858).

**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 and Directives Branch, Division of Administration 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 October 22, 1999, 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: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. 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:* August 27, 1999.

*Description of amendments request:* The proposed amendment revises Technical Specification (TS) 3.7.13, ''Spent Fuel Pool (SFP) Water Level'' to allow placement of one or more fuel assemblies on SFP rack spacers to support fuel reconstitution activities while irradiated fuel assembly movement continues in the SFP. Although the plant TSs do not prohibit fuel reconstitution, the effect of the current wording of TS 3.7.13, in conjunction with the specific design of the SFP and storage racks, limits reconstituting only one fuel assembly at a time and only when no irradiated fuel assembly movement occurs in the SFP. Specifically, the proposed change adds a new statement to the limiting condition for operation that would require the water level over fuel assemblies placed on rack spacers to be 19.8 feet while irradiated fuel assemblies are being moved in the SFP. The proposed administrative controls will ensure that the current design basis fuel handling accident described in the Updated Final Safety Analysis Report (UFSAR) bounds a fuel handling accident associated with reconstitution activities.

*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 proposed change will require a minimum water level of 19.8 feet over fuel assemblies that are placed on rack spacers for fuel reconstitution activities while fuel movement continues in the SFP. This proposed change does not cause any spent fuel handling equipment to be operated in a new or different manner. No structural changes or modifications are being made to the spent fuel handling machine (SFHM) or to the spent fuel storage racks. Administrative controls will be put in place to ensure that the SFHM or an assembly being carried by the SFHM will not strike assemblies placed on rack spacers. This proposed change does not make any changes to equipment, procedures, or processes that increase the likelihood of dropping the fuel assembly from the SFHM. Administrative controls will be put in place to limit the movement of heavy loads such that only a single-failure-proof crane will be used in the area of the affected fuel assembly and the adjacent storage rack cells when the assemblies are seated on rack spacers with their upper end fittings removed. Therefore, this proposed change does not involve a significant increase in the probability of an accident previously evaluated.

A Fuel Handling Incident (FHI) during reconstitution activities is bounded by those previously analyzed and described in the Updated Final Safety Analysis Report (UFSAR) for the limiting FHI. The number of fuel pins that could be ruptured in a raised fuel assembly does not exceed that previously analyzed. Also, by requiring that reconstitution activities do not occur until 10 days after shutdown ensures that a[n] FHI during these activities will be bounded by the most limiting FHI described in the UFSAR. Therefore, the proposed change does not significantly increase the consequences of an accident previously evaluated.

Based on the above, 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 change will not make any physical changes to the plant. Specifically, no modifications will be made to the SFHM, the spent fuel storage racks, or the spent fuel assemblies. No changes are made to the operation of the SFHM. The only change made by this activity is that multiple fuel assemblies may be placed on rack spacers in the SFP for reconstitution activities. Administrative controls will be put in place to ensure that this proposed change does not create the potential of a[n] FHI during reconstitution activities that is not bounded by our current accident analysis. This proposed change does not have any impact on the cooling or safe geometry functions of the SFP storage racks. This proposed change does not create any new interactions between any plant components. Therefore, the possibility of a new or different type of accident is not created by this proposed change.

3. Would not involve a significant reduction in a margin of safety.

The Technical Specification requires a minimum water level to be maintained above the fuel assemblies stored in the SFP storage racks to ensure that sufficient water depth is available to remove the assembled iodine gap activity released from the rupture of an irradiated fuel assembly. The proposed change will allow multiple fuel assemblies to be placed on rack spacers for fuel reconstitution activities while fuel movement continues in the spent fuel pool. These activities will reduce the amount of water maintained above the fuel assemblies that are placed on rack spacers. However, the proposed change does not involve a significant reduction in a margin of safety based on the administrative controls that require an increase in the decay time before these activities can be started. Additional administrative controls will be put in place that include, in part, restricting load movements over the affected fuel assembly and the adjacent storage rack cells, as well as controlling the SFHM. The administrative controls will ensure that the FHI associated with reconstitution activities is bounded by the current design basis FHI described in the UFSAR. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Calvert County Library, Prince Frederick, Maryland 20678.

*Attorney for Licensee:* Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

*NRC Section Chief:* S. Singh Bajwa.

*Florida Power and Light Company, et al., Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida*

*Date of amendment request:* August 18, 1999.

*Description of amendment request:* The proposed amendment will change the required surveillance interval for cycling the steam valves in the turbine overspeed protection system from monthly to quarterly. The license requirement is documented in the St. Lucie, Unit 2 Updated Final Safety Analysis Report (UFSAR) Section 13.7.1.6.2, and the proposed change does not satisfy the 10 CFR 50.59 standards for a change that can be made by the licensee without prior Commission approval.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The small increase in turbine missile ejection frequency resulting from extending the test interval for turbine valves is acceptable with respect to the NRC probabilistic acceptance criterion and supports quarterly testing. In addition, there are no physical changes to plant equipment or changes in plant operation that could initiate or adversely affect the mitigation or

consequences of an accident previously evaluated. Turbine disk integrity remains unchanged since the turbine rotor inspection cycle is not affected by the change in valve testing frequency. Further, there are no changes to protective barriers or changes in separation of equipment important to safety. Therefore, safety related structures, systems, and components remain adequately protected against potential turbine missiles and the potential for turbine missile generation has not significantly increased. The change to extend the turbine valve test interval maintains the intent and design basis function being verified by the surveillance requirement. Therefore, operation of the facility in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no physical changes to plant equipment or changes in plant operation that could create a new or different kind of accident. This proposed change does not result in any plant configuration changes or create new failure modes. The small increase in turbine missile ejection frequency resulting from extending the test interval for turbine valves is acceptable with respect to the NRC probabilistic acceptance criterion and supports quarterly testing. New types of turbine missiles or strike probabilities are not created by extending the turbine valve test interval. No new or different kind of accident is created. In addition, turbine disk integrity remains unchanged since the turbine rotor inspection cycle is not affected by the change in valve testing frequency. Further, there are no changes to protective barriers or changes in the separation of equipment important to safety. Safety related structures, systems, and components remain adequately protected against potential turbine missiles, the potential for turbine missile generation has not significantly increased, and new or different kinds of accidents are not created. Therefore, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

This proposed surveillance change extends the turbine overspeed protection system turbine valve test frequency from monthly to quarterly. The results of turbine missile ejection frequency remain within NRC acceptance criterion and therefore supports quarterly testing. There are no physical changes to plant equipment or changes in plant operation that involve a significant reduction in the margin of safety. Turbine disk integrity remains unchanged since the turbine rotor inspection cycle is not affected by the change in valve testing frequency. There are no changes to protective barriers or changes in separation of equipment important to safety. Therefore, safety related structures, systems, and components remain adequately protected against potential turbine missiles and the potential for turbine missile generation has not significantly increased. The change in turbine valve test interval maintains the intent and design basis function being verified by the surveillance requirement. As such, the assumptions and conclusions of the accident analyses in the UFSAR remain valid and associated safety limits will continue to be met. Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954–9003.

*Attorney for licensee:* M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

*NRC Section Chief:* Sheri R. Peterson.

*GPU Nuclear Inc., Docket No. 50–320, Three Mile Island—Unit 2 (TMI–2), Dauphin County, Pennsylvania*

*Date of amendment request:* June 29, 1999, as supplemented August 27, 1999 (LAR No. 77).

*Description of amendment request:* The proposed amendment would grant authority for the licensee to possess limited amounts and types of radioactive materials without unit distinction so that after the sale and transfer of the Three Mile Island—Unit 1 (TMI–1) license to AmerGen, radioactive materials may continue to be moved between the TMI–1 and TMI–2 units. After the license transfer, GPU Nuclear will need to access the waste handling and processing facilities at TMI–1 (currently common facilities) for its normal post-defueling monitored storage (PDMS) activities. Similarly, AmerGen as the TMI–1 licensee and PDMS contractor, will need to move radioactive apparatus and materials between units, principally during TMI–1 outages. The amendment would not authorize receipt or possession of radioactive material or waste from other sites.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes would not involve a significant increase in the probability of an accident previously evaluated because no accident initiators or assumptions are affected. The proposed changes have no effect on any plant systems. All Limiting Conditions for PDMS and Safety Limits specified in the Technical Specifications will remain unchanged.

[The proposed changes would] not involve a significant increase in the consequences of an accident previously evaluated because no accident conditions or assumptions are affected. The proposed changes do not alter the source term, containment isolation, or allowable radiological consequences. The staging of radioactive materials such as the contaminated reactor coolant pump and motor components will not result in a source term, that if released, would exceed that previously analyzed in the PDMS SAR [safety analysis report] in terms of off-site dose consequences. The proposed changes have no adverse effect on any plant system.

2. [The proposed changes would] not create the possibility of a new or different kind of accident from any previously evaluated because no new accident initiators or assumptions are introduced by the proposed changes. The proposed changes have no direct effect on any plant system. The changes do not affect any system functional requirements, plant maintenance, or operability requirements.

3. [The proposed changes would] not involve a significant reduction in the margin of safety because the proposed changes do not involve significant changes to the initial conditions contributing to accident severity or consequences. The proposed changes have no direct effect on any plant systems.

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:* Law/Government Publications Section, State Library of Pennsylvania, (Regional Depository) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

*Attorney for licensee:* Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Section Chief:* Michael T. Masnik.

*Illinois Power Company, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois*

*Date of amendment request:* August 23, 1999.

*Description of amendment request:* The proposed amendment would delete certain license conditions that are obsolete and no longer apply.

*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 activity does not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed changes delete various license conditions each of which has been fulfilled and no longer warrants a license condition. As such, the changes are purely administrative in nature, and involve no physical or operational changes to the facility. The initial conditions and methodologies used in the accident analyses consequently remain unchanged. Further, the proposed changes do not change or alter the design assumptions for the systems or components used to mitigate the consequences of an accident. Therefore, accident analyses results are not impacted. On this basis, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) The proposed activity does not create the possibility of a new or different kind of accident from any accident previously evaluated.

As noted above, the proposed changes are purely administrative and involve no physical or operational changes to the facility. As such, the proposed changes do not affect the design or operation of any system, structure, or component in the plant. The safety functions of the related structures, systems, or components are not changed in any manner, nor is the reliability or[f] any structures, systems or components reduced. No new or different type of equipment will be installed, and consequently, no new failure modes are introduced. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) The proposed activity does not involve a significant reduction in the margin of safety.

The proposed changes are administrative in nature and have no impact on the margin of safety of any Technical Specification. There is no impact on safety limits or limiting safety system settings. The changes do not affect any plant safety parameters or setpoints. All active/applicable license conditions set forth in the CPS Operating License will remain in effect, and no physical or operational changes to the facility will result from these changes. Therefore, the 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 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:* Vespasian Warner Public Library, 120 West Johnson Street, Clinton, IL 61727.

*Attorney for licensee:* Leah Manning Stetzner, Vice President, General Counsel, and Corporate Secretary, 500 South 27th Street, Decatur, IL 62525.

*NRC Section Chief:* Anthony J. Mendiola.

*Niagara Mohawk Power Corporation, Docket No. 50–220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York*

*Date of amendment request:* August 26, 1999.

*Description of amendment request:* The proposed amendment would revise the Technical Specifications (TS) to reflect the proposed implementation of Noble Metal Chemical Addition (NMCA) so as to enhance the effectiveness of Hydrogen Water Chemistry (HWC) in mitigating Intergranular Stress Corrosion Cracking (IGSCC) in reactor vessel internal components. Specifically, the proposed amendment would raise the reactor water conductivity limit in TS 3.2.3.a from 1.0 micromho/cm to 20 micromho/cm and in TS 3.2.3.c.1 from 5.0 micromho/cm to 20.0 micromho/cm during NMCA application. The proposed amendment will also raise the limit in TS 3.2.3.a and 3.2.3.b from 1 micromho/cm to 2 micromho/cm for up to a 5-month period at power operation following NMCA application. The reactor water conductivity would be restored to within the limit currently specified in TS 3.2.3 after the NMCA process is complete. The Bases for TS 3.2.3 and 4.2.3, ''Coolant Chemistry,'' would be supplemented to explain the changes resulting from NMCA.

*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.

The proposed amendment to TS 3.2.3 will raise the reactor water conductivity limit during and following NMCA application. This change will allow the application of a layer of noble metals to the reactor vessel internals to enhance the effectiveness of HWC in mitigating IGSCC. An increased conductivity is expected both during and following NMCA. However, during NMCA, this increase is caused principally by residual ionic species which do not contribute to IGSCC. Following NMCA application, the increased conductivity is expected to be due to soluble iron and increased pH which has no adverse affect on crack growth. Accordingly, the proposed change will not adversely affect reactor vessel internals or reactor fuel such that the probability of an accident is increased. The proposed change will not alter the current TS requirements concerning equipment needed to mitigate the consequences of an accident nor affect the performance of this equipment. Therefore, operation in accordance with the proposed amendment will not create an increase in the probability or 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 amendment to TS 3.2.3 will raise the reactor water conductivity limit during and following NMCA application. This change will allow the application of a layer of noble metals to the reactor vessel internals to enhance the effectiveness of HWC in mitigating IGSCC. Except for these temporary exceptions to the existing reactor coolant chemistry specification, no new plant or system operating modes are being introduced and plant equipment will continue to perform their intended function. An increased conductivity is expected both during and following NMCA. However, during NMCA, this increase is caused by ionic species which do not contribute to IGSCC. Following NMCA application, the increased conductivity is due to soluble iron and increased pH which has no adverse affect on crack growth. Accordingly, the proposed changes will not affect plant equipment in a way to create a new or different kind of accident. Therefore, operation 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 operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The proposed amendment to TS 3.2.3 will raise the reactor water conductivity limit during and following the application of NMCA. During NMCA, the proposed change will raise the reactor water conductivity limit in TS 3.2.3a and 3.2.3c.1 to 20 [micromho/cm]. However, the expected increase in coolant conductivity is caused principally by ionic species which do not contribute to IGSCC and, therefore, will not adversely affect reactor vessel internals or reactor fuel.

Following NMCA application, industry experience indicates that there may be an elevated conductivity approaching the 1 [micromho/cm] conductivity limit delineated in TS 3.2.3a and 3.2.3b. To provide operating margin, NMPC proposes to raise this limit to 2 [micromho/cm] for up to 5 months of power operation following application. The expected increase in the conductivity is attributed to an increase in soluble iron and pH in the reactor coolant which results from the application of the noble metals and its affect on the deposits on the fuel. Soluble iron nor increased pH contribute to IGSCC crack growth. The existing 1 [micromho/cm] limit is based on EPRI [Electric Power Research Institute] guidelines action Level 2 for power operation, which assumes normal

conductivity below .3 [micromho/cm]. Increasing the limit to 2 [micromho/cm] during the period when soluble iron levels are high provides an equivalent operating margin consistent with the chloride and sulfate limits. Accordingly, this temporary ([less than] 5 months) elevated conductivity is expected, acceptable, and not considered ''abnormal'' as discussed in TS 4.2.3 and associated Bases. Daily samples of coolant for conductivity, chlorides and sulfates will continue to be performed to assure water quality.

Therefore, operation in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* 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 Section Chief:* S. Singh Bajwa.

*Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey*

*Date of amendment request:* August 26, 1999

*Description of amendment request:* The proposed amendment would raise the condensate storage tank (CST) low level setpoint and the corresponding allowable value in Technical Specification (TS) Tables 3.3.3–2 and 3.3.5–2. The subject setpoint is associated with the automatic transfer of the High Pressure Coolant Injection (HPCI) and Reactor Core Isolation Cooling (RCIC) pump suctions from the CST to the suppression pool in the event of low CST level. These changes are being made to address concerns regarding potential vortexing in the HPCI and RCIC suction flowpaths.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The systems affected by the proposed change provide accident mitigation functions. Neither the proposed increase in level setpoint nor the reliance on operator action to maintain the required 135,000 gallon reserve volume in the condensate storage tank (CST) can affect initiation of a design basis accident.

Raising the CST low level setpoint to account for potential vortexing in the HPCI and RCIC suction flowpaths provides assurance that the functions of these systems can be properly carried out. There will no longer be a possibility of air entrainment into the RCIC and HPCI pumps suction at low levels in the CST. Initiation of RCIC or HPCI flow is unaffected by this modification. Execution of the suction line transfer to the suppression pool remains an entirely automatic function, utilizing the same safety related instrument signals as previously.

Reliance on level alarms and operator action to maintain the 135,000-gallon minimum reserve water volume in the CST, in lieu of internal standpipes, cannot increase the consequences of an accident. This is an operational condition that establishes initial conditions prior to an accident occurring. Operators would have sufficient time to respond to a CST level decrease under non-accident conditions. Manually transferring HPCI and RCIC suction to the safety related suppression pool should CST level decline below 203,000 gallons (the 135,000 gallons required inventory, plus 68,000 gallons unusable) ensures HPCI and RCIC remain fully capable of performing their design basis functions.

All parameters pertaining to the accident analysis, including pump initiation time, flowrate, volume and duration of flow delivered to the reactor vessel remain satisfied following implementation of this proposed change. Therefore, no accident scenario evaluated in the SAR [Safety Analysis Report] will be affected, and the radiological consequences of accidents previously evaluated in the SAR are not increased.

These changes, therefore, do not modify or add any initiating parameters that would significantly increase the probability or consequences of any previously analyzed accident.

(2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Implementation of these proposed changes cannot create the possibility of a different type of accident from any previously considered. First, the affected systems only perform mitigation functions, so postulated failures of any of these systems would not initiate a design basis accident. The function credited in the safety analysis is automatic transfer of the HPCI and RCIC suction lines from the CST to the suppression pool. This automatic transfer will still occur as required, with the only difference being execution earlier at a higher CST water level. Any considerations associated with maintaining the required minimum CST water level, including reliance on an alarm and operator action in lieu of a passive design feature, cannot lead to an accident of a different type since the CST itself is explicitly excluded from consideration in the accident analysis. Although the preference is to provide shutdown cooling with the reactor grade water of the CST, failure to do so will neither impact the ability to achieve shutdown cooling nor create a new type of accident.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed change does not involve a significant reduction in a margin of safety.

The margin of safety of the affected TS is maintained. RCIC is provided to assure adequate core cooling in the event of reactor isolation from its primary heat sink and concurrent loss of feedwater flow to the reactor vessel without requiring actuation of ECCS [Emergency Core Cooling System] equipment. This function will be accomplished. HPCI provides a backup to RCIC for safe shutdown and the ECCS function of ensuring the reactor core is adequately cooled to limit fuel clad temperature during a small break loss of coolant accident. The safety analysis does not credit CST water. Since the automatic transfer to the suppression pool is assured with the same high quality and reliability as before, the ECCS function is not affected. Should CST level decline below the required minimum volume, operators would align HPCI and RCIC suction to the suppression pool. System design functions, including containment isolation, continue to be maintained in this alignment.

The CST also provides a source of water for shutdown during station blackout (SBO) scenarios. The proposed changes do not affect the ability to recover from a SBO scenario.

Core spray is provided to assure that the core is adequately cooled following a LOCA [Loss of Coolant Accident] and provides core cooling capacity for all break sizes. Core spray is a primary cooling source after the reactor vessel is depressurized and a source for flooding in case of accidental draining. In Operational Conditions 4 or 5, the CST is relied upon as the cooling water source if the suppression pool is drained below its minimum level. Operator actions in response to a CST alarm ensure sufficient condensate inventory is available to accomplish this function.

ECCS instrumentation (HPCI) is provided to initiate actions to mitigate the consequences of accidents that are beyond the ability of the operator to control. RCIC instrumentation is provided to initiate actions to assure adequate core cooling in the event of reactor isolation from its primary heat sink and the loss of feedwater flow to the reactor vessel. The HPCI and RCIC level instruments continue to provide their automatic function thereby preserving the design requirements of these systems. Remote shutdown instrumentation and controls ensure that sufficient capability is available to permit shutdown and maintenance of Hot Shutdown of the unit from locations outside the control room in the event control room habitability is lost. RCIC continues to satisfy this function.

All design basis requirements of HPCI, RCIC, core spray and the CST continue to be satisfied to ensure safe shutdown and

mitigate a LOCA. Required water volumes remain available for core cooling, as is the automatic transfer to the safety related suppression pool source.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Pennsville Public Library, 190 S. Broadway, Pennsville, NJ 08070.

*Attorney for licensee:* Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

*NRC Section Chief:* James W. Clifford.

*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:* July 29, 1999.

*Description of amendment request:* The proposed amendment would revise Technical Specification (TS) Surveillance Requirement 4.6.1.1 to clarify when verification of primary containment integrity may be performed by administrative means and to change the surveillance interval for verification of manual valves and blind flanges inside of containment.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The operation of Salem Nuclear Generating Station, Unit Nos. 1 and 2, in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The licensee has determined that the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change revises means for verification of containment integrity in certain cases by allowing the verification to be conducted by administrative means such as tagging requests, other TS surveillance procedures and previously performed valve alignments. Although the current Salem TSs allow the use of administrative means to verify valve position, its application is limited to valves that are open under administrative controls.

The proposed amendment does not change the position of containment isolation valves or otherwise modify the containment integrity. Thus, the assumptions made in evaluating the occurrence and radiological consequences of accidents described in the Safety Analysis Report (SAR) have not been changed. The proposed change to use administrative means continues to ensure that the release of radioactive materials from the containment atmosphere will be restricted to those leakage paths and associated leak rates assumed in the accident analysis. Allowing the use of administrative means to verify compliance with the surveillance requirement for these valves is acceptable based on the limited access to these areas in Modes 1 through 4 (power operation through hot shutdown). The probability of misalignment of these containment isolation valves, once they have been verified in the proper position is small. The probability of occurrence of any previously evaluated accident is independent of valve position verification.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated in the SAR.

2. The operation of Salem Nuclear Generating Station, Unit Nos. 1 and 2, in accordance with the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The licensee has determined that the proposed amendment does not physically alter the facility or change the operation of the facility. The proposed change does not affect the current operation and response of any systems, structures or components assumed to function in the accident analysis. Additionally, the proposed change does not increase the consequences of a malfunction of equipment important to safety. The proposed change to use administrative means in lieu of field verification continues to ensure that the release of radioactive materials from the containment atmosphere will be restricted to those leakage paths and associated leak rates assumed in the accident analysis.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The operation of Salem Nuclear Generating Station, Unit Nos. 1 and 2, in accordance with the proposed amendment does not involve a significant reduction in a margin of safety.

The licensee has determined that the proposed amendment does not involve a significant reduction in a margin of safety. The proposed change involves a revision of certain TSs surveillance requirements and frequency of performance. The proposed change does not modify hardware or plant operation, and the accident analyses are unchanged. The proposed amendment will continue to ensure that the proper valves are identified and tested in accordance with the TS requirements. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Salem Free Public Library, 112 West Broadway, Salem, NJ 08079

*Attorney for licensee:* Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038

*NRC Section Chief:* James W. Clifford

*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 25, 1999.

*Description of amendment request:* The proposed amendment would revise Technical Specification (TS) Appendix C, ''Additional Conditions,'' to authorize the performance of single cell charging of operable safety-related batteries by using non-Class 1E single cell battery chargers, with proper electrical isolation. The single cell chargers would be used to restore individual cell float voltage to the normal TS limit.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change permits the use of an industry accepted method to restore a battery cell to its design basis from an OPERABLE but degraded condition or to prevent a cell from becoming degraded. IEEE Std [Institute of Electrical and Electronics Engineers Standard] 450–1995, ''IEEE Recommended Practice for Maintenance, Testing, and Replacement of Vented Lead Storage Batteries for Stationary Applications,'' states that single cell charging is an acceptable method of correcting low cell voltage or low specific gravity conditions for a single cell or for a small number of cells.

At least two class 1E fuses in series will be used on both the positive and negative leads between the battery and the charger to protect the battery if a fault should develop in the charger. The battery charger design includes diodes, a power transformer and control circuitry to prevent draining the connected cells in the event of a short circuit in the 120 Volt ac source or a loss of charger input or output voltage. Charger output is controlled automatically to prevent overcharging the connected cells.

In the event of a controller failure resulting in charger overvoltage, procedural controls

governing the use of the charger ensure the condition is detected and corrected before failure of a connected cell occurs. While the single cell charger is connected, procedures will require periodic checks to verify proper charger operation and to measure electrolyte level, temperature and specific gravity for the cells being charged. Monitoring will be performed at least once every eight hours, a frequency sufficient to ensure compliance with the requirements of the Technical Specifications.

An insulating material will be used to minimize the possibility of shorting leads or clips at the battery. Administrative controls governing the use and storage of transient loads are sufficient to ensure the use of single cell battery chargers does not create a potential missile hazard to safety related systems, structures and components.

The Class 1E DC system is not an accident initiator. The Class 1E DC system supports the operation of safety related equipment required for the safe shutdown of the plant and for the mitigation of accident conditions. Therefore, the proposed change does not increase the probability of an accident previously evaluated.

The station's dc systems will be operable to mitigate the consequences of an accident previously evaluated. Single cell charging would be limited to one OPERABLE class 1E battery bank at a time for either the 28 VDC or 125 VDC systems. Therefore, failure of a class 1E battery as a result of single cell charging would be limited to a single channel and would not reduce the number of OPERABLE dc sources below that required to safely shutdown the plant. Administrative controls would also prohibit the use of single cell charging for an OPERABLE class 1E battery if less than the minimum number of class 1E batteries required by Technical Specifications are OPERABLE.

The proposed change does not cause the capability of the class 1E DC system to be degraded below the level assumed for any accident described in the SAR [Safety Analysis Report]. It would enhance the availability of safety related equipment required for the safe shutdown of the plant and for the mitigation of accident conditions. Therefore the radiological consequences of an accident will remain inside the design basis while single cell charging is performed on an OPERABLE battery.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The potential to adversely affect the Class 1E batteries is minimized by the use of Class 1E fuses and by appropriate administrative controls. Failure modes associated with the proposed change are bounded by the loss of a Class 1E battery bank which was previously evaluated. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change permits the use of non-Class 1E single cell battery chargers, with proper electrical isolation, for charging connected cells in OPERABLE class 1E batteries. This would allow parameters for an individual cell or for a small number of cells to be restored to the normal values specified in Technical Specifications without affecting the remainder of the cells in the battery. Increased cell monitoring after single cell charging, together with PSE&G's corrective action program which requires degraded and non-conforming conditions to be documented and evaluated, provides assurance that the use of single cell charging will not cause long-term cell degradation to go undetected. Since all battery cells are required to be maintained within the allowable values specified in Technical Specifications, and since the use of the single cell charger will not adversely affect battery capacity or capability, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

*Attorney for licensee:* Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

*NRC Section Chief:* James W. Clifford.

## Previously Published Notice 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.

*Commonwealth Edison Company, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois*

*Date of amendment request:* July 30, 1999.

*Description of amendment request:* The proposed amendments would temporarily change the Technical Specifications (TS) to increase the upper temperature limit for the Ultimate Heat Sink (UHS) from 98 degrees Fahrenheit to 100 degrees Fahrenheit. The proposed temporary change would be in effect until September 30, 1999.

*Date of publication of individual notice in* **Federal Register**: August 18, 1999 (64 FR 44962).

*Expiration date of individual notice:* September 17, 1999.

*Local Public Document Room location:* Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

## 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.

*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 application for amendments:* November 30, 1998, as supplemented May 25, 1999.

*Brief description of amendments:* The amendments revise the appropriate Technical Specifications to permit the use of leak-limiting Alloy 800 repair sleeves developed by AAB—Combustion Engineering (ABB-CE) to be used at Calvert Cliffs.

*Date of issuance:* September 1, 1999.

*Effective date:* As of the date of issuance to be implemented during the spring 2000.

*Amendment Nos.:* 231 and 207.

*Facility Operating License Nos. DPR–53 and DPR–69:* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: January 13, 1999 (64 FR 2244).

The May 25, 1999, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated September 1, 1999.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Calvert County Library, Prince Frederick, Maryland 20678.

*Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina*

*Date of application for amendment:* January 28, 1999.

*Brief description of amendment:* The amendment revises Technical Specification (TS) 5.6.5, ''Core Operating Limits Report (COLR),'' to add two references to the list of approved topical reports.

*Date of issuance:* September 1, 1999.

*Effective date:* September 1, 1999.

*Amendment No.:* 185.

*Facility Operating License No. DPR–23.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: February 24, 1999 (64 FR 9184).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 1, 1999.

*Local Public Document Room location:* Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550.

*Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York*

*Date of application for amendment:* January 22, 1999.

*Brief description of amendment:* The amendment revises Technical Specifications 4.3.a and 4.3.b and Basis Section 4.3 to permit reactor coolant system leak test to be performed at normal operating pressure following each refueling outage according to the requirement of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code, Section XI, and implemented in accordance with 10 CFR 50.55a(g).

*Date of issuance:* September 2, 1999.

*Effective date:* As of the date of issuance to be implemented within 60 days.

*Amendment No.:* 203.

*Facility Operating License No. DPR–26:* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: April 7, 1999 (64 FR 17023).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 2, 1999.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

*Consumers Energy Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan*

*Date of application for amendment:* June 17, 1998, as supplemented June 23 and December 2, 1998, and March 18, 1999.

*Brief description of amendment:* The amendment revises the Technical Specifications to reduce the minimum reactor vessel flow rate requirement and revise the units of measurement for consistency with the flow measurement procedure.

*Date of issuance:* September 3, 1999.

*Effective date:* As of the date of issuance and shall be implemented within 60 days of issuance.

*Amendment No.:* 187.

*Facility Operating License No. DPR–20.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: July 2, 1998 (63 FR 36271).

The December 2, 1998, letter provided additional clarifying information and the March 18, 1999, letter requested a 60-day allowance for implementation of the amendment. The additional information and proposed change to the implementation period were within the scope of the original **Federal Register** notice and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 3, 1999.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Van Wylen Library, Hope College, Holland, Michigan 49423–3698.

*Duquesne Light Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania*

*Date of application for amendments:* December 24, 1998, as supplemented June 15, June 17, and July 7, 1999.

*Brief description of amendments:* The amendments revise the Technical Specification (TS) requirements for the axial flux difference (AFD) monitor, quadrant power tilt ratio (QPTR) monitor, rod position deviation monitor, and rod insertion limit (RIL) monitor. Specifically, the changes (1) relocate requirements for the AFD monitor and the QPTR monitor to the Licensing Requirements Manual; (2) delete requirements for the rod position deviation monitor and RIL monitor from the TSs; (3) modify Unit 1 surveillance requirements (SR) 4.1.3.5 and 4.1.3.6 by incorporating the Unit 2 wording to provide surveillances more consistent with the Limiting Condition for Operation; (4) change Unit 1 SR 4.1.3.2.2, SR 4.1.3.5, SR 4.1.3.6 and Unit 2 SR 4.1.3.5 from 24-hour surveillance frequencies to 12-hour frequencies; and (5) delete Unit 1 SR 4.1.3.2.3.

*Date of issuance:* August 30, 1999.

*Effective date:* As of the date of issuance and shall be implemented within 60 days.

*Amendment Nos.:* 225 and 102.

*Facility Operating License Nos. DPR–66 and NPF–73:* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: January 27, 1999 (64 FR 4155) The June 15, June 17, and July 7, 1999, letters provided additional information but did not change the initial proposed no significant hazards consideration determination or expand the amendment beyond the scope of the initial notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 30, 1999.

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:* April 9, 1999, as supplemented by letter dated July 14, 1999.

*Brief description of amendment:* Revises requirements affecting the surveillance methods for the containment tendons, the conduct of containment visual inspections, and the reporting methods employed in disseminating the results of these inspections to the NRC.

*Date of issuance:* September 9, 1999.

*Effective date:* As of the date of issuance and shall be implemented within 30 days from the date of issuance.

*Amendment No.:* 199.

*Facility Operating License No. DPR–51:* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: May 19, 1999 (64 FR 27320).

The July 14, 1999, letter provided clarifying information that did not change the scope of the April 9, 1999, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 9, 1999.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

*FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio*

*Date of application for amendment:* March 17, 1999.

*Brief description of amendment:* This amendment approves a proposed modification that changes the Perry facility as described in the Updated Safety Analysis Report. The change incorporates a leak-off line in the residual heat removal system. The leak-off line is designed to eliminate an operator work around, which will significantly reduce the collective dose to operations personnel.

*Date of issuance:* August 31, 1999.

*Effective date:* August 31, 1999.

*Amendment No.:* 106.

*Facility Operating License No. NPF–58:* This amendment authorizes the revision of the Updated Safety Analysis Report.

*Date of initial notice in* **Federal Register**: May 19, 1999 (64 FR 27322)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 31, 1999.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Perry Public Library, 3753 Main Street, Perry, OH 44081

*Florida Power Corporation, et al., Docket No. 50–302, Crystal River Nuclear Generating Plant, Unit 3, Citrus County, Florida*

*Date of application for amendment:* May 10, 1999.

*Brief description of amendment:* The amendment corrects an invalid reference in Section 5.8, ''High Radiation Area,'' of the Crystal River Unit 3 Improved Technical Specifications (ITS).

*Date of issuance:* September 3, 1999.

*Effective date:* September 3, 1999.

*Amendment No.:* 186.

*Facility Operating License No. DPR–72:* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: July 14, 1999 (64 FR 38026)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 3, 1999.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428.

*Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut*

Date of application for amendment: May 17, 1999.

*Brief description of amendment:* The amendment revises Technical Specification (TS) section 4.4.6.2.2.e to replace the reference to American Society of Mechanical Engineers (ASME) Code paragraph IWV–3472(b) which pertains to the frequency of leakage rate testing for 6-inch, nominal pipe size valves and larger with the requirement that the surveillance interval and frequency of surveillance leakage rate testing for these valves be performed pursuant to the requirements of TS 4.0.5, ''Operations and Surveillance Requirements.''

*Date of issuance:* September 10, 1999.

*Effective date:* As of the date of issuance.

Amendment No.: 174.

*Facility Operating License No. NPF–49:* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: July 14, 1999 (64 FR 38033).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 10, 1999.

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, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

*Northern States Power Company, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota*

*Date of application for amendments:* May 13, 1999.

*Brief description of amendments:* The amendments revise Technical Specifications 6.2.A.2, ''Onsite and Offsite Organizations,'' to reflect a change in the plant organizational structure that was implemented on March 1, 1999.

*Date of issuance:* August 26, 1999.

*Effective date:* As of the date of issuance and shall be implemented within 30 days.

*Amendment Nos.:* 146 and 137.

*Facility Operating License Nos. DPR–42 and DPR–60:* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: July 14, 1999 (64 FR 38034).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 26, 1999.

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.

*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:* April 12, 1999.

*Brief description of amendment:* The amendment removes from the Technical Specifications a footnote regarding departure from nucleate boiling analysis.

*Date of issuance:* September 2, 1999.

*Effective date:* September 2, 1999.

*Amendment No.:* 191.

*Facility Operating License No. DPR–64:* The amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: May 19, 1999 (64 FR 27324).

No significant hazards consideration comments received: No.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 2, 1999.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

*Power Authority of the State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York*

*Date of application for amendment:* January 28, 1999, as supplemented May 4, 1999

*Brief description of amendment:* The amendment changes the reactor trip on turbine trip from at or above 10 percent rated power to at or above the P–8 setpoint.

*Date of issuance:* September 8, 1999.

*Effective date:* As of the date of issuance to be implemented within 30 days.

*Amendment No.:* 192.

*Facility Operating License No. DPR–64:* Amendment revises the Technical Specifications.

*Date of initial notice in* **Federal Register**: April 21, 1999 (64 FR 19563).

The May 4, 1999, letter provided additional information that did not change the staff's proposed finding of no significant hazards consideration.

No significant hazards consideration comments received: No.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 8, 1999.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

*Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey*

*Date of application for amendment:* March 29, 1999, as supplemented June 21, 1999.

*Brief description of amendment:* This amendment revises the Technical Specifications (TSs) by relocating the procedural details of the Radiological Effluent Technical Specifications (RETS) to the Offsite Dose Calculation Manual. The TSs were also revised to relocate procedural details associated with solid radioactive wastes to the Process Control Program. In addition, the Administrative Controls section of the TSs was revised to incorporate programmatic controls for radioactive effluents and environmental monitoring.

These changes are consistent with the guidance provided in Generic Letter 89–01, ''Implementation of Programmatic Controls for Radiological Effluent Technical Specifications in the Administrative Controls Section of the Technical Specifications and the Relocation of Procedural Details of RETS to the Offsite Dose Calculation Manual or to the Process Control Program.''

*Date of issuance:* September 8, 1999.

*Effective date:* As of the date of issuance, and shall be implemented within 60 days.

*Amendment No.:* 121.

*Facility Operating License No. NPF–57:* This amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: May 19, 1999 (64 FR 27324).

The June 21, 1999, supplement provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 8, 1999.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Pennsville Public Library, 190 S. Broadway, Pennsville, NJ 08070.

*STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas*

*Date of amendment request:* June 7, 1999, as supplemented by letters dated June 24 and August 24, 1999.

*Brief description of amendments:* The amendments revised Technical Specification (TS) 2.0, ''Safety Limits and Limiting Safety System Settings,'' TS 3.2.5, ''DNB [Departure from Nucleate Boiling] Parameters,'' and the associated Bases, and Administrative Controls Section 6.9.1.6, ''Core Operating Limits Report [(COLR)],'' by relocating cycle-specific reactor coolant system-related parameter limits from the TSs to the COLR.

*Date of issuance:* September 2, 1999.

*Effective date:* September 2, 1999, to be implemented within 30 days.

*Amendment Nos.:* Unit 1—115; Unit 2—103.

*Facility Operating License Nos. NPF–76 and NPF–80:* The amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: July 14, 1999 (64 FR 38036).

The August 24, 1999, supplement provided revised TS pages and clarifying information that was within the scope of the original **Federal Register** notice and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 2, 1999.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488.

*Tennessee Valley Authority, Docket Nos. 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 2 and 3, Limestone County, Alabama*

*Date of application for amendments:* September 4, 1998, as supplemented by letter dated November 25, 1998.

*Brief description of amendments:* Revises the licensing basis to credit containment pressure in excess of atmospheric pressure in the analysis for Emergency Core Cooling Systems pump.

*Date of issuance:* September 3, 1999.

*Effective date:* As of date of issuance, to be incorporated into the Final Safety Analysis Report (FSAR) with the next update.

*Amendment Nos.:* 261 and 220.

*Facility Operating License Nos. DPR–52 and DPR–68:* Amendments approves changes to the FSAR.

*Date of initial notice in* **Federal Register**: September 23, 1998 (63 FR 5093). The November 25, 1998 supplemental letter did not change the original proposed no significant hazards determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 3, 1999.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Athens Public Library, 405 E. South Street, Athens, Alabama 35611.

*Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee*

*Date of application for amendments:* January 15, 1999 (TS 98–09).

*Brief description of amendments:* The amendments relocate seismic instrumentation requirements from the Technical Specifications to the Technical Requirements Manual.

*Date of issuance:* September 7, 1999.

*Effective date:* As of the date of issuance to be implemented no later than 45 days after issuance.

*Amendment Nos.:* Unit 1—245; Unit 2—236.

*Facility Operating License Nos. DPR–77 and DPR–79:* Amendments revise the technical specifications.

*Date of initial notice in* **Federal Register**: February 10, 1999 (64 FR 6712).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 7, 1999.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

*TU Electric Company, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas*

*Date of amendment request:* May 24, 1999, as supplemented by letter dated July 9, 1999.

*Brief description of amendments:* The amendments remove several cycle-specific parameter limits from the Technical Specifications (TSs). These parameter limits are added to the Core Operating Limits Report (COLR). Appropriate references to the COLR are inserted in the affected TSs. In addition, the core safety limit curves are replaced with safety limits more directly applicable to the fuel and fuel cladding fission product barriers.

The affected TSs are: (1) TS 2.0, ''Safety Limits (Sls),'' (2) TS 3.3.1, ''Reactor Trip System Instrumentation Setpoints,'' (3) TS 3.4.1, ''RCS Pressure, Temperature, and Flow Departure from Nucleate Boiling (DNB) Limits,'' and (4) TS 5.6.5, ''Core Operating Limits Report.''

*Date of issuance:* August 30, 1999.

*Effective date:* As of the date of issuance and shall be implemented within 30 days from the date of issuance.

*Amendment Nos.:* 67 and 67.

*Facility Operating License Nos. NPF–87 and NPF–89:* The amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: June 30, 1999 (64 FR 35213) and July 28, 1999, (64 FR 40908).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 30, 1999.

No significant hazards consideration comments received: No

*Local Public Document Room location:* University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, Texas 76019.

*TU Electric Company, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station (CPSES), Unit Nos. 1 and 2, Somervell County, Texas*

*Date of amendment request:* May 14, 1999.

*Brief description of amendments:* The amendments change the licenses to accurately reflect the new corporate name of the current licensee, ''TXU Electric Company'' in Facility Operating Licenses NPF–87 and NPF–89 for CPSES, Units 1 and 2, respectively.

*Date of issuance:* August 31, 1999.

*Effective date:* As of the date of issuance and shall be implemented within 30 days from the date of issuance.

*Amendment Nos.:* Unit 1—Amendment No. 68; Unit 2—Amendment No. 68.

*Facility Operating License Nos. NPF–87 and NPF–89:* The amendments change the Operating Licenses.

*Date of initial notice in* **Federal Register**: June 30, 1999 (64 FR 35213).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 31, 1999.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, Texas 76019.

*Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont*

*Date of application for amendment:* May 26, 1999.

*Brief description of amendment:* The amendment revises the suppression pool water temperature surveillance requirements to specify monitoring the temperature every 5 minutes when performing testing that adds heat to the suppression pool. In addition, the amendment revises the requirement to check the suppression chamber water level and temperature from ''once per shift'' to ''daily'' and specifies that it is the average temperature that is checked.

*Date of Issuance:* August 30, 1999.

*Effective date:* As of the date of issuance, and shall be implemented within 30 days.

*Amendment No.:* 174.

*Facility Operating License No. DPR–28.:* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: July 28, 1999 (64 FR 40909).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated August 30, 1999.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

*Yankee Atomic Electric Co., Docket No. 50–29, Yankee Nuclear Power Station (YNPS) Franklin County, Massachusetts*

*Date of application for amendment:* March 17, 1999.

*Brief description of amendment:* Revises the Possession Only License by deleting License Condition 2.C.(10) related to the Fitness-For-Duty program.

*Date of issuance:* August 27, 1999.

*Effective date:* August 27, 1999.

*Amendment No.:* 152.

*Facility Operating License No. DPR–3.* Amendment revises the license.

*Date of initial notice in* **Federal Register**: June 2, 1999 (64 FR 29717).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 27, 1999.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

## Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was

not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By October 22, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any

hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. 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 the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 15th day of September, 1999.

**Elinor G. Adensam,**

*Acting Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 99–24573 Filed 9–21–99; 8:45 am]

**BILLING CODE 7590–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 24016; 812–11502]**

## Franklin Gold Fund, et al., Notice of Application

September 16, 1999.

**AGENCY:** Securities and Exchange Commission (''SEC'').

**ACTION:** Notice of application for an order under the Investment Company Act of 1949 (the ''Act'') under (i) section 6(c) of the Act granting an exemption from sections 18(f) and 21(b) of the Act; (ii) section 12(d)(1)(J) of the Act granting an exemption from section 12(d)(1) of the Act; (iii) sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a) (1) and 17(a)(3) of the Act; and (iv) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

**SUMMARY OF APPLICATION:** Applicants request an order that would permit certain registered investment companies to participate in a joint lending and borrowing facility.

**APPLICANTS:** Franklin Gold fund, Franklin Asset Allocation Fund, Franklin Equity Fund, Franklin High Income Trust, Franklin Custodian Funds, Inc., Franklin California Tax-Free Income Fund, Inc., Franklin New York Tax-Free Income Fund, Franklin Federal Tax-Free Income Fund, Franklin Tax-Free Trust, Franklin California Tax-Free Trust, Franklin New York Tax-Free Trust, Franklin Investors Securities Trust, Institutional Fiduciary Trust, Franklin Value Investors Trust, Franklin Strategic Mortgage Portfolio, Franklin Municipal Securities Trust, Franklin Managed Trust, Franklin Strategic Series, Adjustable Rate Securities Portfolios, Franklin Templeton International Trust, Franklin Real Estate Securities Trust, Franklin Templeton Global Trust, Franklin Valuemark Funds, Franklin Universal Trust, Franklin Multi-income Trust, Franklin Templeton Fund Allocator Series, Franklin Money Fund, Franklin Money Fund Trust, Franklin Federal Money Fund, Franklin Tax-Exempt Money Fund, Franklin Mutual Series Fund Inc., Franklin Floating Rate Trust, The Money Market Portfolios, Templeton Growth Fund, Inc., Templeton Funds, Inc., Templeton Global Smaller Companies Fund, Inc., Templeton Income Trust, Templeton Global Real Estate Fund, Templeton Capital Accumulator Fund, Inc., Templeton Global Opportunities Trust, Templeton Institutional Funds, Inc., Templeton Developing Markets Trust, Templeton Global Investment Trust, Templeton Emerging Markets Fund, Inc., Templeton Emerging Markets Appreciation Fund, Inc., Templeton Global Income Fund, Inc., Templeton Global Governments Income Trust, Templeton Emerging Markets Income Fund, Inc., Templeton China World Fund, Inc., Templeton Dragon Fund, Inc., Templeton Vietnam and Southeast Asia Fund, Inc., Templeton Russia Fund, Inc., Templeton Variable Products Series Fund (collectively, the ''Franklin Templeton Funds''), Franklin Advisers, Inc., Franklin Advisory Services, LLC, Franklin Investment Advisory Services, Inc., Templeton Asset Management, Ltd., Templeton Global Advisors Limited, Franklin Mutual Advisers, LLC, Templeton Investment Counsel, Inc., (collectively, the Franklin Templeton Advisers''), and any future registered management investment company advised by the Franklin Templeton Advisers or an entity controlling, controlled by, or under common control with one of the Franklin Templeton Advisers (together with the Franklin Templeton Funds, the ''Funds'').[1]

*Filing Dates:* The application was filed on February 5. 1999 and amended on July 6, 1999 and on September 2, 1999.

*Hearing or Notification of Hearing.* An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 12, 1999 and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers a certificate or service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants, 777 Mariners Island Boulevard, San Mateo, California, 94404.

**FOR FURTHER INFORMATION, CONTACT:** Janet M. Grossnickle, Attorney-Adviser, (202) 942–0526, or Mary Kay Frech, Branch Chief, (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTAL 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, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (telephone (202) 942–8090).

### Applicants' Representations

1. Each Franklin Templeton Fund is registered under the Act as a management investment company and organized as a Massachusetts business trust, a Delaware business trust, a Maryland corporation, or a California corporation. Each Franklin Templeton Adviser is or will be registered as an investment adviser under the Investment Advisers Act of 1940 and serves as an investment adviser to the Funds.

2. Some Funds may lend money to banks or other entities by entering into repurchase agreements or purchasing other short-term instruments, either directly or through a joint account. Certain of the Funds and Franklin

[1] All existing funds that currently intend to rely on the order are named as applicants. Any other existing Fund and any future Fund will rely on the order only in accordance with the terms and conditions of the application.

Templeton Advisers obtained an order to permit them to deposit uninvested cash balances that remain at the end of a trading day in one or more joint trading accounts (each a ''Joint Account'') to be used to enter into short-term investments.[2] The Funds and the Franklin Templeton Advisers obtained an order to permit them to invest their cash balances in one or more of the Funds that are money market funds that comply with rule 2a-7 under the Act (''Money market Funds'').[3] Other Funds may borrow money from the same or other banks for temporary purposes to satisfy redemption requests or to cover unanticipated cash shortfalls such as a trade ''fail'' in which cash payment for a portfolio security sold by a Fund has been delayed.

3. If the Funds were to borrow money under credit arrangements with a bank, the Funds would pay interest on the borrowed cash at a rate which would be significantly higher than the rate would be earned by other (non-borrowing) Funds on investments in repurchase agreements and other short-term instruments of the same maturity as the bank loan. Applicants state that this differential represents the bank's profit for serving as a middleman between a borrower and lender. Other bank loan arrangements, such as committed lines of credit would require the Funds to pay substantial commitment fees in addition to the interest rate to be paid by the borrowing Fund.

4. Applicants request an order that would permit the Funds to enter into lending agreements (''Interfund Lending Agreements'') under which the Funds would lend money directly to and borrow money directly from each other through a credit facility for temporary purposes (''Interfund Loan''). Applicants believe that the proposed credit facility would substantially reduce the Funds' potential borrowing costs and enhance their ability to earn higher rates of interest on short-term lendings. Although the proposed credit facility would substantially reduce the Funds' need to borrow from banks, the Funds would be free to establish committed lines of credit or other borrowing arrangements with banks. The Funds also would continue to maintain overdraft protection, if any, currently provided by their custodians. Applicants state that closed-end Funds will participate in the credit facility only as lenders.

5. Applicants anticipate that the credit facility would provide a borrowing Fund with significant savings when the cash position of the Fund is insufficient to meet temporary cash requirements. This situation could arise when redemptions exceed anticipated volumes and the Funds have insufficient cash on hand to satisfy such redemptions. When the Funds liquidate portfolio securities to meet redemption requests, which normally are effected immediately, they often do not receive payment in settlement for up to three days (or longer for certain foreign transactions). The credit facility would provide a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

6. Applicants also propose using the credit facility when a sale of securities ''fails'' due to circumstances such as a delay in the delivery of cash to the Fund's custodian or improper delivery instructions by the broker effecting the transaction. ''Sales fails'' may present a cash shortfall if the Fund has undertaken to purchase a security with the proceeds from securities sold. When the Fund experiences a cash shortfall due to a sales fail, the custodian typically extends temporary credit to cover the shortfall and the Fund incurs overdraft charges. Alternatively, the Fund could fail on its intended purchase due to lack of funds from the previous sale, resulting in additional cost to the Fund, or sell a security on a same day settlement basis, earning a lower return on the investment. Use of the credit facility under these circumstances would enable the Fund to have access to immediate short-term liquidity without incurring custodian overdraft or other charges.

7. While borrowing arrangements with banks could generally supply needed cash to cover unanticipated redemptions and sales fails, applicants state that under the proposed credit facility a borrowing Fund would pay lower interest rates than those offered by banks on short term loans. In addition, Funds making loans to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash through the Joint Account in repurchase agreements or in the Money Market Funds. Thus, applicants believe that the proposed credit facility would benefit both borrowing and lending Funds.

8. The interest rate charged to the Funds on any Interfund Loan would be the average of the Repo Rate and the Bank Loan Rate, as defined below. The Repo Rate for any day would be the highest rate available to the Joint Account participants from investments in overnight repurchase agreements. The Bank Loan Rate for any day would be calculated by the Franklin Templeton Advisers each day an Interfund Loan is made according to a formula established by the directors or trustees of the Funds (the ''Trustees'') designed to approximate the lowest interest rate at which bank short-term loans would be available to the Funds. The formula would be based upon a publicly available rate (*e.g.*, Federal Funds plus 25 basis points) and would vary with this rate so as to reflect changing bank loan rates. Each Fund's Trustees periodically would review the continuing appropriateness of using the publicly available rate, as well as the relationship between the Bank Loan Rate and current bank rates that would be available to the Funds. The initial formula and any subsequent modifications to the formula would be subject to the approval of each Fund's Trustees.

9. The credit facility would be administered by the Franklin Templeton Advisers' money market investment professionals (including the portfolio manager(s) for the Money Market Funds) and fund accounting department (collectively, the ''Cash Management Team''). Under the proposed credit facility, the portfolio managers for each participating Fund may provide standing instructions to participate daily as a borrower or lender. The Franklin Templeton Advisers on each business day would collect data on the uninvested cash and borrowing requirements of all participating Funds from the Funds' custodians. Applicants expect far more available uninvested cash each day than borrowing demand. Once it had determined the aggregate amount of cash available for loans and borrowing demand, the Cash Management Team would allocate loans among borrowing Funds without any further communication from portfolio managers (other than the Money Market Fund portfolio managers on the Cash Management Team). All allocations will require approval of at least one member of the Cash Management Team who is not a Money Market Fund's portfolio manager. After the Cash Management Team has allocated cash for Interfund Loans, the Franklin Templeton Advisers will invest any remaining cash in accordance with the standing instructions from portfolio managers or return remaining amounts for investment to the Funds. The Money Market Funds typically would not participate as borrowers because they rarely need to borrow cash to meet redemptions.

[2] AGE High Income Fund, Investment Company Act Release Nos. 15485 (Dec. 17, 1986) (notice) and 15534 (Jan. 13, 1987) (order).

[3] Franklin Gold Fund, Investment Company Act Release Nos. 23633 (Jan. 5, 1999) (notice) and 23675 (Feb. 2, 1999) (order.)

10. The Cash Management Team would allocate borrowing demand and cash available for lending among the Funds on what the Cash Management Team believed to be an equitable basis, subject to certain administrative procedures applicable to all Funds, such as the time of filing requests to participate, minimum loan lot sizes, and the need to minimize the number of transactions and associated administrative costs. To reduce transaction costs, each loan normally would be allocated in a manner intended to minimize the number of Funds necessary to complete the loan transaction. The method of allocation and related administrative procedures would be approved by each Fund's Trustees, including a majority of Trustees who are not ''interested persons'' of the Funds, as defined in section 2(a)(19) of the Act (''Independent Trustees''), to ensure that the borrowing and lending Funds participate on an equitable basis.

11. The Franklin Templeton Advisers would (i) monitor the interest rates charged and the other terms and conditions of the Interfund Loans, (ii) ensure compliance with each Fund's investment policies and limitations, (iii) ensure equitable treatment of each Fund, and (iv) make quarterly reports to the Trustees concerning any transactions by the Funds under the credit facility and the interest rates charged.

12. The Franklin Templeton Advisers would administer the credit facility as part of their duties under existing contracts with each Fund and would receive no additional fee as compensation for their services. The Franklin Templeton Advisers or companies affiliated with them may collect standard pricing, recordkeeping, bookkeeping and accounting fees applicable to repurchase and lending transactions generally, including transactions effected through the credit facility. Fees would be no higher than those applicable for comparable bank loan transactions.

13. Each Fund's participation in the proposed credit facility will be consistent with its organizational documents and its investment policies and limitations. The prospectus of each Fund discloses the individual borrowing and lending limitations of the Fund. Each Fund will notify shareholders of its intended participation in the proposed credit facility prior to relying upon any relief granted pursuant to the application. The Statement of Additional Information (''SAI'') of each Fund will disclose all material facts about the Fund's intended participation in the credit facility.

14. In connection with the credit facility, applicants request an order under (i) section 6(c) of the Act granting relief from sections 18(f) and 21(b) of the Act; (ii) section 12(d)(1(J) of the Act granting relief from section 12(d)(1) of the Act; (iii) sections 6(c) and 17(b) of the Act granting relief from sections 17(a)(1) and 17(a)(3) of the Act; and (iv) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

**Applicant's Legal Analysis**

1. Section 17(a)(3) generally prohibits any affiliated person, or affiliated person of an affiliated person, from borrowing money or other property from a registered investment company. Section 21(b) generally prohibits any registered management investment company from lending money or other property to any person if that person controls or is under common control with the company. Section 2(a)(3)(C) of the Act defines an ''affiliated person'' of another person, in part, to by any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that the Funds may be under common control by virtue of having the Franklin Templeton Advisers as their common investment advisers.

2. Section 6(c) provides that an exemptive order may be granted where an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) authorizes the SEC to exempt a proposed transaction from section 17(a) provided that the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of the investment company as recited in its registration statement and with the general purposes of the Act. Applicants believe that the proposed arrangements satisfy these standards for the reasons discussed below.

3. Applicants submit that sections 17(a)(3) and 21(b) of the Act were intended to prevent a party with potential adverse interests to and influence over the investment decisions of a registered investment company from causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of such party and that are detrimental to the best interests of the investment company and its shareholders. Applicants assert that the proposed credit facility transactions do not raise these concerns because (i) the Franklin Templeton Advisers would administer the program as disinterested fiduciaries; (ii) all Interfund Loans would consist only of uninvested cash reserves that the Fund otherwise would invest in short-term repurchase agreements or other short-term instruments either directly or through the Joint Account or in the Money Market Funds; (iii) the Interfund Loans would not involve a greater risk than such other investments; (iv) the lending Fund would receive interest at a rate higher than it could obtain through such other investments; and (v) the borrowing Fund would pay interest at a rate lower than otherwise available to it under any bank loan agreements and avoid the up-front commitment fees associated with committed lines of credit. Moreover, applicants believe that the other conditions in the application would effectively preclude the possibility of any Fund obtaining an undue advantage over any other Fund.

4. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any securities or other property to the company. Section 12(d)(1) of the Act generally makes it unlawful for a registered investment company to purchase or otherwise acquire any security issued by any other investment company except in accordance with the limitations set forth in that section. Applicants believe that the obligation of a borrowing Fund to repay an Interfund Loan may constitute a security under sections 17(a)(1) and 12(d)(1). Section 12(d)(1)(J) provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exception is consistent with the public interest and the protection of investors. Applicants contend that the standards under sections 6(c), 17(b) and 12(d)(1) are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b) and for the reasons discussed below.

5. Applicants state that section 12(d)(1) was intended to prevent the pyramiding of investment companies in order to avoid duplicative costs and fees attendant upon multiple layers of investment companies. Applicants submit that the proposed credit facility does not involve these abuses. Applicants note that there would be no duplicative costs or fees to the Funds or shareholders, and that the Franklin Templeton Advisers would receive no

additional compensation for their services in administering the credit facility. Applicants also note that the purpose of the proposed credit facility is to provide economic benefits for all the participating Funds.

6. Section 18(f)(1) prohibits open-end investment companies from issuing any senior security except that a company is permitted to borrow from any bank; provided, that immediately after any such borrowing there is an asset coverage of at least 300 per centum for all borrowings of the company. Under section 18(g) of the Act, the term ''senior security'' includes any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request relief from section 18(f)(1) to the limited extent necessary to implement the credit facility (because the lending Funds are not banks).

7. Applicants believe that granting relief under section 6(c) is appropriate because the Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of the Fund, including combined credit facility and bank borrowings, have at least 300% asset coverage. Based on the conditions and safeguards described in the application, applicants also submit that to allow the Funds to borrow from other Funds pursuant to the proposed credit facility is consistent with the purposes and policies of section 18(f)(1).

8. Section 17(d) and rule 17d–1 generally prohibit any affiliated person of a registered investment company, or affiliated person of an affiliated person, when acting as principal, from effecting any joint transaction in which the company participates unless the transaction is approved by the SEC. Rule 17d–1 provides that in passing upon applications for exemptive relief from section 17(d), the SEC will consider whether the participation of a registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the company's participation is on a basis different from or less advantageous than that of other participants.

9. Applicants submit that the purpose of section 17(d) is to avoid overreaching by and unfair advantage to investment company insiders. Applicants believe that the credit facility is consistent with the provisions, policies and purposes of the Act in that it offers both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and their shareholders. Applicants note that each Fund would have an equal opportunity to borrow and lend on equal terms consistent with its investment policies and fundamental investment limitations. Applicants therefore believe that each fund's participation in the credit facility will be on terms which are no different from or less advantageous than that of other participating Funds.

**Applicants' Conditions**

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. The interest rates to be charged to the Funds under the credit facility will be the average of the Repo Rate and the Bank Loan Rate.

2. On each business day, the Franklin Templeton Advisers will compare the Bank Loan Rate with the Repo Rate and will make cash available for Interfund Loans only if the Interfund Loan Rate is (i) more favorable to the lending Fund than the Repo Rate; (ii) more favorable to the lending Fund than the yield on the Money Market Funds (''MMF Yield'') (for those Funds that invest in the Money Market Funds); and (iii) more favorable to the borrowing Fund than the Bank Loan Rate.

3. If a Fund has outstanding borrowings, any Interfund Loans to the Fund: (a) Will be at an interest rate equal to or lower than any outstanding bank loan, (b) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that requires collateral, (c) will have a maturity no longer than any outstanding bank loan (and in any event not over seven days), and (d) will provide that, if an event of default occurs under any agreement evidencing an outstanding bank loan to the Fund, that event of default will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the Interfund Lending Agreement entitling the lending Fund to call the Interfund Loan (and exercise all rights with respect to any collateral) and that such call will be made if the lending bank exercises its right to call its loan under its agreement with the borrowing Fund.

4. A Fund may make an unsecured borrowing through the credit facility if its outstanding borrowings from all sources immediately after the interfund borrowing total less than 10% of its total assets, provided that if the Fund has a secured loan outstanding from any other lender, including but not limited to another fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Fund's total outstanding borrowings immediately after interfund borrowing would be greater than 10% of its total assets, the Fund may borrow through the credit facility on a secured basis only. A Fund may not borrow through the credit facility or from any other source if its total outstanding borrowings immediately after the interfund borrowing would be more than 33⅓% of its total assets.

5. Before any Fund that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Fund must first secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding Interfund Loans exceeds 10% of its total assets for any other reason (such as decline in net asset value or because of shareholder redemptions), the Fund will within one business day thereafter: (a) Repay all its outstanding Interfund Loans, (b) reduce its outstanding indebtedness to 10% or less of its total assets, or (c) secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition (5) shall no longer be required. Until each Interfund Loan that is outstanding at any time that a Fund's total outstanding borrowings exceeds 10% is repaid or the Fund's total outstanding borrowings cease to exceed 10% of its total assets, the Fund will mark the value of the collateral to market each day and will pledge such additional collateral as is necessary to maintain the market value of the collateral that secures each outstanding Interfund Loan at least equal to 102% of the outstanding principal value of the loan.

6. No equity, taxable bond or Money Market Fund may lend to another Fund through the credit facility if the loan would cause its aggregate outstanding loans through the credit facility to exceed 5%, 7.5% or 10%, respectively, of its net assets at the time of the loan.

7. A Fund's Interfund Loans to any one Fund shall not exceed 5% of the lending Fund's net assets.

8. The duration of Interfund Loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other

will be treated as separate loan transactions for purposes of this condition.

9. A Fund's borrowings through the credit facility, as measured on the day the most recent loan was made, will not exceed the greater of 125% of the Fund's total net cash redemptions and 102% of sales fails for the preceding seven calendar days.

10. Each Interfund Loan may be called on one business day's notice by the lending Fund and may be repaid on any day by the borrowing Fund.

11. A Fund's participation in the credit facility must be consistent with its investment policies and limitations and organizational documents.

12. The Cash Management Team will calculate total Fund borrowing and lending demand through the credit facility, and allocate loans on an equitable basis among the Funds without intervention of the portfolio manager of a Fund (except a portfolio manager of the Money Market Funds acting in his or her capacity as a member of the Cash Management Team). All allocations will require approval of at least one member of the Cash Management Team who is not a portfolio manager of the Money Market Funds. The Cash Management Team will not solicit cash for the credit facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers (except to the extent that the portfolio managers of the Money Market Funds on the Cash Management Team have access to loan demand data). The Franklin Templeton Advisers will invest any amounts remaining after satisfaction of borrowing demand in accordance with the standing instructions from portfolio managers or return remaining amounts for investment to the Funds.

13. The Franklin Templeton Advisers will monitor the interest rates charged and the other terms and conditions of the Interfund Loans and will make a quarterly report to the Trustees concerning the participation of the Funds in the credit facility and the terms and other conditions of any extensions of credit thereunder.

14. The Trustees of each Fund, including a majority of the Independent Trustees: (a) will review no less frequently than quarterly the Fund's participation in the credit facility during the preceding quarter for compliance with the conditions of any order permitting such transactions; (b) will establish the Bank Loan Rate formula used to determine the interest rate on Interfund Loans and review no less frequently than annually the continuing appropriateness of the Bank Loan Rate formula; and (c) will review no less frequently than annually the continuing appropriateness of the Fund's participation in the credit facility.

15. In the event an Interfund Loan is not paid according to its terms and such default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the Interfund Lending Agreement, the Franklin Templeton Advisers will promptly refer such loan for arbitration to an independent arbitrator selected by the Trustees of any Fund involved in the loan who will serve as arbitrator of disputes concerning Interfund Loans.[4] The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit, at least annually, a written report to the Trustees setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

16. Each Fund will maintain had preserve for a period of not less than six years from the end of the fiscal year in which any transaction under the credit facility occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transaction, including the amount, the maturity, and the rate of interest on the loan, the rate of interest available at the time on short-term repurchase agreements and bank borrowings, the MMF Yield, and such other information presented to the Trustees in connection with the review required by conditions 13 and 14 above.

17. The Franklin Templeton Advisers will prepare and submit to the Trustees for review an initial report describing the operations of the credit facility and the procedures to be implemented to ensure that all Funds are treated fairly. After the credit facility commences operations, the Franklin Templeton Advisers will report on the operations of the credit facility at the Trustees' quarterly meetings. in addition, for two years following the commencement of the credit facility, the independent public accountant for each Fund shall prepare an annual report that evaluates the Franklin Templeton Adviser's assertion that it has established procedures reasonably designed to achieve compliance with the conditions of the order. The report shall be prepared in accordance with the Statements on Standards for Attestation Engagements No. 3 and it shall be filed pursuant to Item 77Q3 of Form N–SAR. In particular, the report shall address procedures designed to achieve the following objectives: (a) that the Interfund Rate will be higher than the Repo Rate, and than the MMF Yield, but lower than the Bank Loan Rate; (b) compliance with the collateral requirements as set forth in the application; (c) compliance with the percentage limitations on interfund borrowing and lending; (d) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Trustees; and (e) that the interest rate on any Interfund Loan does not exceed the interest rate on any third party borrowings of a borrowing Fund at the time of the Interfund Loan. After the final report is filed, the Fund's external auditors, in connection with their Fund audit examinations, will continue to review the operation of the credit facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N–SAR.

18. No fund will participate in the credit facility upon receipt of requisite regulatory approval unless it has fully disclosed in its SAI all material facts about its intended participation.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 99–24602 Filed 9–21–99; 8:45 am]

BILLING CODE 8010–01–M

[4] If the dispute involves Funds with separate boards of Trustees, the Trustees of each Fund will select an independent arbitrator that is satisfactory to each party.

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–41879; File No. SR–DTC–99–15]**

## Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Relating to Procedures When Settling Banks Fail To Settle

September 15, 1999.

On June 11, 1999, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–DTC–99–15) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **FEDERAL REGISTER** on August 6, 1999.[2] No comment letters were received. For

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 41678 (July 30, 1999), 64 FR 43004.

the reasons discussed below, the Commission is approving the proposed rule change.

## I. Description

Under the rule change, DTC is restating its procedures for a settling bank's failure to settle.[3] DTC has revised its procedures for when a settling bank fails to settle with DTC due to a financial or operational problem to state in additional detail the procedures that DTC will follow if a settling bank fails to settle with DTC. For example, the restated procedures (1) state the specific time by which settling banks must acknowledge settlement balances each day, (2) provide for notice by DTC of a settling bank's failure to settle to the participants that settle through the bank, and (3) set forth DTC's rights with respect to payment of credit balances to and retention of collateral of each participant that settles through the bank.[4]

## II. Discussion

Section 17A(b)(3)(F) of the Act[5] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody and control of the clearing agency or for which it is responsible. The Commission believes that the proposed rule change is consistent with DTC's obligations under Section 17A(b)(3)(C) because it should facilitate completion of the daily settlement process at DTC in the event that a settlement bank fails to settle with DTC.

## III. Conclusion

On the basis of the foregoing, the Commission finds that DTC's proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–99–15) be and hereby is approved.

[3] DTC's current procedures were established in 1994 in connection with DTC's conversion to a same-day settlement system. The procedures were set forth in a memorandum which was issued jointly with the National Securities Clearing Corporation and which described the planned conversion of DTC's money settlement system from an oversight funds system to a same-day funds system to an entirely same day funds settlement system (July 29, 1994).

[4] A copy of DTC's procedures is attached as Exhibit 2 to DTC's filing, which is available for inspection and copying in the Commission's Public Reference Room and through DTC.

[5] 15 U.S.C. 78q–1(b)(3)(F).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 99–24603 Filed 9–21–99; 8:45 am]

BILLING CODE 8010–01–M

[6] 17 CFR 200.30–3(a)(12).

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## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3211]**

### State of North Carolina

As a result of the President's major disaster declaration on September 9, 1999, and an amendment thereto on September 11, I find that the Counties of Beaufort, Carteret, Craven, Dare, Hyde, and Pamlico in the State of North Carolina constitute a disaster area due to damages caused by Hurricane Dennis beginning on August 29, 1999, and continuing through September 11, 1999. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on November 7, 1999, and for loans for economic injury until the close of business on June 9, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the contiguous Counties of Jones, Lenoir, Martin, Onslow, Pitt, Tyrrell, and Washington in North Carolina may be filed until the specified date at the above location.

The interest rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Homeowners with credit available elsewhere | 7.250 |
| Homeowners without credit available elsewhere | 3.625 |
| Businesses with credit available elsewhere | 8.000 |
| Businesses and non-profit organizations without credit available elsewhere | 4.000 |
| Others (including non-profit organizations) with credit available elsewhere | 7.000 |
| For Economic Injury: | |
| Businesses and small agricultural cooperatives without credit available elsewhere | 4.000 |

The numbers assigned to this disaster are 321108 for physical damage and 9E5100 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 14, 1999.

**Bernard Kulik,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 99–24670 Filed 9–21–99; 8:45 am]

BILLING CODE 8025–01–U

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## SMALL BUSINESS ADMINISTRATION

**[License No. 02/72–0575]**

### East River Ventures, L.P.; Notice of Surrender of License

Notice is hereby given that East River Ventures, L. P., 645 Madison Avenue, New York, NY 10022, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). East River Ventures, L. P. was licensed by the Small Business Administration on September 26, 1997.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on this date, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies)

Dated: September 15, 1999.

**Don A. Christensen,**

*Associate Administrator for Investment.*

[FR Doc. 99–24673 Filed 9–21–99; 8:45 am]

BILLING CODE 8025–01–U

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## SMALL BUSINESS ADMINISTRATION

### Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the District of New Jersey, entered August 4, 1999, the United States Small Business Administration hereby revokes the license of Japanese American Capital Corp., a New Jersey corporation, to function as a small business investment company under the Small Business Investment Company License No. 02/02–5367 issued to Japanese American Capital Corp. on August 7, 1979 and said license is hereby declared null and void as of September 14, 1999.

Dated: September 14, 1999.

United States Small Business Administration.

**Don A. Christensen,**

*Associate Administrator for Investment.*

[FR Doc. 99–24671 Filed 9–21–99; 8:45 am]

BILLING CODE 8025–01–U

## SMALL BUSINESS ADMINISTRATION

### Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the Southern District of Texas, Houston Division, entered July 28, 1999, the United States Small Business Administration hereby revokes the license of Southern Orient Capital Corporation, a Texas corporation, to function as a small business investment company under the Small Business Investment Company License No. 06/06–5240 issued to Southern Orient Capital Corporation on December 29, 1980 and said license is hereby declared null and void as of September 14, 1999.

Dated: September 14, 1999.

United States Small Business Administration.

**Don A. Christensen,**

*Associate Administrator for Investment.*

[FR Doc. 99–24672 Filed 9–21–99; 8:45 am]

BILLING CODE 8025–01–U

## DEPARTMENT OF STATE

**[Public Notice 3126]**

### Fine Arts Committee; Notice of Meeting

The Fine Arts Committee of the Department of State will meet on Saturday, October 16, 1999 at 9:30 a.m. in the John Quincy Adams State Drawing Room. The meeting will last until approximately 11:00 a.m. and is open to the public.

The agenda for the committee meeting will include a summary of the work of the Fine Arts Office since its last meeting in March 1999 and the announcement of gifts of furnishings as well as financial contributions from January 1 through September 30, l999. Public access to the Department of State is strictly controlled. Members of the public wishing to take part in the meeting should telephone the Fine Arts Office by Monday, October 11, 1999, telephone (202) 647–1990 to make arrangements to enter the building. The public may take part in the discussion as long as time permits and at the discretion of the chairman.

September 16, 1999.

**Gail F. Serfaty,**

*Vice Chairman, Fine Arts Committee.*

[FR Doc. 99–24679 Filed 9–21–99; 8:45 am]

BILLING CODE 4710–38–P

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

**[USCG–1999–6236]**

### National Boating Safety Advisory Council

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of meetings.

**SUMMARY:** The National Boating Safety Advisory Council (NBSAC) and its subcommittees on boat occupant protection, navigation lights, personal flotation device-life saving index, and prevention through people will meet to discuss various issues relating to recreational boating safety. All meetings will be open to the public.

**DATES:** NBSAC will meet on Monday, October 25, 1999, from 8:30 a.m. to 5 p.m. and Tuesday, October 26 from 8:30 a.m. to noon. The Personal Flotation Device-Life Saving Index Subcommittee will meet on Saturday, October 23, 1999, from 1:30 p.m. to 5 p.m. The Prevention Through People Subcommittee will meet on Sunday, October 24, 1999, from 8:30 a.m. to 11:30 a.m.; the Boat Occupant Protection Subcommittee will meet from 12:30 p.m. to 3 p.m.; and the Navigation Light Subcommittee will meet from 3 p.m. to 5 p.m. These meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before October 15, 1999. Requests to have a copy of your material distributed to each member of the committee or subcommittees should reach the Coast Guard on or before October 8, 1999.

**ADDRESSES:** NBSAC will meet at the Four Points Riverwalk North Hotel, 110 Lexington Avenue, San Antonio, Texas. The subcommittee meetings will be held at the same address. Send written material and requests to make oral presentations to Mr. Albert J. Marmo, Commandant (G–OPB–1), US Coast Guard Headquarters, 2100 Second Street SW, Washington, DC 20593–0001. You may obtain a copy of this notice by calling the US Coast Guard Infoline at 1–800–368–5647. This notice is available on the Internet at http://dms.dot.gov or at the Web Site for the Office of Boating Safety at URL address www.uscgboating.org/.

**FOR FURTHER INFORMATION CONTACT:** For questions on this notice, contact Albert J. Marmo, Executive Director of NBSAC, telephone 202–267–0950, fax 202–267–4285.

**SUPPLEMENTARY INFORMATION:** Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

**Agendas of Meetings**

*National Boating Safety Advisory Council (NBSAC).* The agenda includes the following:

(1) Executive Director's report.
(2) Chairman's session.
(3) Personal Flotation Device-Life Saving Index Subcommittee report.
(4) Prevention Through People Subcommittee report.
(5) Boat Occupant Protection Subcommittee report.
(6) Navigation Light Subcommittee report.
(7) Recreational Boating Safety Program report.
(8) U.S. Coast Guard Auxiliary report.
(9) National Association of State Boating Law Administrators report.
(10) Update on fire extinguisher carton labeling.
(11) Presentation on the Global Maritime Distress and Safety System and the National Distress System Modernization Project.
(12) Report on the national recreational boating survey.
(13) Presentation on technical seminars on boating safety standards and compliance.
(14) Discussion of personal watercraft safety issues.
(15) Report on the utilization of grant project results in voluntary standards development.
(16) Recreational boating safety outreach report.
(17) Report on fiscal year 1999 national nonprofit public service organization grants.

*Personal Flotation Device-Life Saving Index Subcommittee.* The agenda includes the following:

(1) Discuss the status of development of the life saving index.
(2) Discuss manual/automatic inflatable personal flotation device (PFD) approval.
(3) Review PFD label criteria.
(4) Discuss issues concerning consumer PFD awareness and Coast Guard sponsored PFD research projects.

*Boat Occupant Protection Subcommittee.* The agenda includes the following:

(1) Discuss actions to develop a performance standard to prevent and minimize the occurrence of propeller strikes.
(2) Discuss ongoing risk management and human factors initiatives.
(3) Discuss personal watercraft off-throttle steering test and evaluation.
(4) Discuss boat engine weight table issues.

*Prevention Through People Subcommittee.* The agenda includes the following:

(1) Initiate the process for continuing subcommittee guidance and advice concerning public safety awareness campaigns and materials dealing with boating under the influence, PFD wear, and other boating safety issues.
(2) Discuss strategies for reaching the operators of small boats, particularly non-powered craft such as canoes and kayaks, not required to be registered in most states.
(3) Discuss development of a national boating safety education standard and education delivery mechanisms.

*Navigation Light Subcommittee.* The agenda includes the following:

(1) Discuss status of navigation light certification rulemaking.

(2) Discuss the navigation light lens size grant study.

(3) Review the Navigation Rules regarding the use of innovative navigation light units.

(4) Discuss marking to indicate certification of navigation lights.

**Procedural**

All meetings are open to the public. Please note that the meetings may close early if all business is finished. At the Chairs' discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Director no later than October 15, 1999. Written material for distribution at a meeting should reach the Coast Guard no later than October 15, 1999. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of a meeting, please submit 25 copies to the Executive Director no later than October 8, 1999.

**Information on Services for Individuals with Disabilities**

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: September 15, 1999.

**Terry M. Cross,**

*Rear Admiral, US Coast Guard, Assistant Commandant for Operations, Acting.*

[FR Doc. 99–24701 Filed 9–21–99; 8:45 am]

BILLING CODE 4910–15–U

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Aging Transport Systems Rulemaking Advisory Committee; Meeting

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of public meeting.

**SUMMARY:** This notice announces a public meeting of the FAA's Aging Transport Systems Rulemaking Advisory Committee.

**DATES:** The meeting will be held October 13–14, 1999, beginning at 9 a.m. on October 13. Arrange for oral presentations by October 6.

**ADDRESSES:** The meeting will be at the Bessie Coleman Conference Center, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Effie M. Upshaw, Office of Rulemaking, ARM–209, FAA, 800 Independence Avenue, SW, Washington, DC 20591, Telephone (202) 267–7626, FAX (202) 267–5075.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given of a meeting of the Aging Transport Systems Rulemaking Advisory Committee in the Bessie Coleman Conference Center, Federal Aviation Administration, 800 Independence Ave., S.W., Washington, DC.

The agenda will include:

- Opening remarks.
- Discussion of working group activities including reports on the noninstrusive inspections and progress on development of intrusive inspections.
- Presentation on ATA Chapter wire codes.
- Presentation on the potential effects of aging on high energy radiated fields and lightning protection systems.
- Presentation on the International Maintenance Review Board.

Attendance is open to the interested public but will be limited to the space available. The public must make arrangements by October 6, 1999, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 20 copies to the Executive Director, or by bringing the copies to him at the meeting. Public statements will only be considered if time permits. In addition, sign and oral interpretation as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC on September 14, 1999.

**Anthony F. Fazio,**

*Director, Office of Rulemaking.*

[FR Doc. 99–24646 Filed 9–21–99; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent to Rule on Application (99–03–C–00–RDM) to impose and use the revenue from a passenger facility charge (PFC) at Roberts Field-Redmond Municipal Airport, submitted by the City of Redmond, Redmond, Oregon

**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 PFC revenue at Roberts Field-Redmond Municipal Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

**DATES:** Comments must be received on or before October 22, 1999.

**ADDRESS:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250; Renton, Washington 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Carolyn S. Novick, A.A.E., Airport Manager, at the following address: City of Redmond, P.O. Box 726, Redmond, OR 97756.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Roberts Field-Redmond Municipal Airport, under section 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Ms. Mary Vargas, (425) 227–2660; Seattle Airports District Office, SEA–ADO; 1601 Lind Avenue SW, Suite 250; Renton, Washington 98055–4056. 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 (99–03–C–00–RDM) to impose and use PFC revenue at Roberts Field-Redmond Municipal Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On September 15, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by City of Redmond, Redmond, Oregon, 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 December 17, 1999.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: December 1, 2000.

Proposed charge expiration date: April 1, 2004.

Total requested for use approval: $1,021,900.

Brief description of proposed project: Impose and Use: Reconstruct taxiway ''F'' North and construct exit taxiway and holding apron; Installation of Distance-to-go signs on runway 10/28 & REILS on runway 4; Construct Building for storage & Maintenance of Airport Snow & Ice Control Equipment & Materials; Reconstruct taxiway ''F'' South & Relocate taxiway ''H.''

Class or classes of air carriers which the public agency has requested not be

required to collect PFC's: Air taxi/commercial operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Roberts Field-Redmond Municipal Airport.

Issued in Renton, Washington on September 15, 1999.

**Warren D. Ferrell,**

*Acting Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.*

[FR Doc. 99–24647 Filed 9–21–99; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### PA 23 Subcorridor: Lancaster County, Pennsylvania

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of Intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for the PA 23 Subcorridor in Earl Township, East Earl Township, East Lampeter Township, Manheim Township, Upper Leacock Township, and New Holland Borough, Lancaster County, Pennsylvania.

**FOR FURTHER INFORMATION CONTACT:** Deborah Suciu Smith, Environmental Specialist, Federal Highway Administration, 228 Walnut Street, Room 536, Harrisburg, Pennsylvania 17101–1720, Telephone: 717–221–3785, or Mark Malhenzie, Project Manager, Pennsylvania Department of Transportation 2140 Herr Street, Harrisburg, Pennsylvania, 17103, Telephone 717–783–5080.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Pennsylvania Department of Transportation (PennDOT) and the Lancaster County Planning Office, will prepare an environmental impact statement (EIS) to identify and evaluate alternatives which address transportation problems within the PA 23 Subcorridor. The proposed project would involve improvements to transportation conditions in the PA 23 Subcorridor from the PA 23/U.S. Route 30 interchange on the west to U.S. Route 322 on the east.

A Notice of Intent was previously published in the **Federal Register** on February 27, 1987, to advise the public that an EIS would be prepared to identify and evaluate alternatives to provide a viable means of relieving traffic congestion on PA 23 and U.S. Route 30 in Lancaster County. Public concerns redirected the scope of the project and a revised Notice of Intent was published on June 16, 1988. The intent of the second Notice was to advise the public that separate EIS's would be prepared to identify and evaluate alternatives to relieve traffic congestion on PA 23 and U.S. Route 30 independently.

In 1997, the Lancaster County Transportation Coordinating Committee (Lancaster County MPO) was the lead agency for the PA 23 Corridor Major Investment Study (MIS), consistent with the requirements of the Intermodal Surface Transportation Efficiency Act of 1991. The PA 23 Corridor Study MIS gathered various types of data which resulted in the identification of transportation needs and will lead to the development of alternatives. Typical areas of concern identified by various members of the public and resource agencies during the MIS studies include, but are not limited to, the following: socioeconomic and land use impacts; the unique social sub-groups; effects on cultural, and natural resources; agricultural preservation; roadway safety; business-industry; tourism; and economic stability.

The PA 23 Corridor Study MIS demonstrated present and future transportation problems in the PA 23 Subcorridor from U.S. Route 30 to the U.S. Route 322 intersection east of New Holland, a distance of approximately 21.5 km (13.4 miles). Transportation needs in the PA 23 Subcorridor include congestion, decreasing levels of service, traffic diversion from PA 23 to local roads, uncontrolled access to adjacent driveways and connecting roads, and a mix of motorized and non-motorized means of travel. Improvements to the corridor are considered necessary to provide for the existing and projected transportation demands.

A range of transportation alternatives, including No-Build, Transportation Systems Management (TSM), Traffic Control Measures (TCM), and Travel Demand Management (TDM), Transit, Widening, and Relocation alternatives will be developed consistent with land use strategies to address the identified transportation needs. The development of alternatives will be based on traffic demands, engineering requirements, environmental and socioeconomic constraints, the county's growth management plan, and public input. Public involvement and inter-agency coordination will be maintained throughout the development of the EIS.

To insure that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments and suggestions are invited from interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the addresses listed above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: September 14, 1999.

**Deborah Suciu Smith,**

*Environmental Specialist, Federal Highway Administration, Harrisburg, Pennsylvania.*

[FR Doc. 99–24612 Filed 9–21–99; 8:45 am]

BILLING CODE 4910–22–M

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement; Morrison County, Minnesota

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of Intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for the proposed reconstruction of Trunk Highway 371 (TH 371) in Morrison County, Minnesota.

**FOR FURTHER INFORMATION CONTACT:** Cheryl Martin, Federal Highway Administration, Galtier Plaza, Box 75, 175 East Fifth Street, Suite 500, St. Paul, Minnesota 55101–2904, Telephone (651) 291–6120; or Roger Risser, Project Manager, Minnesota Department of Transportation—District 3, 1991 Industrial Park Road, Baxter, Minnesota 56425, Telephone (218) 828–22482 V, (651) 296–9930 TTY.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Minnesota Department of Transportation, will prepare an EIS on a proposal to improve TH 371 between County State Aid Highway (CSAH) 46 north of Little Falls to 0.8 kilometer north of CSAH 48 in Morrison County,

Minnesota, a distance of approximately 9.5 kilometers. Improvements to the corridor are considered necessary to provide for existing and projected traffic demands, correct an existing safety problem and address deteriorating pavement and bridge conditions.

Alternatives under consideration include:

- No Build
- Several variations of ''Build'' alternatives involving reconstruction and/or realignment and new construction of TH 371 into a four-lane highway (divided or undivided).

The ''Trunk Highway 371—Reconstruction, Scoping Document/Draft Scoping Decision Document'' will be published in the Fall of 1999. A press release will be published to inform the public of the document's availability. Copies of the scoping document will be distributed to agencies, interested persons and libraries for review to aid in identifying issues and analyses to be contained in the EIS. A 30-day comment period for review of the document will be provided. A public scoping meeting will also be held during the comment period to afford an opportunity for all interested persons, agencies and groups to comment on the proposed action. Public notice will be given for the time and place of the meeting.

Coordination has been initiated and will continue with appropriate Federal, State and local agencies and private organizations and citizens who have previously expressed or are known to have an interest in the proposed action. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: September 14, 1999.

**Stanley M. Graczyk,**

*Project Development Engineer, Federal Highway Administration, St. Paul, Minnesota.*

[FR Doc. 99–24681 Filed 9–21–99; 8:45 am]

BILLING CODE 4910–22–M

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

### Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on July 7, 1999, [64 FR 36738].

**DATES:** Comments must be submitted on or before October 22, 1999.

**FOR FURTHER INFORMATION CONTACT:** Taylor E. Jones, Director, Office of Maritime Labor, Training and Safety, Maritime Administration, MAR–250, Room 7302, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5755 or FAX 202–493–2288. Copies of this collection can also be obtained from that office.

**SUPPLEMENTARY INFORMATION:** Maritime Administration (MARAD).

*Title:* U.S. Merchant Marine Academy Application for Admission.

*OMB Control Number:* 2133–0010.

*Type of Request:* Extension of currently approved collection.

*Affected Public:* Individuals desirous of becoming students at the U.S. Merchant Marine Academy.

*Form(s):* KP 2–65.

*Abstract:* The collection consists of Parts I, II, and III of Form KP 2–65 (U.S. Merchant Marine Academy Application for Admission. These items are completed by individuals wishing to be admitted as students to the U.S. Merchant Marine Academy and are reviewed by staff members of the Academy. The collection is necessary to select the best qualified candidates for the U.S. Merchant Marine Academy.

*Annual Estimated Burden Hours:* 5 hours.

**ADDRESSES:** Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attention MARAD Desk Officer.

*Comments Are Invited On:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC on September 17, 1999.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 99–24680 Filed 9–21–99; 8:45 am]

BILLING CODE 4910–81–P

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

### Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** List of Applications for Modification of Exemptions.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

**DATES:** Comments must be received on or before (15 days after publication).

**ADDRESS COMMENTS TO:** Records Center, Research and Special Programs,

Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

**FOR FURTHER INFORMATION CONTACT:** Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW, Washington, DC or at http://dms.dot.gov.

This notice of receipt of applications for modification of exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on September 16, 1999.

**J. Suzanne Hedgepeth,**

*Director, Office of Hazardous Materials Exemptions and Approvals.*

| Application No. | Docket No. | Applicant | Modification of exemption |
|---|---|---|---|
| 8556–M | | Gardner Cryogenics, Lehigh Valley, PA [1] | 8556 |
| 10798–M | | Matheson Tri-Gas, Parsippany, NJ [2] | 10798 |
| 10928–M | | MathesonTri-Gas, Parsippany, NJ [3] | 10928 |
| 11432–M | | Baker Atlas, Houston, TX [4] | 11432 |
| 11506–M | | OEA, Inc., Denver, CO [5] | 11506 |
| 11880–M | RSPA–1997–2463 | International Catalyst Corporation, Lloydminister, Alberta, CA [6] | 11880 |
| 11914–M | RSPA–1997–2738 | Dae Ryuk Can Co., Ltd., Seoul, KR [7] | 11914 |
| 12245–M | RSPA–1999–5489 | BetzDearborn, Inc., Trevose, PA [8] | 12245 |

[1] To modify the exemption to provide for design changes of the non-DOT specification portable tank manufactured in accordance with ASME Code criteria; add a new 4830 gallon liquid helium tank design.
[2] To modify the exemption to allow for the transportation of an additional Division 2.3 material in tank cars.
[3] To modify the exemption to allow for the transportation of an additional Division 2.3 material in tank cars.
[4] To modify the exemption to allow for an alternate lining and relief from certain marking/shipping paper entry requirements for the transportation of Division 1.4 igniters mix-packed with Division 1.4 detonators transported with Class 1 explosives.
[5] To modify the exemption to include passenger-carrying aircraft as an authorized mode of transportation.
[6] To modify the exemption to allow for a valve design change in the unloading system of the non-specification steel covered hopper railcars for the transportation of Division 4.2 materials.
[7] To modify the exemption to allow for a design change for an additional non-DOT specification container with a maximum capacity not to exceed 15 cubic inches for the transportation of a Division 2.3 material.
[8] To reissue the exemption originally issued on an emergency basis for the unloading of hazardous materials from IBCs without removal from a motor vehicle.

[FR Doc. 99–24703 Filed 9–21–99; 8:45 am]
**BILLING CODE 4910–60–M**

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

### Office of Hazardous Materials Safety; Notice of Applications for Exemptions

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** List of Applicants for Exemptions.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

**DATES:** Comments must be received on or before October 22, 1999.

**ADDRESS COMMENTS TO:** Records Center, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

**FOR FURTHER INFORMATION CONTACT:** Copies of the application (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW., Washington, DC 20590 or at http://dms.dot.gov.

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on September 16, 1999.

**J. Suzanne Hedgepeth,**

*Director, Office of Hazardous Materials Exemptions and Approvals.*

NEW EXEMPTIONS

| Application No. | Docket No. | Applicant | Regulations(s) affected | Nature of Exemption Thereof |
|---|---|---|---|---|
| 12332–N | RSPA–1999–6176 | Automotive Occupant, Restraints Council, Lexington, KY. | 49 CFR 173.166 (c) & (e). | To authorize the transportation in commerce of air bag modules or seat belt pre-tensioners that have been removed from motor vehicles for disposal to be transported without required markings. (mode 1) |
| 12333–N | RSPA–1999–6174 | BFI, Atlanta, GA | 49 CFR 173.28(b)(4)(i) | To authorize the transportation in commerce of non-DOT specification open-head plastic drums for use in transporting regulated Medical waste, Division 6.2 (mode 1) |

NEW EXEMPTIONS—Continued

| Application No. | Docket No. | Applicant | Regulations(s) affected | Nature of Exemption Thereof |
|---|---|---|---|---|
| 12334–N | RSPA–1999–6177 | Autoclave Engineers, Erie, PA. | 49 CFR 178.36 | To authorize the manufacture, marking and sale of non-DOT specification cylinders comparable to 3A or 3AX seamless steel cylinder for use in transporting compressed hydrogen, Division 2.1. (mode 1) |
| 12335–N | RSPA–1999–6178 | Baker Hughes, Houston, TX. | 49 CFR 173.62(c), PM E–139, PPR 1. | To authorize an alternative packaging method for use in transporting Cord, detonating, Division 1.1D and 1.4D. (modes 1, 3) |
| 12336–N | RSPA–1999–6179 | AC Plastiques Canada (1992) Inc., Les Cedres, Quebec, CA. | 49 CFR 172.102(c), 178.345–2, 4, 7, 14(b) –15, 178.348–1 & 2. | To authorize the manufacture, marking and sale of fiber reinforced plastic highway cargo tanks for use in transporting Class 8 material. (mode 1) |
| 12338–N | RSPA–1999–6180 | Aeronex, Inc., San Diego, CA. | 49 CFR 173.212 | To authorize the transportation in commerce of non-DOT specification seamless steel cylinders comparable to DOT–3A cylinders for use in transporting Self-heating solid, inorganic, n.o.s., Division 4.2. (mode 1) |
| 12339–N | RSPA–1999–6201 | BOC Gases, Murray Hill, NJ. | 49 CFR, 173.192(a)(3), 173.302(a)(5), 173.302(f), 173.304(a)(4), 173.304(d)(3)(i). | To authorize the transportation in commerce of various Division 2.1 and 2.3 gases in DOT Specification 3AL aluminum cylinders, overpacked in freight containers. (mode 3) |
| 12340–N | RSPA–1999–6199 | General Chemical Corp., Parsippany, NJ. | 49 CFR 178.605 | To authorize the transportation in commerce of Class 8 material in DOT 3H1 HDPE square jerricans with a lower pressure rating, equipped with or without diptubes (modes 1, 2, 3) |
| 12341–N | RSPA–1999–6200 | Space Systems/Loral, Palo Alto, CA. | 49 CFR 173.301, 178.46. | To authorize the transportation in commerce of non-DOT Specification cylinders pressurized to a low storage pressure with Division 2.2 material. (modes 1, 4) |
| 12342–N | RSPA–1999–6196 | Elliot 1 Day Surgery, Center, Manchester, NH. | 49 CFR 172.101 Col. 8(c), 173.197. | To authorize the transportation in commerce of regulated medical waste in poly bags overpacked in non-DOT specification bulk bins. (mode 1) |
| 12343–N | RSPA–1999–6198 | City Machine & Welding, Inc. of Amarillo, Amarillo, TX. | 49 CFR 173.302(c)(2), (c)(3), (c)(4), 173.34(e)(6)(i)(D), 173.34(e)(6)(i)(D), 173.34(e)(7)(i), 173.34(e), (e)(2), (e)(4). | To authorize acoustic emission retesting of DOD–3AAX and 3T cylinders for use in transporting various hazardous materials classed in Division 2.1, 2.2 and 2.3. (mode 1) |

[FR Doc. 99–24704 Filed 9–21–99; 8:45 am]

BILLING CODE 4910–60–M

federal register

Wednesday
September 22, 1999

# Part II

# Nuclear Regulatory Commission

**10 CFR Part 50**

**Industry Codes and Standards; Amended Requirements; Final Rule**

**NUCLEAR REGULATORY COMMISSION**

**10 CFR Part 50**

**RIN 3150–AE26**

## Industry Codes and Standards; Amended Requirements

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission is amending its regulations to incorporate by reference more recent editions and addenda of the ASME Boiler and Pressure Vessel Code and the ASME Code for Operation and Maintenance of Nuclear Power Plants for construction, inservice inspection, and inservice testing. These provisions provide updated rules for the construction of components of light-water-cooled nuclear power plants, and for the inservice inspection and inservice testing of those components. This final rule permits the use of improved methods for construction, inservice inspection, and inservice testing of nuclear power plant components.

**DATES:** Effective November 22, 1999. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 22, 1999.

**FOR FURTHER INFORMATION CONTACT:** Thomas G. Scarbrough, Division of Engineering, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–2794, or Robert A. Hermann, Division of Engineering, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–2768.

**SUPPLEMENTARY INFORMATION:**

1. Background
2. Summary of Comments
2.1 List of Each Revision, Implementation Schedule, and Backfit Status
2.2 Discussion
2.3 120-Month Update
2.3.1 Section XI
2.3.1.1 Class 1, 2, and 3 Components, Including Supports
2.3.1.2 Limitations:
2.3.1.2.1 Engineering Judgment (Deleted)
2.3.1.2.2 Quality Assurance
2.3.1.2.3 Class 1 Piping
2.3.1.2.4 Class 2 Piping (Deleted)
2.3.1.2.5 Reconciliation of Quality Requirements
2.3.2 OM Code (120-Month Update)
2.3.2.1 Class 1, 2, and 3 Pumps and Valves
2.3.2.2 Background—OM Code
2.3.2.2.1 Comments on the OM Code
2.3.2.3 Clarification of Scope of Safety-Related Valves Subject to IST
2.3.2.4 Limitation:
2.3.2.4.1 Quality Assurance
2.3.2.5 Modification:
2.3.2.5.1 Motor-Operated Valve Stroke-Time Testing
2.4 Expedited Implementation
2.4.1 Appendix VIII
2.4.1.1 Modifications:
2.4.1.1.1 Appendix VIII Personnel Qualification
2.4.1.1.2 Appendix VIII Specimen Set and Qualification Requirements
2.4.1.1.3 Appendix VIII Single Side Ferritic Vessel and Piping and Stainless Steel Piping Examination
2.4.2 Generic Letter on Appendix VIII
2.4.3 Class 1 Piping Volumetric Examination (Deferred)
2.5 Voluntary Implementation
2.5.1 Section III
2.5.1.1 Limitations:
2.5.1.1.1 Engineering Judgement (Deleted)
2.5.1.1.2 Section III Materials
2.5.1.1.3 Weld Leg Dimensions
2.5.1.1.4 Seismic Design
2.5.1.1.5 Quality Assurance
2.5.1.1.6 Independence of Inspection
2.5.1.2 Modification:
2.5.1.2.1 Applicable Code Version for New Construction
2.5.2 Section XI (Voluntary Implementation)
2.5.2.1 Subsection IWE and Subsection IWL
2.5.2.2 Flaws in Class 3 Piping; Mechanical Clamping Devices
2.5.2.3 Application of Subparagraph IWB–3740, Appendix L
2.5.3 OM Code (Voluntary Implementation)
2.5.3.1 Code Case OMN–1
2.5.3.2 Appendix II
2.5.3.3 Subsection ISTD
2.5.3.4 Containment Isolation Valves
2.6 ASME Code Interpretations
2.7 Direction Setting Issue 13
2.8 Steam Generators
2.9 Future Revisions of Regulatory Guides Endorsing Code Cases
3. Voluntary Consensus Standards
4. Finding of No Significant Environmental Impact
5. Paperwork Reduction Act Statement
6. Regulatory Analysis
7. Regulatory Flexibility Certification
8. Backfit Analysis
9. Small Business Regulatory Enforcement Fairness Act

## 1. Background

The Nuclear Regulatory Commission (NRC) is amending its regulations to incorporate by reference the 1989 Addenda, 1990 Addenda, 1991 Addenda, 1992 Edition, 1992 Addenda, 1993 Addenda, 1994 Addenda, 1995 Edition, 1995 Addenda, and 1996 Addenda of Section III, Division 1, of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (BPV Code) with five limitations; the 1989 Addenda, 1990 Addenda, 1991 Addenda, 1992 Edition, 1992 Addenda, 1993 Addenda, 1994 Addenda, 1995 Edition, 1995 Addenda, and 1996 Addenda of Section XI, Division 1, of the ASME BPV Code with three limitations; and the 1995 Edition and 1996 Addenda of the ASME Code for Operation and Maintenance of Nuclear Power Plants (OM Code) with one limitation and one modification. The final rule imposes an expedited implementation of performance demonstration methods for ultrasonic examination systems. The final rule permits the optional implementation of the ASME Code, Section XI, provisions for surface examinations of High Pressure Safety Injection Class 1 piping welds. The final rule also permits the use of evaluation criteria for temporary acceptance of flaws in ASME Code Class 3 piping (Code Case N–523–1); mechanical clamping devices for ASME Code Class 2 and 3 piping (Code Case N–513); the 1992 Edition including the 1992 Addenda of Subsections IWE and IWL in lieu of updating to the 1995 Edition and 1996 Addenda; alternative rules for preservice and inservice testing of certain motor-operated valve assemblies (OMN–1) in lieu of stroke-time testing; a check valve monitoring program in lieu of certain requirements in Subsection ISTC of the ASME OM Code (Appendix II to the OM Code); and guidance in Subsection ISTD of the OM Code as part of meeting the ISI requirements of Section XI for snubbers. This final rule deletes a previous modification for inservice testing of containment isolation valves.

On December 3, 1997 (62 FR 63892), the NRC published a proposed rule in the **Federal Register** that presented an amendment to 10 CFR part 50, ''Domestic Licensing of Production and Utilization Facilities,'' that would revise the requirements for construction, inservice inspection (ISI), and inservice testing (IST) of nuclear power plant components. For construction, the proposed amendment would have permitted the use of Section III, Division 1, of the ASME BPV Code, 1989 Addenda through the 1996 Addenda, for Class 1, Class 2, and Class 3 components with six proposed limitations and a modification.

For ISI, the proposed amendment would have required licensees to implement Section XI, Division 1, of the ASME BPV Code, 1995 Edition up to and including the 1996 Addenda for Class 1, Class 2, and Class 3 components with five proposed limitations. The proposed amendment included permission for licensees to implement Code Cases N–513, ''Evaluation Criteria for Temporary Acceptance of Flaws in Class 3 Piping,'' and N–523, ''Mechanical Clamping Devices for Class 2 and 3 Piping.'' The proposed

amendment also would allow licensees to use the 1992 Edition including the 1992 Addenda of Subsections IWE and IWL in lieu of updating to the 1995 Edition and the 1996 Addenda. The proposed rule included expedited implementation of Appendix VIII, ''Performance Demonstration for Ultrasonic Examination Systems,'' to Section XI, Division 1, with three proposed modifications. An expedited examination schedule would also have been required for a proposed modification to Section XI which addresses volumetric examination of Class 1 high pressure safety injection (HPSI) piping systems in pressurized water reactors (PWRs).

For IST, the proposed amendment would have required licensees to implement the 1995 Edition up to and including the 1996 Addenda of the ASME OM Code for Class 1, Class 2, and Class 3 pumps and valves with one limitation and one modification. The proposed amendment included permission for licensees to implement Code Case OMN–1 in lieu of stroke-time testing for motor-operated valves; Appendix II which provides a check valve condition monitoring program as an alternative to certain check valve testing requirements in Subsection ISTC of the OM Code; and Subsection ISTD of the OM Code as part of meeting the ISI requirements in Section XI for snubbers. Finally, the proposed rule would delete the modification presently in § 50.55a(b) for IST of containment isolation valves.

The NRC regulations currently require licensees to update their ISI and IST programs every 120 months to meet the version of Section XI incorporated by reference into 10 CFR 50.55a and in effect 12 months prior to the start of a new 120-month interval. The NRC published a supplement to the proposed rule on April 27, 1999 (64 FR 22580), that would eliminate the requirement for licensees to update their ISI and IST programs beyond a baseline edition and addenda of the ASME BPV Code. Under that proposed rule, licensees would continue to be allowed to update their ISI and IST programs on a voluntary basis to more recent editions and addenda of the ASME Code incorporated by reference in the regulations. Upon further review, the Commission decided to issue this final rule to incorporate by reference the 1995 Edition with the 1996 Addenda of the ASME BPV Code and the ASME OM Code with appropriate limitations and modifications. The Commission also decided to consider the proposal to eliminate the requirement to update ISI and IST programs every 120 months as a separate rulemaking effort. Following consideration of the public comments on the April 27, 1999, proposed rule, the NRC may prepare a final rule addressing the continued need for the requirement to update periodically ISI and IST programs and, if necessary, establishing an appropriate baseline edition of the ASME Code.

## 2. Summary of Comments

Interested parties were invited to submit written comments for consideration on the proposed rule published on December 3, 1997. Comments were received from 65 separate sources on the proposed rule. These sources consisted of 27 utilities and service organizations, the Nuclear Energy Institute (NEI), the Nuclear Utility Backfitting and Reform Group (NUBARG) represented by the firm of Winston & Strawn, the ASME Board on Nuclear Codes and Standards, the Electric Power Research Institute (EPRI), the Performance Demonstration Initiative (PDI), the Nuclear Industry Check Valve Group, the State of Illinois Department of Nuclear Safety, Oak Ridge National Laboratory, the Southwest Research Institute, three consulting firms (one firm submitted three separate letters), and 24 individuals. The commenters' concerns related principally to one or more of the proposed limitations and modifications included in the proposed rule. Many of these limitations and modifications have been renumbered in the final rule because some limitations and modifications that were contained in the proposed rule were deleted.

The proposed rule divided the proposed revisions to 10 CFR 50.55a into three groups based on the implementation schedule (i.e., 120-month update, expedited, and voluntary). These groupings have been retained in the discussion of the final rule. For each of these groups, it is indicated below in parentheses whether or not particular items are considered a backfit under 10 CFR 50.109 as discussed in Section 8, Backfit Analysis. This section provides a list of each revision and its implementation schedule, followed by a brief summary of the comments and their resolution. The summary and resolution of public comments and all of the verbatim comments which were received (grouped by subject area) are contained in Resolution of Public Comments. This document is available for inspection and copying for a fee in the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC.

2.1 List of Each Revision, Implementation Schedule, and Backfit Status.

- 120-Month Update [in accordance with §§ 50.55a(f)(4)(i) and 50.55a(g)(4)(i)]
- Section XI (Not A Backfit)

2.3.1.1 Class 1, 2, and 3 Components, Including Supports
2.3.1.2.1 Engineering Judgement (Deleted)
2.3.1.2.2 Quality Assurance
2.3.1.2.3 Class 1 Piping
2.3.1.2.4 Class 2 Piping (Deleted)
2.3.1.2.5 Reconciliation of Quality Requirements

- OM Code (Not A Backfit)

2.3.2.1 Class 1, 2, and 3 Pumps and Valves
2.3.2.3 Clarification of Scope of Safety-Related Valves Subject to IST
2.3.2.4.2 Quality Assurance
2.3.2.5.1 Motor-Operated Valve Stroke-Time Testing

- Expedited Implementation [after 6 months from the date of the final rule—Backfit]

2.4.1 Appendix VIII
2.4.1.1.1 Appendix VIII Personnel Qualification
2.4.1.1.2 Appendix VIII Specimen Set and Qualification Requirements
2.4.1.1.3 Appendix VIII Single Side Ferritic Vessel and Piping and Stainless Steel Piping Examination
2.4.3 Class 1 Piping Volumetric Examination (Deferred)

- Voluntary Implementation [may be used when final rule published—Not A Backfit]
- Section III

2.5.1.1.1 Engineering Judgement (Deleted)
2.5.1.1.2 Section III Materials
2.5.1.1.3 Weld Leg Dimensions
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2.5.1.1.6 Independence of Inspection
2.5.1.2.1 Applicable Code Version for New Construction

- Section XI

2.5.2.1 Subsection IWE and Subsection IWL
2.5.2.2 Flaws in Class 3 Piping; Mechanical Clamping Devices
2.5.2.3 Application of Subparagraph IWB–3740, Appendix L

- OM Code

2.5.3.1 Code Case OMN–1
2.5.3.2 Appendix II
2.5.3.3 Subsection ISTD
2.5.3.4 Containment Isolation Valves
2.2 Discussion
2.3 120-Month Update
2.3.1 Section XI
2.3.1.1 Class 1, 2, and 3 Components, Including Supports

Section 50.55a(b)(2) endorses the 1995 Edition with the 1996 Addenda of

Section XI, Division 1, for Class 1, Class 2, and Class 3 components and their supports. The proposed rule contained five limitations to address NRC positions on the use of Section XI: engineering judgment, quality assurance, Class 1 piping, Class 2 piping, and reconciliation of quality requirements. As a result of public comment, the NRC has reconsidered its positions on the use of engineering judgment and Class 2 piping. These two limitations have been eliminated from the final rule. In addition, the NRC has modified the scope of the limitation related to reconciliation of quality requirements. A discussion of each of the five proposed limitations and their comment resolution follows.

2.3.1. Limitations.

2.3.1.2.1 Engineering Judgement.

The first proposed limitation to the implementation of Section XI (§ 50.55a(b)(2)(xi) in the proposed rule) addressed an NRC position with regard to the Foreword in the 1992 Addenda through the 1996 Addenda of the BPV Code. That Foreword addresses the use of ''engineering judgement'' for ISI activities not specifically considered by the Code. The December 3, 1997, proposed rule contained a limitation which would have specified that licensees receive NRC approval for those activities prior to implementation.

Twenty-three commenters provided 30 separate comments on the proposed limitation to the use of engineering judgment with regard to Section XI activities. After reviewing the comments, it is apparent that the proposed rule did not accurately communicate the NRC's concerns with regard to the use of engineering judgment for Section XI activities. All of the commenters construed the limitation to prohibit the use of engineering judgment for all activities. The NRC understands that the use of engineering judgement is routinely exercised on a daily basis at each plant. It was not the NRC's intent to interject itself in this process by requiring prior approval as suggested by most commenters. The limitation was added to the proposed rule to address specific situations where engineering judgment was used and a regulatory requirement was not observed. Upon reconsideration of this issue and after reviewing all of the comments, the NRC has deleted this limitation from the final rule. The summary and the detailed discussions provided in the responses to the public comments should adequately address NRC concerns with regard to past applications of engineering judgment.

The NRC acknowledges that the use of engineering judgment is a valid and necessary part of engineering activities. However, in applying such judgment, licensees must remain cognizant of the need to assure continued compliance with regulatory requirements. Specific examples of cases where application of engineering judgment resulted in failure to satisfy regulatory requirements are discussed in detail in the Response to Public Comments, Section 2.3.1.2.1, Engineering Judgment, and Section 2.6, ASME Code Interpretations. Questions were raised by the industry regarding Interpretations, the use of engineering judgment, and related enforcement actions. At NEI's request, the NRC staff met with NEI on January 11, 1995, to discuss the use of engineering judgment and Code interpretations. On November 12, 1996, a meeting was held between representatives from the NRC and the ASME to discuss the same issues as well as the related enforcement actions. NRC Inspection Manual Part 9900, ''Technical Guidance,'' which had been developed in response to industry questions was also discussed. The ASME representatives agreed that the NRC guidance with respect to engineering judgment was consistent with their understanding of the relationship between the ASME Code and federal regulations. The ASME stated that the NRC should not establish a formal method for reviewing ASME Code interpretations. This position was based primarily on the understanding that it would be tantamount to NRC becoming the interpreter of the Code.

It is apparent from the comments received on the proposed limitation that there is continuing confusion regarding the relationship between ASME Code requirements and NRC regulations. The NRC incorporates the ASME Code by reference into 10 CFR 50.55a. Upon adoption, the Code provisions become a part of NRC regulations as modified by other provisions in the regulations. Several commenters argued that a modification or limitation in the regulations cannot replace or overrule a Code provision or Interpretation. They also argued that, because the NRC did not accept all ASME Interpretations, the NRC was reinterpreting the Code. The NRC recognizes that the ASME is the official interpreter of the Code. However, only the NRC can determine whether the ASME Interpretation is acceptable such that it constitutes compliance with the NRC's regulations and does not adversely affect safety. The NRC cannot a priori approve Code Interpretations. While it is true that the ASME is the official interpreter of the Code, if the ASME interprets the Code in a manner which the NRC finds unacceptable (e.g., results in non-compliance with NRC regulatory requirements, a license condition, or technical specifications), the NRC can take exception to the Interpretation and is not bound by the ASME Interpretation. To put it another way, only the ASME can provide an Interpretation of the Code, but the NRC may make the determination whether that Interpretation constitutes compliance with NRC regulations. Hence, licensees need to consider the guidance on the use of Interpretations contained in the NRC Inspection Manual Part 9900, ''Technical Guidance.''

2.3.1.2.2 Quality Assurance.

The second proposed limitation to the implementation of Section XI [§ 50.55a(b)(2)(xii) in the proposed rule] pertained to the use of ASME Standard NQA–1, ''Quality Assurance Requirements for Nuclear Facilities,'' with Section XI. Six comments were received and all were considered in arriving at the NRC's decision to retain the limitation as contained in the proposed rule. This limitation has been renumbered as § 50.55a(b)(2)(x) in the final rule.

As part of the licensing basis for nuclear power plants, NRC licensees have committed to certain quality assurance program provisions that are identified in both their Technical Specifications and Quality Assurance Programs. These provisions, as explained below, are taken from several sources (e.g., ASME, ANSI) and together, they constitute an acceptable Quality Assurance Program. The licensee quality assurance program commitments describe how the requirements of Appendix B, ''Quality Assurance Criteria for Nuclear Power Plants and Fuel Processing Plants,'' to 10 CFR part 50 will be satisfied by referencing applicable industry standards and the NRC Regulatory Guides (RGs) that endorsed the industry standards (e.g., the ANSI N45 series standards and applicable regulatory guides or NQA–1–1983 as endorsed by RG 1.28 (Revision 3), ''Quality Assurance Program Requirements (Design and Construction),'' and by prescriptive text contained in the program. Further, owners of operating nuclear power plants have committed to the additional operational phase quality assurance and administrative provisions contained in ANSI N18.7 as endorsed by RG 1.33, ''Quality Assurance Program Requirements (Operations).''

Section XI references the use of either NQA–1 or the owner's Appendix B Quality Assurance Program (10 CFR part 50, Appendix B) as part of its individual provisions for a QA program. However, NQA–1 (any version) does not contain some of the quality assurance provisions and administrative controls governing operational phase activities that are contained in the ANSI standards as well as other documents which, as a group, constitute an acceptable program. When the NRC originally endorsed NQA–1, it did so with the knowledge that NQA–1 was not entirely adequate and must be supplemented by other commitments such as the ANSI standards. The later versions of NQA–1 also, by themselves, would not constitute an acceptable Quality Assurance Program. Hence, NQA–1 is not acceptable for use without the other quality assurance program provisions identified in Technical Specifications and licensee Quality Assurance Programs. The NRC staff has received questions regarding the relationship between commitments made relative to the Appendix B QA Program and Section XI as endorsed by 10 CFR 50.55a. It is apparent from public comments that there is confusion with regard to Section XI permitting the use of either NQA–1 or the owner's QA Program. The proposed limitation clarified that, when performing Section XI activities, licensees must meet other applicable NRC regulations. The limitation has been retained in the final rule to provide emphasis that licensees must comply with other applicable NRC regulations in addition to the quality assurance provisions contained in Section XI. As further clarification, the following discussion is provided.

Although not discussed in the proposed amendment to 10 CFR 50.55a, the requirements of §§ 50.34(b)(6)(ii) and 50.54(a) for establishing and revising QA Program descriptions during the operational phase are required to be followed and are not superseded or usurped by any of the requirements presently contained in 10 CFR 50.55a. Therefore, even though the present text of 10 CFR 50.55a does not take exception to applying the quality assurance provisions of NQA–1–1979 to ASME Section XI work activities, licensees of commercial nuclear power plants are required to comply not only with the QA provisions included in the Codes referenced in 10 CFR 50.55a, but also the quality assurance program developed to satisfy the requirements contained in § 50.34(b)(6)(ii). This means that, regardless of the specific quality assurance controls delineated in Section XI as referenced in 10 CFR 50.55a, licensees must meet the additional quality assurance provisions of their NRC approved quality assurance program description and other administrative controls governing operational phase activities.

2.3.1.2.3 Class 1 Piping.

The third proposed limitation to the implementation of Section XI [§ 50.55a(b)(2)(xiii) in the proposed rule] pertained to the use of Section XI, IWB–1220, ''Components Exempt from Examination,'' that are contained in the 1989 Edition in lieu of the rules in the 1989 Addenda through the 1996 Addenda. Subparagraph IWB–1220 in these later Code addenda contain provisions from three Codes Cases: N–198–1, ''Exemption from Examination for ASME Class 1 and Class 2 Piping Located at Containment Penetrations;'' N–322, ''Examination Requirements for Integrally Welded or Forged Attachments to Class 1 Piping at Containment Penetrations;'' and N–334, ''Examination Requirements for Integrally Welded or Forged Attachments to Class 2 Piping at Containment Penetrations,'' which the NRC found to be unacceptable. The provisions of Code Case N–198–1 were determined by the NRC to be unacceptable because industry experience has shown that welds in service-sensitive boiling water reactor (BWR) stainless steel piping, many of which are located in containment penetrations, are subjected to an aggressive environment (BWR water at reactor operating temperatures) and will experience Intergranular Stress Corrosion Cracking. Exempting these welds from examination could result in conditions which reduce the required margins to failure to unacceptable levels. The provisions of Code Cases N–322 and N–334 were determined to be unacceptable because some important piping in PWRs and BWRs was exempted from inspection. Access difficulty was the basis in the Code cases for exempting these areas from examination. However, the NRC developed the break exclusion zone design and examination criteria utilized for most containment penetration piping expecting not only that Section XI inspections would be performed but that augmented inspections would be performed. These design and examination criteria are contained in Branch Technical Position MEB 3–1, an attachment of NRC Standard Review Plan 3.6.2, ''Determination of Rupture Locations and Dynamic Effects Associated with the Postulated Rupture of Piping.''

Twenty-one comments were received on this limitation. Some commenters understood the bases for the limitation and did not believe that significant hardship would result. Many of the commenters argued that the Code cases were developed because these configurations are generally inaccessible and cannot be examined. Some argued that the piping in question is not safety significant and, thus, the examinations are unwarranted and the repairs which will be required are unnecessary.

The NRC disagrees with these comments. The provisions of § 50.55a(g)(2) require that facilities who received their construction permit on or after January 1, 1971, for Class 1 and 2 systems be designed with provisions for access for preservice inspections and inservice inspections. Several early plants with limited access have been granted plant specific relief for certain configurations. These exemptions were granted on the basis that the examinations were impractical because these plants were not designed with access to these areas. Modifications to the plant would have been required at great expense to permit examination. Therefore, narrow exceptions were granted to these early plants. For later plants, however, § 50.55a(g)(2) required that plants be constructed to provide access. The rationale for granting exemptions to early plants is not applicable to these later plants. In addition, there have been improvements in technology for the performance of examination using remote automated equipment. In designs where these welds are truly inaccessible, relief will continue to be granted when appropriate bases are provided by the licensee per § 50.55a(g)(5). With regard to the safety significance of this piping, failure of Class 1 piping within a containment penetration may lead to loss of containment integrity and an unisolable pipe break. These areas were considered break exclusion zones as part of their initial design, in part, due to the augmented examinations performed on this portion of the piping system. Further, this issue could affect the large early release frequency (LERF). For these reasons, the limitation has been retained in the final rule (§ 50.55a(b)(2)(xi)) to require licensees to use the rules for IWB–1220 that are contained in the 1989 Edition in lieu of the rules in the 1989 Addenda through the 1996 Addenda.

2.3.1.2.4 Class 2 Piping.

The fourth proposed limitation to the implementation of Section XI (§ 50.55a(b)(2)(xiv) in the proposed rule) would have confined implementation of

Section XI, IWC–1220, ''Components Exempt from Examination;'' IWC–1221, ''Components Within RHR (Residual Heat Removal), ECC (Emergency Cool Cooling), and CHR (Containment Heat Removal) Systems or Portions of Systems;'' and IWC–1222, ''Components Within Systems or Portions of Systems Other Than RHR, ECC, and CHR Systems,'' to the 1989 Edition (i.e., it was determined that the 1989 Addenda through the 1996 Addenda were unacceptable). The provisions of Code Case N–408–3, ''Alternative Rules for Examination of Class 2 Piping,'' were incorporated into Subsection IWC in the 1989 Addenda. These provisions contain rules for determining which Class 2 components are subject to volumetric and surface examination. The NRC limitation on the use of the Code case and its revisions has consistently been that an ''applicant for an operating license should define the Class 2 piping subject to volumetric and surface examination in the Preservice Inspection for determination of acceptability by the NRC staff.'' Approval was required to ensure that safety significant components in the Residual Heat Removal, Emergency Core Cooling, and Containment Heat Removal systems are not exempted from appropriate examination requirements. The limitation in the proposed rule would have extended the approval required for preservice examination to inservice examination. Twenty comments were received, all disagreeing with the need for this limitation. Commenters pointed out that the information of interest is contained in the ISI program plan which is required by the Code to be submitted to the NRC. In addition, the intent of the limitation is current practice, and suitable controls are presently in place to ensure that adequate inspections of this piping are being performed. The NRC has reconsidered its bases for this limitation and agrees with the comments. Hence, the limitation has been eliminated from the final rule.

2.3.1.2.5 Reconciliation of Quality Requirements.

The fifth proposed limitation to the implementation of Section XI (§ 50.55a(b)(2)(xx) in the proposed rule) addressed reconciliation of quality requirements when implementing Section XI, IWA–4200, 1995 Addenda through the 1996 Addenda. Specifically, there were two provisions addressing the reconciliation of replacement items (§ 50.55a(b)(2)(xx)(A)) and the definition of Construction Code (§ 50.55a(b)(2)(xx)(B)). The limitation was included in the proposed rule to address the concern that, due to changes made to IWA–4200, ''Items for Repair/Replacement Activities,'' in the 1995 Addenda, and IWA–9000, ''Glossary,'' definition of Construction Code in the 1993 Addenda, a Section III component could be replaced with a non-Section III component, or that Construction Codes earlier than the Code of record might be used to procure components.

Twelve comments were received on the limitation. Most of the commenters stated that the limitation was too extensive; i.e., rather than taking exception to Subparagraph IWA–4200, the limitation should specifically address Subparagraph IWA–4222, ''Reconciliation of Code and Owner's Requirements.'' Several comments suggested that the limitation be simplified to require only that ''Code items shall be procured with Appendix B requirements.'' Additional comments were provided relating to the need to remove the limitation on the definition of Construction Code, the use of the quality provisions contained in the Construction Code, and the historical provisions contained in Section XI for reconciling of technical requirements.

The NRC has carefully reviewed the comments and agrees with the conclusions that: (1) A non-Section III item cannot be used to replace a Section III item; (2) only the same or later editions of the same Construction Code, or one that is higher in the evolutionary scale of the Code may be used; and (3) when using an earlier Construction Code, licensees must remain within the same Construction Code. The limitation has been revised in the final rule to address the reconciliation requirements contained in IWA–4222. However, changes to IWA–4222 in the 1995 Addenda specifically exempt quality assurance requirements from the reconciliation process. The various changes implemented in the 1995 Addenda, including the new definition of Construction Code, the identification of new Construction Codes, and the specific exemption to reconcile quality assurance requirements, could result in codes and standards being utilized which do not contain any quality assurance requirements, or contain quality assurance requirements which do not fully comply with Appendix B to 10 CFR part 50. Thus, the NRC has adopted the commenters' suggestion to clarify that Code items shall be procured in accordance with Appendix B requirements. Hence, when implementing the 1995 Addenda through the 1996 Addenda, the limitation (§ 50.55a(b)(2)(xvii) in the final rule) will require, in addition to the reconciliation provisions of IWA–4200, that the replacement items be purchased to the extent necessary to comply with the owner's quality assurance program description required by 10 CFR 50.34(b)(6)(ii). The rewording of the limitation addresses the NRC's concerns with regard to definitions. That portion of the proposed limitation has been eliminated from the final rule.

2.3.2 OM Code (120-Month Update).

2.3.2.1 Class 1, 2, and 3 Pumps and Valves.

This rule incorporates by reference for the first time into 10 CFR 50.55a the ASME Code for Operation and Maintenance of Nuclear Power Plants (OM Code).

2.3.2.2 Background—OM Code.

Until 1990, the ASME Code requirements addressing IST of pumps and valves were contained in Section XI, Subsections IWP (pumps) and IWV (valves). The provisions of Subsections IWP and IWV were last incorporated by reference into 10 CFR 50.55a in a final rulemaking published on August 6, 1992 (57 FR 34666). In 1990, the ASME published the initial edition of the OM Code which provides rules for IST of pumps and valves. The requirements contained in the 1990 Edition are identical to the requirements contained in the 1989 Edition of Section XI, Subsections IWP (pumps) and IWV (valves). Subsequent to the publication of the 1990 OM Code, the ASME Board on Nuclear Codes and Standards (BNCS) transferred responsibility for maintenance of these rules on IST from Section XI to the OM Committee. As such, the Section XI rules for inservice testing of pumps and valves that are presently incorporated by reference into NRC regulations are no longer being updated by Section XI.

The 1990 Edition of the ASME OM Code consists of one section (Section IST) entitled ''Rules for Inservice Testing of Light-Water Reactor Power Plants.'' This section is divided into four subsections: ISTA, ''General Requirements,'' ISTB, ''Inservice Testing of Pumps in Light-Water Reactor Power Plants,'' ISTC, ''Inservice Testing of Valves in Light-Water Reactor Power Plants,'' and ISTD, ''Examination and Performance Testing of Nuclear Power Plant Dynamic Restraints (Snubbers).'' The testing of snubbers is governed by the ISI requirements of Section XI of the ASME BPV Code. Therefore, the rule only requires implementation of Subsections ISTA, ISTB, and ISTC. Because this final rule for the first time incorporates by reference the OM Code, the NRC has determined that the latest

endorsed Edition and Addenda of the OM Code (i.e., 1995 Edition up to and including the 1996 Addenda) should be used. Therefore, there is no need to incorporate by reference earlier Editions and Addenda of the OM Code (e.g., 1990 Edition or 1992 Edition).

2.3.2.2.1 Comments on the OM Code.

There were four commenters addressing the proposed endorsement of the OM Code. The ASME BNCS (commenter one) agreed that the action was appropriate based on the ASME moving the responsibility for developing and maintaining IST program requirements from Section XI to the OM Code. A utility (commenter two) requested clarification as to when licensees would be required to begin using the 1995 Edition with the 1996 Addenda for the OM Code. Licensees are presently required by Section XI to perform IST of pumps and valves. The regulations in 10 CFR 50.55a currently require licensees to update their IST (and ISI) programs to the latest Code incorporated by reference in § 50.55a(b) every 120 months. Hence, there is not a need to accelerate the transition to the OM Code.

A utility (commenter three) stated that changes to the OM Code that appear in the 1995 Edition with the 1996 Addenda would require their facilities to modify the test loop piping for demonstrating pump design flow rate. The NRC is aware that some licensees may have difficulty fully implementing these tests and in certain cases, due to the impracticality of implementation, a request for relief under § 50.55a(f)(5) would be appropriate. However, the OM committees developed these provisions in an effort to improve functional testing of pumps because present pump testing programs may not be capable of fully demonstrating that pumps are performing as designed. Some licensees have preoperational test loops which may be used to demonstrate full flow for this testing. Hence, the NRC has concluded that current regulatory requirements address this issue and a modification to the final rule in response to this comment is not required.

The fourth commenter (an individual) stated that the NRC was primarily responsible for the changes in the 1994 Addenda (referred to as the Comprehensive Pump Test) which will result in additional pump testing. Further, the commenter believes that the changes were more the result of pressure by the NRC than actions determined prudent by the OM committees. Hence, the conclusion is drawn that, because the changes were not instituted exclusively by the OM committees, a backfit analysis is appropriate. With respect to the addition of the Comprehensive Pump Test, the OM Code committees had decided to pursue new approaches to pump testing for a long time before its actual development. In some cases, the changes resulted in less stringent requirements or in the deletion of certain requirements. The NRC staff raised concerns with certain changes and discussed these concerns with the ASME/OM representatives in ASME/OM committee meetings. As a result, the ASME/OM decided to develop an approach to pump testing that would include a nominal ''bump'' test (i.e., a more frequent, but less rigorous test) complemented by a biennial ''comprehensive'' test (i.e., a less frequent, but more rigorous test). Subsequent changes to the 1990 OM Code were developed and adopted through a consensus process in which members of the nuclear industry are the primary participants. The NRC's position on the backfit issue is discussed in Section 8, Backfit Analysis, of the final rule, and in the response to public comments on the proposed rule. The NRC does not regard the development of the Comprehensive Pump Test to be an example of ''coercion'' by the NRC; rather it is an example of a properly functioning consensus process.

2.3.2.3 Clarification of Scope of Safety-Related Valves Subject to IST.

The previous language in § 50.55a(f)(1) had been interpreted by some licensees as a requirement to include all safety-related pumps and valves regardless of ASME Code Class (or equivalent) in the IST program of plants whose construction permits were issued before January 1, 1971. The NRC proposed to revise this paragraph in the draft rule amendment to clarify which safety-related pumps and valves are addressed by 10 CFR 50.55a. The intent of the revision was to ensure that the IST scope of pumps and valves for these earlier-licensed plants was similar to the scope for plants licensed after January 1, 1971. A corresponding revision was also proposed for § 50.55a(g)(1) for ISI requirements.

Fifteen separate commenters responded to the proposed clarification to § 50.55a(f)(1). During consideration of their comments, it became apparent that the proposed language in § 50.55a(f)(1) for IST did not fully accomplish its intended purpose. Instead of narrowing the IST scope of earlier-licensed plants to be consistent with the scope of later plants as intended, the proposed language inadvertently expanded the scope to include all pumps and valves in safety-related steam, water, air, and liquid-radioactive waste systems. The scope of pumps and valves to be included in IST should be dependent on the safety-related function of the component rather than the function of the system. That is, a safety-related system might include many pumps and valves. However, not all of the pumps and valves might have a safety-related function. For example, some valves in a safety-related system might be used for maintenance purposes only although they might be classified as safety-related because they are part of the safety-related system pressure boundary. Accordingly, these valves would not need to be tested under the IST program, but the welds connecting the valve to the piping might be required to be examined under the ISI program. For this reason, the NRC further concluded that, unlike the scope issue that arose in § 50.55a(f)(1) for IST, the scope issue did not apply to ISI, and a modification to the language of § 50.55a(g)(1) pertaining to ISI is not appropriate. Therefore, the existing language of § 50.55a(g)(1) will remain unchanged.

However, the need to modify the language for IST requirements exists. The final rule revises § 50.55a(f)(1) to ensure that the scope of inservice testing of pumps and valves in earlier plants is consistent with the scope applicable to later plants. This was accomplished by making the language of § 50.55a(f)(1) consistent with the scope of Paragraph 1.1 in Subsections ISTB and ISTC of the OM Code. Hence, § 50.55a(f)(1) in the final rule specifies that those pumps and valves that perform a specific function to shut down the reactor or maintain the reactor in a safe shutdown condition, mitigate the consequences of an accident, or provide overpressure protection for safety-related systems must meet the test requirements applicable to components which are classified as ASME Code Class 2 and Class 3 to the extent practical. The new language establishes the scope of pumps and valves that are to be included in an IST program based on the safety-related function of the pump or valve. The requirements for pumps and valves that are part of the reactor coolant pressure boundary have not been changed. This change in the regulation will clarify the scope of IST for earlier-licensed plants resulting in a more consistent scope in pump and valve IST programs for all nuclear power plants.

2.3.2.4 Limitation.

2.3.2.4.1 Quality Assurance.

The proposed rule contained one limitation (§ 50.55a(b)(3)(i)) to implementation of the OM Code addressing quality assurance (QA). This limitation pertained to the use of ASME Standard NQA–1, ''Quality Assurance Requirements for Nuclear Facilities,'' with the OM Code. Three comments were received and all were considered in arriving at the NRC's decision to retain the limitation as contained in the proposed rule.

As part of the licensing basis for nuclear power plants, NRC licensees have committed to certain quality assurance program provisions which are identified in both their Technical Specifications and Quality Assurance Programs. These provisions are taken from several sources (e.g., ASME, ANSI) and together, they constitute an acceptable Quality Assurance Program. The licensee quality assurance program commitments describe how the requirements of appendix B to 10 CFR part 50 will be satisfied by referencing applicable industry standards and the NRC Regulatory Guides (RGs) which endorsed the industry standards (e.g., the ANSI N45 series standards and applicable regulatory guides or NQA–1–1983 as endorsed by RG 1.28, Revision 3) and by prescriptive text contained in the program. Further, owners operating nuclear power plants have committed to the additional operational phase quality assurance and administrative provisions contained in ANSI N18.7 as endorsed by RG 1.33.

The OM Code references the use of either NQA–1 or the owner's Appendix B Quality Assurance Program (10 CFR part 50, appendix B) as part of its individual provisions for a QA program. However, NQA–1 (any version) does not contain some of the quality assurance provisions and administrative controls governing operational phase activities which would be required in order to use NQA–1 in lieu of an owner's Appendix B QA Program Description. When the NRC originally endorsed NQA–1, it did so with the knowledge that NQA–1 was not entirely adequate and must be supplemented by other commitments such as the ANSI standards. The later versions of NQA–1 also, by themselves, would not constitute an acceptable Quality Assurance Program. Hence, NQA–1 is not acceptable for use without the other quality assurance program provisions identified in Technical Specifications and licensee Quality Assurance Programs. The NRC staff has received questions regarding the relationship between commitments made relative to the Appendix B QA Program and the proposed endorsement of the OM Code by 10 CFR 50.55a. It is apparent from the public comments that there is confusion with regard to the OM Code permitting the use of either NQA–1 or the owner's QA Program. The proposed limitation clarified that, when performing Section XI activities, licensees must meet other applicable NRC regulations. The limitation (§ 50.55a(b)(3)(i)) is retained in the final rule to provide emphasis that owners must comply with other applicable NRC regulations in addition to the quality provisions contained in the OM Code. The following discussion provides further clarification.

Although not discussed in the proposed amendment to 10 CFR 50.55a, the requirements of §§ 50.34(b)(6)(ii) and 50.54(a) for establishing and revising QA Program descriptions during the operational phase are required to be followed and are not superseded or usurped by any of the requirements presently contained in 10 CFR 50.55a. Therefore, even though the present text of 10 CFR 50.55a does not take exception to applying the quality provisions of NQA–1–1979 to ASME OM Code work activities, owners of commercial nuclear power plants are required to comply not only with the QA provisions included in the Codes referenced in 10 CFR 50.55a, but also the quality assurance program developed to satisfy the requirements contained in § 50.34(b)(6)(ii). This means that, regardless of the specific quality assurance controls delineated in the OM Code as referenced in 10 CFR 50.55a, owners must meet the additional quality assurance provisions of their NRC approved quality assurance program description and other administrative controls governing operational phase activities.

2.3.2.5 Modification.

2.3.2.5.1 Motor-Operated Valve Stroke-Time Testing.

The proposed rule contained a modification (§ 50.55a(b)(3)(ii)) pertaining to supplementing the stroke-time testing requirement of Subsection ISTC of the OM Code applicable for motor-operated valves (MOVs) with programs that licensees have previously committed to perform, prior to issuance of this amendment to 10 CFR 50.55a, for demonstrating the design-basis capability of MOVs. Stroke-time testing of MOVs is also specified in ASME Section XI. Seven commenters responded to the proposed change. The primary concern raised was that licensees would be required to comply with the provisions on stroke-time testing in the OM Code as well as the programs developed under their licensing commitments for demonstrating MOV design-basis capability. This might result in a duplication of activities associated with inservice testing of safety-related MOVs and the periodic verification of the design-basis capability of safety-related MOVs at nuclear power plants.

Since 1989, it has been recognized that the quarterly stroke-time testing requirements for MOVs in the Code are not sufficient to provide assurance of MOV operability under design-basis conditions. For example, in Generic Letter (GL) 89–10, ''Safety-Related Motor-Operated Valve Testing and Surveillance,'' the NRC stated that ASME Section XI testing alone is not sufficient to provide assurance of MOV operability under design-basis conditions. Therefore, in GL 89–10, the NRC staff requested licensees to verify the design-basis capability of their safety-related MOVs and to establish long-term MOV programs. The NRC subsequently issued GL 96–05, ''Periodic Verification of Design-Basis Capability of Safety-Related Motor-Operated Valves,'' to provide updated guidance for establishing long-term MOV programs. Licensees have made licensing commitments pursuant to GL 96–05 that are being reviewed by the NRC staff. Most licensees have voluntarily committed to participate in an industry-wide Joint Owners Group (JOG) Program on MOV Periodic Verification. This program will help provide consistency among the individual plant long-term MOV programs.

At this time, the OM Code committees are working to update the Code with respect to its provisions for quarterly MOV stroke-time testing. For example, the ASME is considering incorporating Code Case OMN–1, ''Alternative Rules for Preservice and Inservice Testing of Certain Electric Motor-Operated Valve Assemblies in Light-Water Reactor Power Plants,'' into the OM Code. These provisions would allow users to replace quarterly MOV stroke-time testing with a combination of MOV exercising at least every refueling outage and MOV diagnostic testing on a longer interval. (The NRC has determined that, for MOVs, Code Case OMN–1 is acceptable in lieu of Subsection ISTC, with a modification. See Section 2.5.3.1 for further information.)

In light of the present weakness in the information provided by quarterly MOV stroke-time testing, this modification has been retained in the final rule. However, the NRC agrees with the

public comment that the language in the proposed rule referring to licensing commitments was cumbersome and the language has been clarified. The final rule supplements the Code requirements for MOV stroke-time testing with a provision that licensees periodically verify MOV design-basis capability. The changes to § 50.55a(b)(3)(ii) do not alter expectations regarding existing licensee commitments relating to MOV design-basis capability. Without being overly prescriptive, the final rule allows licensees to implement the regulatory requirements in a manner that best suits their particular application. The rulemaking does not require licensees to implement the JOG program on MOV periodic verification. The final rule in § 50.55a(b)(3)(iii) allows licensees the option of using ASME Code Case OMN–1 to meet the requirements of § 50.55a(b)(3)(ii).

2.4 Expedited Implementation.

2.4.1 Appendix VIII.

The proposed rule contained a requirement (§ 50.55a(g)(6)(ii)(C)) that licensees expedite implementation of mandatory Appendix VIII, ''Performance Demonstration for Ultrasonic Examination Systems,'' to Section XI, 1995 Edition with the 1996 Addenda. Three proposed modifications were included to address NRC positions on the use of Appendix VIII. The proposed rule would have required licensees to implement Appendix VIII for all examinations of the pressure vessel, piping, nozzles, and bolts and studs which occur after 6 months from the date of the final rule. The proposed rule would not have required any change to a licensee's ISI schedule for examination of these components, but would have required that the provisions of Appendix VIII be used for all examinations after that date.

The 1989 Addenda to Section XI added mandatory Appendix VIII to enhance the requirements for performance demonstration for ultrasonic examination (UT) procedures. In 1991, the Performance Demonstration Initiative (PDI) was organized and funded. PDI is an organization of all U. S. nuclear utilities formed for the express purpose of developing efficient, cost-effective, and technically sound implementation of the performance demonstration requirements described in the ASME Code Section XI, Appendix VIII. The EPRI NDE Center provides technical support and administration for this program on behalf of the utilities. The PDI program has been evolving. Changes to the program were being made as difficulties in implementing some Code provisions were discovered. Other changes resulted when agreements were reached on issues such as training. Finally, the program has evolved as programs were developed for each Appendix VIII supplement.

Sixty comments were received related to the proposed expedited implementation of Appendix VIII to Section XI. The issues raised by the commenters were generally uniform and narrow in scope; i.e., in agreement with the principles behind the development of Appendix VIII, but opposed to the manner in which the proposed rule would implement performance demonstration. In addition, commenters argued that implementation of Appendix VIII within 6 months from the date of the final rule was not possible because:

(1) Some Appendix VIII supplements have not yet been implemented by PDI;

(2) The number of qualified individuals is not yet sufficient;

(3) The rule would require UT personnel to requalify; and

(4) PDI's implementation of Appendix VIII differs from the Code.

The NRC staff met four times with representatives from PDI, EPRI, and NEI between the dates of May 12, 1998, and November 19, 1998, to discuss items such as the current status of the PDI program, and Appendix VIII of Section XI as modified by PDI during the development of the program. Piping, bolting, and RPV samples, for the initial phase of the program, were completed in 1994. Procedure and personnel demonstrations were initiated in April of 1994. Since that time, a large number of personnel and procedures have been qualified. However, additional time and effort will be required to complete the industry qualification process for the remaining supplements of Appendix VIII.

Subsequent to these meetings and consideration of the public comments, the NRC has reviewed the latest version of the PDI program for examination of vessels, piping, and bolting. The NRC agrees that this version will provide reasonable assurance of detecting the flaws of concern in ferritic vessels and piping. In addition, adoption in the final rule of Appendix VIII as modified by PDI during the development of the program means that the present test specimens are acceptable. The PDI program requires scanning the examination volume from both sides of the same surface of piping welds when it is accessible. Examinations performed from one side of a pipe weld may be conducted with procedures and personnel demonstrated at PDI; i.e., confirmed proficiency with single sided examinations. For the vessel weld, the volume must be examined in 4 directions from the clad-to-basemetal interface to a depth of 15 percent through-wall. Examinations performed from one side of a vessel weld may be conducted on the remaining portion of the weld volume provided the procedure shows the ability to detect flaws at angles up to 45 degrees from normal. In addition, to demonstrate equivalency to two sided examinations, the NRC staff and PDI agree that the demonstration be performed with specimens containing flaws with non-optimum sound energy reflecting characteristics or flaws similar to those in the vessel or pipe being examined. Because Appendix VIII supplements were designed for two-sided examinations, given the uniqueness in some instances of single side examinations, requalification may be necessary to demonstrate proficiency for these special cases. Single side examinations are not permitted for 15 percent of the vessel volume adjacent to the cladding, and thus cannot be used for Supplement 4 performance demonstration.

Evidence indicates that there are shortcomings in the qualifications of personnel and procedures in ensuring the reliability of nondestructive examination of the reactor vessel and other components of the reactor coolant system, the emergency core cooling systems, and portions of the steam and feedwater systems. Imposition of performance demonstration will greatly enhance the overall level of assurance of the reliability of ultrasonic examination techniques in detecting and sizing flaws. Hence, the final rule will expedite the implementation of these safety significant performance demonstration programs. The final rule will permit licensees to implement either Appendix VIII, ''Performance Demonstration for Ultrasonic Examination Systems,'' to Section XI, Division 1, 1995 Edition with the 1996 Addenda, or Appendix VIII as executed by PDI. Because PDI is not a consensus standards body, its program document cannot be referenced in the final rule. Thus, the PDI requirements are directly contained in the final rule in § 50.55a(b)(2)(xv).

In § 50.55a(g)(6)(ii)(C), the final rule incorporates a phased implementation of Appendix VIII over a three-year period. Licensees are required to implement the supplements to Appendix VIII according to the following schedule:

(1) Six months after the effective date of the final rule: Supplement 1,

''Evaluating Electronic Characteristics of Ultrasonic Systems,'' Supplement 2, ''Qualification Requirements for Wrought Austenitic Piping Welds,'' Supplement 3, ''Qualification Requirements for Ferritic Piping Welds,'' and Supplement 8, ''Qualification Requirements for Bolts and Studs;''

(2) One year after the effective date of the final rule: Supplement 4, ''Qualification Requirements for the Clad/Base Metal Interface of Reactor Vessel,'' and Supplement 6, ''Qualification Requirements for Reactor Vessel Welds Other Than Clad/Base Metal Interface;''

(3) Two years after the effective date of the final rule: Supplement 11, ''Qualification Requirements for Full Structural Overlaid Wrought Austenitic Piping Welds;'' and

(4) Three years after the effective date of the final rule: Supplement 5, ''Qualification Requirements for Nozzle Inside Radius Section,'' Supplement 7, ''Qualification Requirements for Nozzle-to-Vessel Weld,'' Supplement 10, ''Qualification Requirements for Dissimilar Metal Piping Welds,'' Supplement 12, ''Requirements for Coordinated Implementation of Selected Aspects of Supplements 2, 3, 10, and 11,'' and Supplement 13, ''Requirements for Coordinated Implementation of Selected Aspects of Supplements 4, 5, 6, and 7.''

Performance demonstration requirements for Supplement 9, ''Qualification Requirements for Cast Austenitic Piping Welds,'' have not yet been initiated pending completion of the other supplements. Hence, the final rule does not address Supplement 9.

The final rule has been structured so that the equipment and procedures previously qualified under the PDI program are acceptable. Personnel previously qualified by PDI will remain qualified with the exception of a small population of individuals qualified for Supplements 4 and 6.

2.4.1.1 Modifications.

2.4.1.1.1 Appendix VIII Personnel Qualification.

The first proposed modification of Appendix VIII (§ 50.55a(b)(2)(xvii) in the proposed rule) related to its requirement that ultrasonic examination personnel meet the requirements of Appendix VII, ''Qualification of Nondestructive Examination Personnel for Ultrasonic Examination,'' to Section XI. Appendix VII–4240 contains a requirement for personnel to receive a minimum of 10 hours of training on an annual basis. The NRC had determined that this requirement was inadequate for two reasons. The first reason was that the training does not require laboratory work and examination of flawed specimens. Signals can be difficult to interpret and, as detailed in the regulatory analysis for this rulemaking, experience and studies indicate that the examiner must practice on a frequent basis to maintain the capability for proper interpretation. The second reason is related to the length of training and its frequency. Studies have shown that an examiner's capability begins to diminish within approximately 6 months if skills are not maintained. Thus, the NRC had determined that 10 hours of annual training is not sufficient practice to maintain skills, and that an examiner must practice on a more frequent basis to maintain proper skill level. The modification in the proposed rule would have required 40 hours of annual training including laboratory work and examination of flawed specimens.

Thirty-five comments were received on this proposed modification to Appendix VIII. Many of the commenters stated that 40 hours of required training were excessive because:

(1) The EPRI NDE Center did not have the facilities which would be required to satisfy this requirement;

(2) An ample supply of training specimens would cost each site $75,000; and

(3) The requirement would result in administrative as well as cost burdens for both the utility and the vendor.

Based on the public comments and the meetings with PDI and EPRI, the NRC has reconsidered its position. The PDI program has adopted a requirement for 8 hours of training, but it is required to be hands-on practice. In addition, the training must be taken no earlier than 6 months prior to performing examinations at a licensee's facility. PDI believes that 8 hours will be acceptable relative to an examiner's abilities in this highly specialized skill area because personnel can gain knowledge of new developments, material failure modes, and other pertinent technical topics through other means. Thus, the NRC has decided to adopt in the final rule the PDI position on this matter. These changes are reflected in § 50.55a(b)(2)(xiv) of the final rule.

2.4.1.1.2 Appendix VIII Specimen Set and Qualification Requirements.

The second proposed modification of Appendix VIII (§ 50.55a(b)(2)(xviii) in the proposed rule) would have required that all flaws in the specimen sets used for performance demonstration for piping, vessels, and nozzles be cracks. For piping, Appendix VIII requires that all of the flaws in a specimen set be cracks. However, for vessels and nozzles, Appendix VIII would allow as many as 50 percent of the flaws to be notches. The NRC had previously believed that, for the purpose of demonstrating nondestructive examination (NDE) capabilities, notches are not realistic representations of service induced cracks. The flaws in the specimen sets utilized for piping by EPRI for the PDI are all cracks.

Thirty-two comments were received on this proposed modification to Appendix VIII. A majority of the commenters stated that this modification should be deleted from the rule because it would require the manufacture of new specimens and that the majority of procedure and examiner qualifications performed to date would be nullified. Many commenters argued that notches are realistic representations of cracks. Another comment was that fabrication defects should be permitted in order to test an examiner's ability to discriminate between real flaws and innocuous reflectors.

The NRC believes that flaws in test specimens used for UT should be representative of the flaws normally found or expected to be found in operating plants. Based on the public comments, the final rule in § 50.55a(b)(2)(xv) permits a population of notches and fabrication flaws on a limited basis for vessel and nozzle test specimen sets (Supplements 4, 5, 6, and 7). For these components, the NRC has concluded that a mix of cracks and notches is acceptable as long as they provide a similar detection and sizing challenge to that seen in actual service induced degradation. These types of notches will ensure that the qualification demonstration tests the ability of an examiner to discriminate between real flaws and innocuous reflectors. In addition, a mix of cracks and notches means that the present specimens can continue to be used for qualification. For wrought austenitic, ferritic, and dissimilar metal welds, however, these flaws can best be represented with cracks. Cracks span the ultrasonic spectra of flaw surface conditions from rough to smooth, jagged to straight, single to multiple tip, and tight to wide tip. Notches generally have smooth surfaces that reflect a narrow ultrasonic spectrum that represents a small population of flaws contained in components. Some variations in UT examination techniques may be more challenged with a notch located in specific locations, whereas other variations in UT examination techniques may not. With respect to

bolting, the NRC believed it would be clear that bolting was not addressed by the proposed modification. The NRC does not consider it necessary to use cracks for performance qualification for Supplement 8 as notches are appropriate reflectors in the specimen test sets.

2.4.1.1.3 Appendix VIII Single Side Ferritic Vessel and Piping and Stainless Steel Piping Examination.

The third proposed modification of Appendix VIII (§ 50.55a(b)(2)(xix) in the proposed rule) would have required that all specimens for single-side tests contain microstructures like the components to be inspected and flaws with non-optimum characteristics consistent with field experience that provide realistic challenges to the UT technique. The industry would have been required to develop specimen sets that contain microstructures similar to the types found in the components to be inspected and flaws with non-optimum characteristics (such as skew, tilt, and roughness) consistent with field experience that provide realistic challenges for single-sided performance demonstration. Appendix VIII does not distinguish specimens for two-sided examinations from those used for single-sided examination since Appendix VIII was originally developed using UT lessons learned from two-sided examinations of welds.

Thirty comments were received on this proposed modification to Appendix VIII. Many commenters stated that the NRC should delete this modification because it would invalidate the current PDI test specimens and the procedures and examiners already qualified. Another prevalent comment was that the flaws being used by PDI in vessel and piping specimens represent the microstructure and flaw orientation of postulated in-service flaws in vessel welds and, therefore, ferritic vessels should be exempted from the proposed requirement.

Based on the consideration of public comments, the final rule permits either Appendix VIII, as contained in the 1995 Edition with the 1996 Addenda, or Appendix VIII, as modified by PDI during development of the program, to be implemented. The PDI program requirements are contained in § 50.55a(b)(2)(xv). The NRC agrees that the latest version of the PDI program will provide reasonable assurance of detecting the flaws of concern in ferritic vessels and piping. In addition, adoption in the final rule of Appendix VIII as modified by PDI during the development of the PDI program means that the present test specimens are acceptable. The PDI program requires scanning the examination volume from both sides of the piping weld on the same surface when it is accessible. Examinations performed from one side of a vessel weld may be conducted with procedures and personnel demonstrated at PDI; i.e., confirmed proficiency with single sided examinations by a procedure that shows the ability to detect flaws at angles up to 45 degrees from the normal. The equipment, procedures, and personnel must demonstrate proficiency with single side examination. In addition, to demonstrate equivalency to two sided examinations, PDI requires that the demonstration be performed with specimens containing flaws with non-optimum sound energy reflecting characteristics or flaws similar to those in the ferritic vessel or pipe being examined. Because Appendix VIII supplements were designed for two-sided examinations, given the uniqueness in some instances of single side examinations, requalification may be necessary to demonstrate proficiency for these special cases. Single side examinations are not permitted for 15 percent of the vessel volume adjacent to the cladding, and thus cannot be used for Supplement 4 performance demonstration.

The final rule recognizes the difficulties of performance demonstration for two sided examination of austenitic stainless steel. However, PDI does not endorse single side inspection of austenitic welds because current technology cannot consistently satisfy Appendix VIII criteria. Thus, for certain situations, the final rule in § 50.55a(b)(2)(xvi) contains criteria for demonstrating equivalency to two sided examinations.

Single side examination of wrought-to-cast stainless steel is outside the scope of the current qualification program for austenitic piping. Current technology is not reliable for detecting flaws on the opposite side of wrought-to-cast stainless steel welds. Given these shortcomings, single side examination of stainless steel piping is considered ''best effort.'' The results of best-effort examination on the cast side of these welds is, in the NRC's view, marginal at best.

2.4.2 Generic Letter on Appendix VIII.

The proposed rule contained a summary of a draft generic letter published in the **Federal Register** for public comment on December 31, 1996 (61 FR 69120). The purpose of the generic letter was to alert the industry to the importance of using equipment, procedures, and examiners capable of reliably detecting and sizing flaws in the performance of comprehensive examinations of reactor vessels and piping. The NRC received 16 comment letters on the generic letter.

Eighteen comments were received on the summary. Many of the comments reiterated comments submitted on Appendix VIII (i.e., Section 2.4.1). Some commenters stated that the summary in the proposed rule inappropriately categorized and consolidated comments providing generalized responses to the industry's detailed comments. One commenter stated that an alternative to the proposed rule would be to mandate the use of PDI through a generic letter.

The NRC disagrees with the characterization of its consideration of the comments submitted on the generic letter. The NRC thoroughly considered each comment. Commenters generally were not in agreement with the proposed NRC action and a determination was made to withdraw the generic letter pending rulemaking. Thus, the NRC's action to withdraw the generic letter was consistent with the commenters' recommendations. The summary of the comments in the Statement of Considerations for the proposed rule was not intended to provide a detailed response to every comment received on the generic letter. The purpose of the summary was to provide some history and background related to the proposed Appendix VIII action and to alert the industry that it was the NRC's intent to withdraw the generic letter. Implementation of Appendix VIII was included in the proposed and final rules partly as a result of public comment that a generic letter should not be used to mandate new examination requirements.

2.4.3 Class 1 Piping Volumetric Examination (Deferred).

A proposed modification of Section XI (§ 50.55a(b)(2)(xv) in the proposed rule) would have required licensees of pressurized water reactor (PWR) plants to supplement the surface examination of Class 1 High Pressure Safety Injection (HPSI) system piping as required by Examination Category B–J of Table IWB–2500–1 for nominal pipe sizes (NPS) between 4 (inches) and 1+ (inches), with a volumetric (ultrasonic) examination. This requirement was proposed because:

(1) Inside diameter cracking of HPSI piping in the subject size range has been previously discovered (as detailed in NRC Generic Letter 85–20, ''High Pressure Injection/Make-Up Nozzle Cracking in Babcock and Wilcox Plants,'' and in NRC Information Notice

97–46, ''Unisolable Crack in High-Pressure Injection Piping'');

(2) Failure of this line could result in a small break loss of coolant accident while directly affecting the system designed to mitigate such an event;

(3) Volumetric examinations are already required by the Code for Class 2 portions of this system (Table IWC–2500–1, Examination Category C–F–1) within the same NPS range; and

(4) Surface examinations are not highly effective in identifying cracks and flaws in piping as evidenced by events at nuclear power plants and comparisons to other examination techniques.

Implementation of this requirement was proposed to be performed during any ISI program inspection of the HPSI system performed after 6 months from the date of the final rule. Using a licensee's existing ISI schedules would result in the volumetric examinations being implemented in a reasonable period of time while not impacting lengths of outages or requiring facility shutdown solely for performance of these examinations. In light of recent industry initiatives to address Class 1 piping volumetric examination, the NRC is deferring rulemaking in this area at this time.

Fifteen comments were received on this modification to Section XI. Several concerns were raised in the comments.

(1) Volumetric examination of piping components in this size range is not very effective.

(2) Given the general ineffectiveness of volumetric examination for this piping, the occupational exposure which would be incurred outweighs the perceived need.

(3) The expedited implementation does not allow sufficient time to prepare specimen sets to comply with Appendix VIII.

(4) There was no evidence that this problem would occur in all PWRs (i.e., the concern should be limited to Babcock & Wilcox (B&W) plants which have already addressed this problem).

(5) The ASME Section XI Subcommittee on Inservice Inspection has initiated an action to address Class 1 piping.

These five concerns are addressed in order below.

As detailed in the regulatory analysis for the proposed rule, the initiation and propagation of pipe cracks at several plants have shown that surface examinations alone are not sufficient to detect the types of cracks which have occurred. It is agreed that these examinations for certain configurations may be difficult. The basic thermohydraulic phenomenon which caused the thermal fatigue cracking in the piping is well understood. However, current modeling limitations make it difficult to predict when this phenomenon will occur and at what locations. At this time, the most reliable means of detection is volumetric examination of the entire system in accordance with Section XI provisions for other Class 1 piping systems. In addition, experience has shown that, after initially discovering a section of degraded HPSI piping via leakage detection at one unit, it was possible to successfully identify similar degradation in the HPSI lines at sister units during subsequent ultrasonic examinations (in locations considered difficult to inspect). Therefore, it is the NRC's view that the usefulness of ultrasonic examinations in discovering thermal fatigue cracking in these lines has already been demonstrated in practice. Additionally, it is not clear to the NRC that the integrity of this piping can be assured in the presence of a through-wall flaw under all normal, emergency, upset, and faulted operating conditions for all PWR facilities. In short, the NRC does not believe that visual walkdowns should be the principal means of detecting leakage from pipes in these safety systems.

The NRC is aware that the imposition of any additional inspections of the reactor coolant pressure boundary may result in additional cost and/or additional worker radiation exposure depending on the plant. Some units have already implemented these examinations in response to occurrences of thermal fatigue cracking at that unit. Given the safety significance of the HPSI system (i.e., failure of this line could result in a small break loss of coolant accident while directly affecting the system designed to mitigate such an event) and the number of failures reported to date (failures have occurred in the U.S. and several foreign countries), the NRC concludes that the burden associated with such examinations is minimal.

The provisions of Appendix VIII are applicable to these examinations. The NRC staff has had several meetings with representatives from the industry's Performance Demonstration Initiative (PDI) group to discuss the status of the performance demonstration program. It is the NRC's understanding that the PDI program for piping is complete and can be implemented as soon as the administrative procedures have been developed.

The NRC does not concur that the absence of piping failures for certain portions of the HPSI system in other reactor designs precludes the need for attention to this issue in those systems at those facilities. Thermal fatigue damage attributed to diverse initiating phenomena has been reported at several facilities in the U.S. and in Europe. As discussed, it is difficult to predict when and where this phenomenon might occur. Until data consistent with the failures that occurred are determined, and the thermohydraulic phenomenon which caused the failures is reproducible by analytical means, there is limited assurance that a given analytical method will provide a reliable assessment under all potential cyclic stratification circumstances, except in special cases where the technique is obviously conservative with respect to known data. At this time, the most reliable means of detection is volumetric examination.

General Design Criterion (GDC) 14, ''Reactor coolant pressure boundary,'' of 10 CFR part 50, appendix A, or similar provisions in the licensing basis, requires that the reactor coolant pressure boundary (of which the unisolable portions of the HPSI system are a part) be tested so as to have an extremely low probability of abnormal leakage, of propagating failure, and of gross rupture. The ASME Section XI Subcommittee on Inservice Inspection is considering the need for volumetric examination of Class 1 HPSI systems. Further, the nuclear industry has initiated a voluntary effort being coordinated by the Nuclear Energy Institute to address the issue of thermal fatigue of nuclear power plant piping. The NRC has decided to defer regulatory action on the volumetric examination of Class 1 HPSI system piping while evaluating the industry initiative and determining the need for interim action during performance of the initiative. The NRC does not believe that deferral of regulatory action in this rulemaking while evaluating the need for interim action for HPSI Class 1 weld examinations will significantly affect plant safety, because staff evaluations indicate that a minimal increase in core damage frequency would result from potentially undiscovered flaws in HPSI Class 1 piping welds over this short time period. In light of the limited benefit of surface examinations of Class 1 HPSI system piping and concerns regarding occupational radiation exposure in the performance of those examinations, this rule in § 50.55a(g)(4)(iii) endorses but does not mandate the provision in the ASME Code for surface weld examinations of Class 1 HPSI system piping.

2.5 Voluntary Implementation.

2.5.1 Section III.

The proposed rule stated that the NRC had reviewed the 1989 Addenda, 1990 Addenda, 1991 Addenda, 1992 Edition, 1992 Addenda, 1993 Addenda, 1994 Addenda, 1995 Edition, 1995 Addenda, and 1996 Addenda of Section III, Division 1, for Class 1, Class 2, and Class 3 components, and had determined that they were acceptable for voluntary use with six proposed limitations. The final rule contains five limitations to the implementation of Section III. The proposed limitation on the use of engineering judgment during Section III activities has been deleted from the rule. In addition, the proposed rule stated that 10 CFR 50.55a would be modified to ensure consistency between 10 CFR 50.55a and NCA–1140. The ASME initiated an action to address this issue and requested that the NRC delete this modification from the final rule. The NRC agrees in principle with the ASME action and has deleted the modification.

The version of Section III utilized by applicants and licensees is established prior to construction as required by § 50.55a(b), (c), and (d). For operating plants, § 50.55a permits licensees to use the original construction code during the operational phase or voluntarily update to a later version which has been endorsed by 10 CFR 50.55a. Accordingly, the limitations to Section III apply to design and construction of new nuclear plants and become applicable to operating plants only if a licensee voluntarily updates to a later version.

2.5.1.1 Limitations.

2.5.1.1.1 Engineering Judgment (Deleted).

The first proposed limitation to the implementation of Section III (§ 50.55a(b)(1)(i) in the proposed rule) addressed an NRC position with regard to the Foreword in the 1992 Addenda through the 1996 Addenda of the ASME BPV Code. That Foreword addresses the use of ''engineering judgement'' for ISI activities not specifically considered by the Code. The proposed rule would have required licensees to receive NRC approval for those activities prior to implementation.

Twenty-three commenters provided 26 separate comments on the proposed limitation to the use of engineering judgment with regard to Section III activities. This proposed limitation has been dealt with in the same manner as the proposed limitation on the use of engineering judgment for Section XI activities. The NRC has deleted this limitation from the final rule as discussed in Section 2.3.1.2.1. The response to public comments in Section 2.3.1.2.1 addresses all of the comments which were received and provides specific examples of cases where application of engineering judgment resulted in failure to satisfy regulatory requirements.

2.5.1.1.2 Section III Materials.

The second proposed limitation to the implementation of Section III (§ 50.55a(b)(1)(ii) in the proposed rule) pertained to a reference to Part D, ''Properties,'' of Section II, ''Materials.'' Section II, Part D, contained many printing errors in the 1992 Edition. These errors were corrected in the 1992 Addenda. The limitation would require that Section II, 1992 Addenda, be applied when using the 1992 Edition of Section III to ensure that the design stresses intended by the ASME Code are used.

Four comments were received on the proposed limitation. One commenter agreed with the proposed action. The second commenter disagreed with the severity of the errors but had no objection to the proposed action. The third commenter stated that alerting users of the Code to such errors in a rulemaking was inappropriate. The fourth commenter argued that every version of Section II contains errors and that the NRC should recommend the use of the latest version because it contains the fewest number of errors. The limitation was not included in the proposed rule to initiate a debate over how conservative the errors were or whether the errors could cause faulty designs. There were over 160 Errata in the 1992 Edition (as identified in the 1992 Addenda) apparently because of a printing error. By comparison, there were only 16 Errata in the 1993 Addenda. The NRC was simply attempting to alert users of the Code to that fact. This limitation has been retained in the final rule to ensure that these particular design stress tables will not be used. This limitation is contained in § 50.55a(b)(1)(i) in the final rule.

2.5.1.1.3 Weld Leg Dimensions.

The third proposed limitation to the implementation of Section III [§ 50.55a(b)(1)(iii) in the proposed rule] would correct a conflict in the design and construction requirements in Subsection NB (Class 1), Subsection NC (Class 2), and Subsection ND (Class 3) of Section III, 1989 Addenda through the 1996 Addenda of the BPV Code. Two equations in NB–3683.4(c)(1), Footnote 11 to Figure NC–3673.2(b)–1, and Figure ND–3673.2(b)–1 were modified in the 1989 Addenda and are no longer in agreement with Figures NB–4427–1, NC–4427–1, and ND–4427–1. This change results in a different weld leg dimension depending on whether the dimension is derived from the text or calculated from the figures. Thus, the proposed limitation was included to ensure consistency by specifying use of the 1989 Edition for the above referenced paragraphs and figures in lieu of the 1989 Addenda through the 1996 Addenda.

Four comments were received on this proposed limitation. One commenter believed that the limitation was necessary. A second commenter believed that it was inappropriate to address Code errors in a rulemaking and this action should be accomplished through an information notice. The third commenter agreed that there appears to be a conflict, but they did not believe that the conflict would result in designs which do not satisfy the requirements and recommended deletion of the limitation. The fourth commenter stated that a conflict did not exist as a result of the changes made in the 1989 Addenda; i.e., the changes were deliberate to permit the designer an option on determining the proper weld size. However, this commenter did state that a printing error had been made in another change to the 1994 Addenda which has been corrected in the 1998 Edition.

The NRC disagrees that the limitation should be deleted from the final rule. The weld size requirements that were used in the majority of U.S. operating nuclear power plant piping systems were provided by ANSI B31.7, Nuclear Power Piping Code, ANSI B31.1, Power Piping Code, and early editions of the ASME Code, Section III. Specifically, these standards required that the minimum socket weld size equal 1.25 t but not less than ⅛ inch, where t is the nominal pipe wall thickness. The same weld size requirements as those specified in the above listed codes are also required by other nationally recognized codes and standards such as ANSI B31.3, Petroleum Refinery Piping Code. Those sizes were established as a result of many years of experience associated with the design and construction of piping systems, piping equipment, and components. In 1981, Code Case N–316, ''Alternative Rules for Fillet Weld Dimensions for Socket Welded Fittings,'' was published permitting a reduction in socket weld sizes to 1.09 t. In essence, the Code case was developed to provide relief for certain utilities having difficulty complying with the minimum socket weld size requirement of 1.25 t. The

provisions contained in the Code case were incorporated into the 1989 Edition of the ASME Code. The NRC accepted this reduction because the new weld size was still greater than the pipe. In the 1989 Addenda of Section III of the ASME Code, the requirements for the size of socket welds were further reduced to 0.75 t which would permit welds smaller than the thickness of the pipe. The NRC is concerned with the structural integrity of a joint with a weld size which is less than the pipe wall thickness. The reduction to 0.75 t was not supported with test results or operating experience. Thus, a good technical basis has not been provided for reducing minimum socket weld sizes in nuclear power plant piping. It should be noted that the petrochemical industry has not made a corresponding change to the standards governing weld sizes in refinery piping. Hence, this limitation has been retained in § 50.55a(b)(1)(ii).

2.5.1.1.4 Seismic Design.

The fourth proposed limitation to the implementation of Section III (§ 50.55a(b)(1)(iv) in the proposed rule) pertained to new requirements for piping design evaluation contained in the 1994 Addenda through the 1996 Addenda of the ASME BPV Code. The NRC had determined that changes to articles NB–3200, ''Design by Analysis,'' NB–3600, ''Piping Design,'' NC–3600, ''Piping Design,'' and ND–3600, ''Piping Design,'' of Section III for Class 1, 2, and 3 piping design evaluation for reversing dynamic loads (e.g., earthquake and other similar type dynamic loads which cycle about a mean value) were unacceptable. The new requirements are based, in part, on industry evaluations of the test data performed under sponsorship of the EPRI and the NRC. NRC evaluations of the data do not support the changes and indicate lower margins than those estimated in earlier evaluations. The ASME has established a special working group to reevaluate the bases for the seismic design for piping.

Six comments were received on this proposed limitation to Section III. None of the commenters agreed with the proposed limitation and recommended its deletion from the final rule. The primary argument was that present seismic design of safety related piping is ''overly conservative both as it relates to the seismic capacity of structures which house or support such piping as well as the potential for a reduction in overall piping safety and reliability.'' Several commenters stated that, while it is true that there is an ongoing review within the ASME concerning the revised criteria, the data support the revised rules.

An extensive discussion of this issue is provided in both the regulatory analysis and the response to public comments. In summary, in 1993 prior to publication of the new ASME Code rules, the NRC initiated a research program at the U.S. Department of Energy (DOE) Energy Technology Engineering Center (ETEC) to evaluate the technical basis for the Code changes, and to assess the impact of the Code changes. In December 1994, the NRC informed the ASME that there were technical concerns regarding the new criteria, and the NRC would not endorse the criteria changes in the 1994 Addenda pending the results from the research program. By letter dated May 24, 1995, the NRC restated its technical concerns, and transmitted preliminary findings from those ETEC studies which had been completed to date along with the peer review comments. After receiving comments and input from other members of the ASME BPV Code as well as representatives from other countries, the ASME established a Special Working Group—Seismic Rule (SWG–SR) in September 1995 to assess the concerns identified by the NRC and others regarding the new piping design rules, and provide a proposed resolution to address these concerns.

The ETEC efforts are now complete, and the results of the research indicate that the technical bases for the new piping design rules as published in the 1994 Addenda were incomplete. The results of the research are contained in NUREG/CR–5361, ''Seismic Analysis of Piping,'' which was published in May 1998. The SWG–SR is considering ETEC's recommendations and is conducting some additional studies.

The NRC has concluded that additional technical bases need to be developed before the new rules could be found to be acceptable and will continue to interact via normal NRC staff participation with the Code committees. Thus, this limitation has been retained in § 50.55a(b)(1)(iii). Licensees will be permitted to use articles NB–3200, NB–3600, NC–3600, and ND–3600, in the 1989 Addenda through the 1993 Addenda, but are prohibited from using these articles as contained in the 1994 Addenda through the 1996 Addenda.

2.5.1.1.5 Quality Assurance.

The fifth proposed limitation to the implementation of Section III [§ 50.55a(b)(1)(v) in the proposed rule] pertained to the use of ASME Standard NQA–1, ''Quality Assurance Requirements for Nuclear Facilities.'' Section III references NQA–1 as part of its individual requirements for a QA program by integrating portions of NQA–1 into the QA program defined in NCA–4000, ''Quality Assurance,'' rather than permitting NQA–1 as a stand alone document similar to Section XI and the OM Code. Hence, even though NQA–1 by itself does not adequately describe how to satisfy the requirements of 10 CFR part 50, appendix B, the same concern does not exist regarding Section III and the use of NQA–1 as exists with Section XI. However, the limitation has been included in the final rule to provide consistency between the requirements of Section III, Section XI, and the OM Code, and to eliminate any possible confusion which could be created by not addressing the use of NQA–1 under each circumstance. The NRC had reviewed the requirements of NQA–1, 1986 Addenda through the 1992 Addenda, that are part of the incorporation by reference of Section III, and had determined that the provisions of NQA–1 are acceptable for use in the context of Section III activities. Portions of NQA–1 are integrated into Section III administrative, quality, and technical provisions which provide a complete QA program for design and construction. The additional criteria contained in Section III, such as nuclear accreditation, audits, and third party inspection, establishes a complete program and satisfies the requirements of 10 CFR part 50, appendix B (i.e., the provisions of Section III integrated with NQA–1). Licensees may voluntarily choose to apply later provisions of Section III. Hence, a limitation was included in the proposed rule which would require that the edition and addenda of NQA–1 specified by NCA–4000 of Section III be used in conjunction with the administrative, quality, and technical provisions contained in the edition of Section III being utilized.

Five comments were received on this proposed limitation. One commenter stated that the limitation was reasonable. The other commenters found the limitation confusing given that the NRC had determined that the provisions of NQA–1 were acceptable.

Section III is a design and construction code used by the manufacturers and suppliers of new Code items. However, Section III is also used for controlling the construction of replacement Code items during the operational phase at nuclear power plants. The basis for the limitation in the proposed rule was that the quality provisions contained in NQA–1 (any version) are not adequate to describe how to satisfy the applicable 10 CFR

requirements for these activities. The NRC has not taken any exceptions to the quality or administrative provisions contained in Section III. However, in the proposed limitation for Section III, the NRC emphasized that the quality provisions of NQA–1 are acceptable for use in the context of Section III activities for the construction of new and replacement Code items. Therefore, the NRC has concluded that the quality provisions contained in Section III are acceptable for the construction of new and replacement items; i.e., NQA–1 is not adequate by itself. Thus, the limitation has been retained in § 50.55a(b)(1)(iv).

2.5.1.1.6 Independence of Inspection.

The sixth proposed limitation to the implementation of Section III [§ 50.55a(b)(1)(vi) in the proposed rule] related to prohibiting licensees from using subparagraph NCA–4134.10(a), ''Inspection,'' in the 1995 Edition through the 1996 Addenda. Before this edition and addenda, inspection personnel were prohibited from reporting directly to the immediate supervisors responsible for performing the work being inspected. However, in the 1995 Edition, NCA–4134.10(a) was modified so that independence of inspection was no longer required. This could result in noncompliance with Criterion I, ''Organization,'' of 10 CFR part 50, appendix B. This criterion requires that persons performing QA functions report to a management level such that authority and organizational freedom, including sufficient independence from cost and schedule when opposed to safety considerations, are provided.

Four comments were received on this limitation. One commenter stated that the proposed limitation was reasonable. The second commenter stated that this position is consistent with NRC's previous positions. The third commenter stated the change in the Code provisions had been made because the previous Code requirements exceeded the requirements of appendix B. The fourth commenter stated that there has never been a provision in appendix B that prohibited inspectors from reporting to the supervisor responsible for the work being inspected.

The NRC disagrees with both the third and fourth commenters. Criterion I, ''Organization,'' of 10 CFR part 50, appendix B requires the establishment and execution of a quality assurance program which includes establishing and delineating in writing the authority and duties of persons and organizations performing activities affecting the safety-related functions of structures, systems, and components. In particular, Criterion I states: ''These activities include both the performing functions of attaining quality objectives and the quality assurance functions. The quality assurance functions are those of (a) assuring that an appropriate quality assurance program is established and effectively executed and (b) verifying, such as by checking, auditing, and inspection, that activities affecting safety-related functions have been correctly performed.'' Criterion I continues by stating that ''[t]he persons and organizations performing quality assurance functions shall have sufficient authority and organizational freedom to identify quality problems; to initiate, recommend, or provide solutions; and to verify implementation of solutions. Such persons and organizations performing quality assurance functions shall report to a management level such that this required authority and organizational freedom, including sufficient independence from cost and schedule when opposed to safety considerations, are provided.'' Criterion X, ''Inspection,'' of Appendix B requires ''[s]uch inspection shall be performed by individuals other than those who performed the activity being inspected.''

The requirements of 10 CFR part 50, appendix B could not be met for persons performing the quality function of inspection if those persons were reporting to the individual directly responsible for meeting cost, schedule, etc. (e.g., the requirement that personnel performing quality functions, such as inspection and auditing, shall have sufficient authority and organizational freedom to identify quality problems; to initiate, recommend, or provide solutions; and to verify implementation of solutions).

As discussed in the first paragraph in this section, earlier versions of Section III contained a requirement for reporting independence. The requirement was contained in Supplement 10S–1, ''Supplementary Requirements for Inspection.'' Supplement 10S–1, paragraph 2.1 states that, ''Inspection personnel shall not report directly to the immediate supervisors who are responsible for performing the work being inspected.'' The Code change substitutes the more general wording in Basic Requirement 1 that applies to the overall organization. Applying this general requirement for the more specific requirements applied to independence of inspectors could promote noncompliance with established licensee QA program commitments in the absence of compensating measures. Thus, the limitation has been retained in § 50.55a(b)(1)(v). Licensees will be permitted to use the provisions contained in NCA–4134.10(a) in the 1989 Addenda through the 1994 Addenda, but will be prohibited from using these provisions as contained in the 1995 Edition through the 1996 Addenda.

2.5.1.2 Modification.

2.5.1.2.1 Applicable Code Version for New Construction.

The modification of Section III contained in the proposed rule addressed a possible conflict between NCA–1140, ''Use of Code Editions, Addenda, and Cases,'' and 10 CFR 50.55a for new construction. NCA–1140 of Section III requires that the length of time between the date of the edition and addenda used for new construction and the docket date of the construction permit application for a nuclear power plant be no greater than three years. Section 50.55a(b)(1) requires that the edition and addenda utilized be incorporated by reference into the regulations. The possibility exists that the edition and addenda required by the ASME Code to be used for new construction would not be incorporated by reference into 10 CFR 50.55a. In order to resolve this possible discrepancy, the NRC proposed to modify existing §§ 50.55a(c)(3)(i), 50.55a(d)(2)(i), and 50.55a(e)(2)(i), to permit an applicant for a construction permit to use the latest edition and addenda which has been incorporated by reference into § 50.55a(b)(1) if the requirements of the ASME Code and the regulations cannot simultaneously be satisfied.

Three comments were received regarding this proposed modification to Section III. The ASME Board on Nuclear Codes and Standards (BNCS) agreed that there would be a conflict for new construction, but stated that the modification would preclude a Section III requirement for stamping. The BNCS recommendation was to delete this modification. The ASME is considering a Code case to resolve this by providing an alternative to NCA–1140(a)(2) which would allow an exception to this requirement when permitted by the enforcement authority. The NRC agrees with the suggested comment. The NRC, through its normal participation in the ASME committee process, will work with the appropriate ASME committees to provide an alternative when the requirements of the ASME Code and the regulations cannot simultaneously be satisfied. Hence, the proposed

modification has been deleted from the final rule.

2.5.2 Section XI (Voluntary Implementation).

The proposed rule contained provisions intended to permit licensees to voluntarily implement specific portions of the Code. One provision related to Subsection IWE and Subsection IWL of the 1995 Edition with the 1996 Addenda. Another provision related to Code Case N–513, ''Evaluation Criteria for Temporary Acceptance of Flaws in Class 3 Piping,'' and Code Case N–523–1, ''Mechanical Clamping Devices for Class 2 and 3 Piping.''

2.5.2.1 Subsection IWE and Subsection IWL.

A final rule was published on August 8, 1996 (61 FR 41303), which incorporated by reference for the first time the 1992 Edition with the 1992 Addenda of Subsection IWE, ''Requirements for Class MC and Metallic Liners of Class CC Components of Light-Water Cooled Power Plants,'' and Subsection IWL, ''Requirements for Class CC Concrete Components of Light-Water Cooled Power Plants.'' The final containment rule contained a requirement for licensees to develop and implement a containment ISI program within 5 years. Some licensees have begun the development of this program. However, other licensees have expressed an interest in using later versions of the Code for this program. During review of the 1995 Edition with the 1996 Addenda, the NRC determined that the provisions contained in Subsection IWE and Subsection IWL would be acceptable when used in conjunction with the modifications contained in the final rule published on August 8, 1996 (61 FR 41303). Thus, the proposed rule contained a provision [§ 50.55a(b)(2)(vi)] to permit licensees to implement either the presently required 1992 Edition with the 1992 Addenda, or the 1995 Edition with the 1996 Addenda.

Twenty comments were received related to this provision. One commenter agreed with the action as proposed, and another did not object to the action but expressed a preference for the 1998 Edition. Three commenters stated that the NRC should give consideration to deferring action on this proposed amendment so that the 1998 Edition for containment ISI can be incorporated into this rulemaking. There are several provisions in Subsections IWE and IWL, 1992 Edition with the 1992 Addenda, that licensees are finding cumbersome to implement. The commenters indicated that relief requests relative to these provisions will be submitted. Because these implementation difficulties have been addressed in the 1998 Edition, incorporation of the 1998 Edition would preclude the need to seek relief. Five commenters believe that the NRC did not perform the mandatory backfit analysis for the August 8, 1996 (61 FR 41303), final rule; and, therefore, did not adequately justify its implementation. Further, the commenters believe that the NRC responses to the public comments were inadequately substantiated. Based on this, the comments argued that the proposed rule should be revised to make these subsections voluntary. Finally, one commenter believes that these subsections should be used on a trial basis before they are mandated.

The NRC has made a determination to go forward with the final rule. Given the high priority of some of the items contained in the rule, deferral of the final rule to consider the 1998 Edition for containment ISI would result in an unacceptable delay. Approval of the 1998 Edition for containment ISI would involve not only review of Subsections IWE and IWL but review of the related Code requirements such as Subsection IWA, ''General Requirements,'' Section V, ''Nondestructive Examination,'' and Section IX, ''Welding and Brazing Qualifications.'' In addition, incorporation by reference of these additional Code requirements would result in the renoticing of the rule in the **Federal Register** for public comment. The NRC staff has met with NEI, EPRI, and utility representatives to discuss several industry concerns with regard to implementation of a containment ISI program. It is the NRC's understanding that these concerns can be addressed through the use of alternative examination requirements provided by an ASME Code case or the submittal of a relief request (e.g., some containment designs cannot meet Code access for examination requirements).

The NRC performed the mandatory backfit analysis for the August 8, 1996, rulemaking. Twelve commenters including NUBARG submitted comments on the documented evaluation which was performed in accordance with § 50.109(a)(4). The industry developed examination rules for containments in response to a perceived need. The reported occurrences of containment degradation and the potential for additional serious occurrences was well documented in the final rule. No technical basis has been provided for the comment that this rule should be used to revise the implementation status of Subsections IWE and IWL from mandatory to voluntary. Therefore, the provision has not been changed in the final rule. However, the proposed provision (§ 50.55a(b)(2)(ix) in the proposed rule) containing supplemental requirements for the examination of concrete containments has been renumbered as § 50.55a(b)(2)(viii) in the final rule. The proposed provision (§ 50.55a(b)(2)(x) in the proposed rule) containing supplemental requirements for the examination of metal containments and liners of concrete containments has been renumbered as § 50.55a(b)(2)(ix) in the final rule.

As licensees have begun developing their containment ISI programs, the NRC has received requests to clarify the implementation schedule for ISI of concrete containments and their post-tensioning systems. The current wording of § 50.55a(g)(6)(ii)(B)(2) requiring licensees to implement ''the inservice examinations which correspond to the number of years of operation which are specified in Subsection IWL'' has created confusion regarding whether the first examination of concrete is required to meet the examination schedule in Section XI, Subsection IWL, IWL–2410, which is based on the date of the Structural Integrity Test (SIT), or may be performed at any time between September 9, 1996, and September 9, 2001. In addition, the examination schedule for post-tensioning systems relative to the examination schedule for concrete was not clear. According to § 50.55a(g)(6)(ii)(B)(2) of the final rulemaking of August 8, 1996, the first examination of concrete may be performed at any time between September 9, 1996, and September 9, 2001. The intent of the rule was that, for operating plants, the date of the first examination of concrete not be linked to the date of the SIT. The first examination of concrete will set the schedule for subsequent concrete examinations. With regard to examination of the post-tensioning system, operating plants are to maintain their present 5-year schedule as they transition to Subsection IWL. For operating reactors, there is no need to repeat the 1, 3, 5-year implementation cycle.

Section 50.55a(g)(6)(ii)(B)(2) also stated that the first examination performed shall serve the same purpose for operating plants as the preservice examination specified for plants not yet in operation. The affected plants are presently operating, but they will be performing the examination of concrete under Subsection IWL for the first time.

Because the plants are operating, a Section XI preservice examination cannot be performed. Therefore, the first concrete examination is to be an inservice examination which will serve as the baseline (the same purpose for operating plants as the preservice examination specified for plants not yet in operation). With completion of this first examination of concrete, the second 5-year ISI interval would begin. Likewise, examinations of the post-tensioning system at the nth year (e.g., the 15th year post-tensioning system examination), if performed to the requirements of Subsection IWL, are to be performed to the ISI requirements, not the preservice requirements.

The NRC has also been requested to clarify the schedule for future examinations of concrete and their post-tensioning systems at both operating and new plants. There is no requirement in Subsection IWL to perform the examination of the concrete and the examination of the post-tensioning system at the same time. The examination of the concrete under Subsection IWL and the examination of the liner plates of concrete containments under Subsection IWE may be performed at any time during the 5-year expedited implementation. This examination of the concrete and liner plate provides the baseline for comparison with future containment ISI. Coordination of these schedules in future examinations is left to each licensee. New plants would be required to follow all of the provisions contained in Subsection IWL, i.e., satisfy the preservice examination requirements and adopt the 1, 3, 5-year examination schedule linked to the Structural Integrity Test. The final rule has been clarified in § 50.55a(g)(6)(ii)(B)(*2*) with respect to the examination schedules.

The NRC has also received a request to clarify § 50.55a(g)(4)(v)(C) regarding the replacement requirements of Subsection IWL–7000 for concrete and the post-tensioning systems. Section 50.55a(g)(4)(v)(A) and (B) each state the inservice inspection, repair, and replacement requirements must be met for metal containments and metallic shell and penetration liners, respectively. However, § 50.55a(g)(4)(v)(C) states only that the inservice inspection and repair requirements applicable to concrete and the post-tensioning systems be met. This raised a question regarding whether the omission of the word ''replacement'' was intentional.

The intent of the rule was to require implementation of all the Articles of Subsection IWL. The failure to include ''replacements'' was an oversight. Section 50.55a(g)(4) requires that ''* * * components which are classified as Class CC pressure retaining components and their integral attachments must meet the requirements, except for design and access provisions and preservice examination requirements, set forth in Section XI of the ASME Boiler and Pressure Vessel Code and Addenda that are incorporated by reference in paragraph (b).'' Section 50.55a(g)(4)(v)(C) has been clarified in this final rule by including ''replacement'' in order to eliminate any further confusion.

2.5.2.2 Flaws in Class 3 Piping.

Section 50.55a(b)(2)(xvi) in the proposed rule pertained to use of ASME Code Case N–513, ''Evaluation Criteria for Temporary Acceptance of Flaws in Class 3 Piping,'' and Code Case N–523–1, ''Mechanical Clamping Devices for Class 2 and 3 Piping.'' These Code cases were developed to address criteria for temporary acceptance of flaws (including through-wall leaking) of moderate energy Class 3 piping where a Section XI Code repair may be impractical for a flaw detected during plant operation (i.e., a plant shutdown would be required to perform the Code repair). In the past, licensees had to request NRC staff approval to defer Section XI Code repair for these Class 3 moderate energy (200 °F, 275 psig) piping systems. The NRC had determined that Code Case N–513 is acceptable except for the scope and Section 4.0. Code Case N–523–1 is acceptable without limitation. When using Code Case N–523–1, it should be noted that the Code case erroneously references Table NC–3321–2, rather than Table NC–3321–1 for pressure-retaining clamping devices designed by stress analysis. The use of Code Case N–513, with the limitations, and Code Case N–523–1 will obviate the need for licensees to request approval for deferring repairs; thus saving NRC and licensee resources.

Section 1.0(a) of the Scope to Code Case N–513 limits the use of the requirements to Class 3 piping. However, Section 1.0(c) would allow the flaw evaluation criteria to be applied to all sizes of ferritic steel and austenitic stainless steel pipe and tube. Without some limitation on the scope of the Code case, the flaw evaluation criteria could be applied to components such as pumps and valves, and pressure boundary leakage; applications for which the criteria should not be utilized. Thus, paragraph (B) of the proposed provision limited the use of Code Case N–513 to those applications for which it was developed.

The first paragraph of Section 4.0 of Code Case N–513 contains the flaw acceptance criteria. The criteria provide a safety margin based on service loading conditions. The second paragraph of Section 4.0, however, would permit a reduction of the safety factors based on a detailed engineering evaluation. Criteria and guidance are not provided for justifying a reduction, or limiting the amount of reduction. The NRC had determined that this provision was unacceptable because the second paragraph could permit available margins to become unacceptably low. Hence, § 50.55a(b)(2)(xvi)(A) of the proposed provision required that, when implementing Code Case N–513, the specific safety factors in the first paragraph of Section 4.0 must be satisfied.

There were seven commenters on the proposed use of these Code cases. One commenter agreed with the proposed action. Five commenters believed that the endorsement of these Code cases in a rulemaking is not appropriate. Five commenters disagreed with the limitations to Code Case N–513.

The reason for incorporating the Code cases in the proposed rule was that § 50.55a(g)(4) requires the application of Section XI during all phases of plant operation. Under Section XI structural and operability requirements, piping containing indications greater than 75 percent of the pipe thickness are deemed unsatisfactory for continued service. A limitation must be included in the rulemaking to modify the above mentioned Section XI regulatory requirements. Because regulatory guides are not mandatory, inclusion of the Code cases in Regulatory Guide 1.147 would not modify the Section XI repair requirements. In addition, the preparation of these relief requests consumes considerable industry resources, and the review and issuance consume considerable NRC staff resources. Therefore, the NRC is implementing this limited use of these Code cases through the final rule.

With regard to the limitations on the use of Code Case N–513, some commenters questioned the restrictions and believe that the Code case should be permitted in other applications such as socket welded connections. The Code case has been approved for use on moderate energy Class 3 piping and tubing (which is the ASME scope of the Code case). The NRC does not believe that the criteria are applicable to socket welds because NDE methods are not available for adequate flaw characterization. In addition, the NRC

does not agree that the level of reduction of safety margins which would be permitted by the Code case is appropriate. The margins available in an unflawed component are expected to be higher than for a degraded component. Margins less than the minimums specified for Level A, B, C, and D loading conditions are not acceptable. Hence, these restrictions have been maintained in the final rule except for the limitation related to original construction. The NRC agrees with commenters that any defects remaining from construction that have been determined by evaluation to be permissible are acceptable and has removed this limitation from the final rule. Code Cases N–513 and N–523–1 are addressed in § 50.55a(b)(2)(xiii) of the final rule.

2.5.2.3 Application of Subparagraph IWB–3740, Appendix L.

Appendix L of Subparagraph IWB–3740 permits a licensee to demonstrate that a component is acceptable with regard to cumulative fatigue effects by performing a flaw tolerance evaluation of the component as an alternative to meeting the fatigue requirements of Section III. The NRC has reviewed Appendix L and determined that its use is generally acceptable. However, licensees should be aware of the following two items, which have been under consideration by certain ASME committees and may affect future revisions of Appendix L. The first item is that the assumption of a postulated flaw with a fixed aspect ratio of 6 may not be conservative depending on the extent of cumulative usage factor (CUF) criteria exceedance along the surface of the component. The assumption of a fixed aspect ratio can have an impact on crack growth rates and projected remaining fatigue life in a component. The second item pertains to the influence of environmental effects on both fatigue usage and crack growth evaluations in Appendix L. Environmental crack growth data from laboratory studies indicate the potential for a growth rate which is different from that currently reflected in a draft Section XI Code case which has been under ASME consideration. In addition, some environmental effects data on fatigue usage are available that may be considered for a revision to Section III.

2.5.3 OM Code (Voluntary Implementation).

The proposed rule contained three provisions [§§ 50.55a(b)(3)(iii), 50.55a(b)(3)(iv), and 50.55a(b)(3)(v)] pertaining to voluntary implementation of alternatives to specific OM Code requirements. The first provision involved implementation of ASME Code Case OMN–1, ''Alternative Rules for Preservice and Inservice Testing of Certain Electric Motor-Operated Valve Assemblies in Light-Water Reactor Power Plants,'' in lieu of stroke time testing as required in Subsection ISTC, with a modification. The second provision involved implementation of a check valve condition monitoring program under Appendix II as an alternative to the testing or examination provisions contained in Subsection ISTC, with three modifications. The third provision involved use of Subsection ISTD to satisfy certain ISI requirements for snubbers provided in ASME BPV Code, Section XI. Each of these provisions is discussed separately below.

2.5.3.1 Code Case OMN–1.

Section 50.55a(b)(3)(iii) of the proposed rule addressed the voluntary implementation of Code Case OMN–1 in lieu of stroke time testing as required for motor-operated valves (MOVs) in Subsection ISTC. In particular, Code Case OMN–1 permits licensees to replace quarterly stroke-time testing of MOVs with a program of exercising on intervals of one year or one refueling outage (whichever is longer) and diagnostic testing on longer intervals. As indicated in Attachment 1 to GL 96–05, the Code case meets the intent of the generic letter, but with certain limitations which were discussed in the generic letter. For MOVs, Code Case OMN–1 is acceptable in lieu of Subsection ISTC, except for leakage rate testing (ISTC 4.3) which must continue to be performed. In addition, OMN–1 contains a maximum MOV test interval of 10 years, which the NRC supports. However, the NRC believed it prudent to include the modification requiring licensees to evaluate the information obtained for each MOV, during the first 5 years or three refueling outages (whichever is longer) of use of the Code case, to validate assumptions made in justifying a longer test interval. These conditions on the use of OMN–1 were included in the rule as a modification [§ 50.55a(b)(3)(iii)(A) in the final rule].

Paragraph 3.7 of OMN–1 discusses the use of risk insights in implementing the provisions of the Code case such as those involving MOV grouping, acceptance criteria, exercising requirements, and testing frequency. For example, Paragraph 3.6.2 of OMN–1 states that exercising more frequently than once per refueling cycle shall be considered for MOVs with high risk significance. Since the proposed rule was issued, the NRC has reviewed plant-specific requests to use OMN–1 and has determined that a clarification of the rule is appropriate regarding the provision in the Code case for the consideration of risk insights if extending the exercising frequencies for MOVs with high risk significance beyond the quarterly frequency specified in the ASME Code. In particular, licensees should ensure that increases in core damage frequency and/or risk associated with the increased exercise interval for high-risk MOVs are small and consistent with the intent of the Commission's Safety Goal Policy Statement (51 FR 30028; August 21, 1986). The NRC also considers it important for licensees to have sufficient information from the specific MOV, or similar MOVs, to demonstrate that exercising on a refueling outage frequency does not significantly affect component performance. The information may be obtained by grouping similar MOVs and staggering the exercising of MOVs in the group equally over the refueling interval. This clarification is provided in § 50.55a(b)(3)(iii)(B) of the final rule.

Thus, Code Case OMN–1 is acceptable as an optional alternative to MOV stroke-time test requirements with

(1) The modification that, at 5 years or three refueling outages (whichever is longer) from initial implementation of Code Case OMN–1, the adequacy of the test interval for each MOV must be evaluated and adjusted as necessary; and

(2) The clarification of the provision in OMN–1 for the establishment of exercise intervals for high risk MOVs in that the licensee will be expected to ensure that the potential increase in core damage frequency and risk associated with extending exercise intervals beyond a quarterly frequency is small and consistent with the intent of the Commission's Safety Goal Policy Statement.

In addition, as noted in GL 96–05, licensees are cautioned that, when implementing Code Case OMN–1, the benefits of performing a particular test should be balanced against the potential adverse effects placed on the valves or systems caused by this testing. Code Case OMN–1 specifies that an IST program should consist of a mixture of static and dynamic testing. While there may be benefits to performing dynamic testing, there are also potential detriments to its use (i.e., valve damage). Licensees should be cognizant of this for each MOV when selecting the appropriate method or combination of methods for the IST program.

Seven commenters responded to the proposed voluntary use of Code Case

OMN–1. All of the commenters agreed with the action to permit use of the Code case. However, four of the commenters did not believe that it was appropriate to do so in a rulemaking. Two commenters believe that the rule codifies individual licensee responses to Generic Letters 89–10 and 96–05 which is unnecessary. Two commenters did not believe that the NRC had adequately justified limits on the test intervals.

The proposed rule referenced Code Case OMN–1 as one method for developing a long-term MOV program that satisfies the recommendations of GL 96–05. This issue is closely related to Section 2.3.2.5.1. The amendment does not require the use of Code Case OMN–1. Licensees will be allowed the option of using the Code case as an alternative to the Code-required provisions for MOV stroke-time testing with the specified limitation and clarification. The voluntary use of Code Case OMN–1 by a licensee (in accordance with the rule and GL 96–05) would resolve weaknesses in the Code requirements for quarterly MOV stroke-time testing, and would also address the need to establish a long-term MOV program in response to GL 96–05.

With regard to the concerns that the rule would require licensees to comply with the provisions on stroke-time testing in the OM Code and also with the programs developed under their licensing commitments for demonstrating MOV design-basis capability, it has been recognized since 1989 that the quarterly stroke-time testing requirements for MOVs in the ASME Code are not sufficient to provide assurance of MOV operability under design-basis conditions. For example, in GL 89–10, the NRC stated that ASME BPV Code, Section XI, testing alone is not sufficient to provide assurance of MOV operability under design-basis conditions. Therefore, in GL 89–10, the NRC requested licensees to verify the design-basis capability of their safety-related MOVs and to establish long-term MOV programs. The NRC subsequently issued GL 96–05 to provide updated guidance for establishing long-term MOV programs. However, the NRC agrees with the public comment that the language in the proposed rulemaking referring to licensing commitments is cumbersome. The paragraph has been revised in the final rule to be performance-based to focus on maintaining MOV design-basis capability.

With regard to the question of limits on test intervals, the amendment does not limit the diagnostic test interval in Code Case OMN–1 for MOVs to 5 years or three refueling outages. In endorsing the allowable use of Code Case OMN–1, the amendment states that the adequacy of the test interval for each MOV shall be evaluated and adjusted as necessary but not later than 5 years or three refueling outages (whichever is longer) from initial implementation of Code Case OMN–1. In other words, the amendment requires when applying Code Case OMN–1, prior to extending diagnostic test intervals for a specific MOV beyond 5 years (or three refueling outages), that the licensee evaluate test information on similar MOVs to ensure that the aging mechanisms are sufficiently understood such that the MOV will remain capable of performing its safety function over the entire diagnostic test interval. After evaluating the test information on similar MOVs, a licensee can extend the diagnostic test interval on other MOVs beyond 5 years or three refueling outages up to 10-year limit specified in Code Case OMN–1.

2.5.3.2 Appendix II.

Paragraph ISTC 4.5.5 of Subsection ISTC permits the owner to use Appendix II, ''Check Valve Condition Monitoring Program,'' of the OM Code as an alternative to the testing or examination provisions of ISTC 4.5.1 through ISTC 4.5.4. If an owner elects to use Appendix II, the provisions of Appendix II become mandatory per OM Code requirements. However, upon reviewing the appendix, the NRC determined that the requirements in Appendix II must be supplemented in three areas. The first area is testing or examination of the check valve obturator movement to both the open and closed positions to assess its condition and confirm acceptable valve performance. Bi-directional testing of check valves was approved by the ASME OM Main Committee for inclusion in the 1996 Addenda to the Code. The NRC agrees with the need for a required demonstration of bi-directional exercising movement of the check valve disc. Single direction flow testing of check valves, as an interpreted requirement, will not always detect degradation of the valve. The classic example of this faulty testing strategy is that the departure of the disc would not be detected during forward flow tests. The departed disc could be lying in the valve bottom or another part of the system, and could move to block flow or disable another valve. Although the ASME's Working Group on Check Valves (OM Part 22) is considering Code rules for bi-directional testing of check valves, Appendix II does not presently require it. Hence, the modification in § 50.55a(b)(3)(iv)(A) was included so that an Appendix II condition monitoring program includes bi-directional testing of check valves to assess their condition and confirm acceptable valve performance (as is presently required by the OM Code).

The second area needing supplementation is the length of test interval. Appendix II would permit a licensee to extend check valve test intervals without limit. Under the current check valve IST program, most valves are tested quarterly during plant operation. The interval for certain valves has been extended to refueling outages. The NRC has concluded that operating experience exists at this time to support longer test intervals for the condition monitoring concept. A policy of prudent and safe interval extension dictates that any additional interval extension must be limited to one fuel cycle, and this extension must be based on sufficient experience to justify the additional time. Condition monitoring and current experience may qualify some valves for an initial extension to every other fuel cycle, while trending and evaluation of the data may dictate that the testing interval for some valves be reduced. Extensions of IST intervals must consider plant safety and be supported by trending and evaluating both generic and plant-specific performance data to ensure the component is capable of performing its intended function over the entire IST interval. Thus, the modification (§ 50.55a(b)(3)(iv)(B)) limits the time between the initial test or examination and second test or examination to two fuel cycles or three years (whichever is longer), with additional extensions limited to one fuel cycle. The total interval is limited to a maximum of 10 years. An extension or reduction in the interval between tests or examinations would have to be supported by trending and evaluation of performance data.

The third area in Appendix II which the NRC determined should be supplemented is the requirement applicable to a licensee who discontinues a condition monitoring program. A licensee who discontinues use of Appendix II, under Subsection ISTC 4.5.5, is required to return to the requirements of Subsection ISTC 4.5.4. However, the NRC has concluded that the requirements of ISTC 4.5.1 through ISTC 4.5.4 must be also met. Hence, if the monitoring program is discontinued, the modification [§ 50.55a(b)(3)(iv)(C)] specifies that licensees implement the provisions of ISTC 4.5.1 through ISTC 4.5.4.

Thirty-four comments were received relative to the proposed voluntary implementation of Appendix II. There were seven comments supporting the

option to utilize the requirements of Appendix II. Most of the commenters did not agree with the limitations on the use of Appendix II. However, during its June 1997 meeting, the ASME's Working Group on Check Valves (OM Part 22) identified the following issues related to Condition Monitoring (as reported in the December 1, 1997, meeting minutes) that still needed to be resolved: consideration of safety significance; trending; interval limits; step-wise interval limits; and bi-directional testing. The proposed modifications addressed these issues. Based on its interaction with OM–22, the NRC believes the ASME will address these issues in future updates of the Code.

Condition Monitoring, as described in Appendix II, is a program consisting of a general process without specified requirements, interval extension limits, and criteria. Condition Monitoring is a new Code approach with a promise of better detection of check valve degradation, improved valve performance, and maintaining reliable component capability over extended intervals, while adjusting test and examination intervals. The Condition Monitoring approach has not yet been implemented. Therefore, the nuclear industry lacks sufficient experience upon which to provide confidence of a uniform industry application of the process, or that equivalent requirements and interval extension limits will be applied, or assurance that components are capable of maintaining safe and reliable performance over extended intervals. Failure to ensure proper implementation of the process without specified requirements, interval extension limits, and criteria could result in inadvertent degradation in safety. Ensuring proper implementation could present an unwieldy compliance and inspection process for the NRC and licensees. The modifications to Appendix II contained in the rule provide for a safe and prudent progression of extending test and examination intervals consistent with historical experience and performance expectations. In addition, the modifications allow the licensee to conduct self-compliance inspections and minimize the expenditure of owner and NRC resources. Hence, the NRC has concluded that the modifications are justified and they have been retained in the final rule.

The NRC considers the Condition Monitoring approach of Appendix II for check valves to be a significant improvement over present Code requirements, and encourages licensees to implement Appendix II. Where a licensee's Code of record is an earlier edition or addenda of the ASME Code, the regulations in § 50.55a(f)(4)(iv) allow the licensee to implement portions of subsequent Code editions and addenda that are incorporated by reference in the regulations subject to the limitations and modifications listed in the rule, and subject to Commission approval. The NRC staff will favorably consider a request by a licensee under § 50.55a(f)(4)(iv) to apply Appendix II, in advance of incorporating the 1995 Edition with the 1996 Addenda of the ASME OM Code as its Code of record, if the licensee justifies the following in its submitted request:

(1) The modifications to Appendix II contained in the rule have been satisfied; and

(2) All portions of the 1995 Edition with the 1996 Addenda of the OM Code that apply to check valves are implemented for the remaining check valves not included in the Appendix II program.

2.5.3.3 Subsection ISTD.

Article IWF–5000, ''Inservice Inspection Requirements for Snubbers,'' of the ASME BPV Code, Section XI, 1996 Addenda, requires examinations and tests of snubbers at nuclear power plants as part of the licensee's ISI program in accordance with ASME/ANSI OM, Part 4. Some licensees control testing of snubbers through plant technical specifications. Although the ASME BPV Code, Section XI, establishes ISI requirements for examination and tests of snubbers, the ASME OM Code also provides guidance on snubber examination and testing in Subsection ISTD, ''Inservice Testing of Dynamic Restraints (Snubbers) in Light-Water Reactor Power Plants.'' The proposed rule (§ 50.55a(b)(3)(v)) stated that licensees may use the guidance in Subsection ISTD, OM Code, 1995 Edition with the 1996 Addenda, for testing snubbers. The final rule (§ 50.55a(b)(3)(v)) clarifies that Subsection ISTD, OM Code, 1995 Edition, up to and including the 1996 Addenda may be used to meet certain ISI requirements for snubbers provided in IWF–5000 of the ASME BPV Code, Section XI. The licensee must still meet those requirements of IWF–5000, Section XI, not included in or addressed by Subsection ISTD. Consistent with IWF–5000, the rule specifies that preservice and inservice examinations must be performed using the VT–3 visual examination method in IWA–2213.

Eleven comments were received on the endorsement of Subsection ISTD of the ASME OM Code. Seven commenters indicated that some owners have modified their Technical Specifications Snubber Surveillance Requirements to follow the provisions of GL 90–09, ''Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions,'' to move the specific visual inspection and functional testing requirements to a Technical Requirements Manual. The NRC has addressed these comments in the final rule by referencing technical specifications or licensee-controlled documents for snubber test or examination requirements.

One commenter noted that Article IWF–5000, Section XI, requires examination of snubbers be performed in accordance with ASME OM–1987, Part 4. Licensees of plants with a large number of snubbers have found the required visual inspection schedule in Part 4 to be excessively restrictive. As a result, some licensees have expended a significant amount of resources and have subjected plant personnel to unnecessary radiological exposure to comply with the visual examination requirements. Many licensees have been granted relief based on application of the snubber visual inspection intervals contained in GL 90–09. The final rule allows licensees to use the snubber visual inspection interval contained in Table ISTD 6.5.2–1, ''Refueling Outage-Based Visual Examination Table,'' Subsection ISTD, OM Code, as an alternative to the Table in OM–1987, Part 4. Table ISTD 6.5.2–1 is substantially similar to the guidance provided in GL 90–09 for snubber visual inspection intervals. The final rule should help resolve the concerns regarding the visual inspection schedule in OM–1987, Part 4.

Some commenters proposed Subsection ISTD as an acceptable alternative to the preservice and inservice examination requirements in IWF–5000, Section XI. The NRC has not accepted this suggestion because some preservice and inservice examinations for snubbers are not included in the OM Code. For example, Subsection ISTD does not address inspection of integral and non-integral attachments, such as lugs, bolting, pins, and clamps. Further, Subsection ISTD does not address snubbers in systems required to maintain the integrity of reactor coolant pressure boundary.

Section 2.5.3.3, ''Subsection ISTD,'' of the Statement of Considerations for the proposed rule (62 FR 63903; December 3, 1997) stated that inservice testing of dynamic restraints or snubbers is governed by plant technical specifications and, thus, has never been included in 10 CFR 50.55a. It was apparent from comments received on

this section that this statement was confusing and needed to be clarified. First, it is true that 10 CFR 50.55a never directly required inservice testing of snubbers although the language in the current rule would appear to indicate otherwise. The language in the current rule states in § 50.55a(f)(4), ''Throughout the service life of a boiling or pressurized water-cooled nuclear power facility, components (including supports) which are classified as ASME Code Class 1, Class 2, and Class 3 must meet the requirements * * * set forth in section XI of editions of the ASME Boiler and Pressure Vessel Code and Addenda * * *'' (emphasis added). Although the language clearly states that ''components (including supports)'' are within the scope of inservice testing, and it appears that inservice testing of snubbers is included under this statement, this statement was an editorial error. In the 1992 final rule amending 10 CFR 50.55a to more clearly distinguish the requirements for inservice testing from those for inservice inspection (57 FR 34666; August 6, 1992), paragraph (g) was split into two separate paragraphs—paragraph (f) for inservice testing and paragraph (g) was retained for inservice inspection. In the 1992 final rule, similar requirements that applied to both inservice inspection and inservice testing were carried over from paragraph (f) to paragraph (g). The terminology, ''components (including supports),'' which existed in paragraph (g) was changed in paragraph (f) to read, ''pumps and valves,'' except in this one instance. Therefore, the Commission views this error as an editorial oversight. In the final rule, the language in paragraph (f)(4) has been corrected to read, ''pumps and valves,'' instead of ''components (including supports).''

Based on this discussion, § 50.55a never directly required inservice testing of snubbers. However, confusion resulted because some licensees interpreted this to mean that the NRC was implying that inservice testing of snubbers was never a regulatory requirement. Inservice testing of snubbers is a regulatory requirement and has been for many years. Section 50.55a(g)(4) requires that ASME Code Class 1, 2, and 3 components (including supports) must meet the inservice inspection requirements of ASME Code, Section XI. Article IWF–5000 of Section XI, ''Inservice Inspection Requirements for Snubbers,'' provides requirements for the examination and testing of snubbers in nuclear power plants. Therefore, inservice testing of snubbers is required by 10 CFR 50.55a because it incorporates by reference Section XI requirements including Article IWF–5000. Inservice testing of snubbers has been a requirement in IWF–5000 since Subsection IWF was first issued in the Winter 1978 Addenda of the ASME Code, Section XI.

2.5.3.4 Containment Isolation Valves.

The proposed rule contained a provision to delete the existing modification in § 50.55a(b)(2)(vii) for IST of containment isolation valves (CIVs), which was added to the regulations in a rulemaking published on August 6, 1992 (57 FR 34666). That rulemaking incorporated by reference, among other things, the 1989 Edition of ASME Section XI, Subsection IWV that endorsed part 10 of ASME/ANSI OMa–1988 for valve inservice testing. A modification to the testing requirements of part 10 related to CIVs was included in the rulemaking indicating that paragraphs 4.2.2.3(e) and 4.2.2.3(f) of part 10 were to be applied to CIVs. Since that time, the ASME OM Committee has performed a comprehensive review of OM Part 10 CIV testing requirements and acceptance standards, and has developed a basis document supporting removal of the requirements for analysis of leakage rates and corrective actions in Part 10 for those CIVs that do not provide a reactor coolant system pressure isolation function. The NRC reviewed this OM Committee basis document and determined that the modification addressing CIVs could be removed from the regulation. The requirements of 10 CFR part 50, Appendix J, ensure adequate identification analysis, and corrective actions for leakage monitoring of CIVs. There were four separate commenters on the proposed deletion of this modification and all were in agreement with the action. The final rule deletes this requirement.

2.6 ASME Code Interpretations.

The ASME issues ''Interpretations'' to clarify provisions of the ASME BPV and OM Codes. Requests for interpretation are submitted by users and, after appropriate committee deliberations and balloting, responses are issued by the ASME. Generally, the NRC agrees with these interpretations. However, in a few cases interpretations have been issued which conflicted with or were inconsistent with NRC requirements. Following the guidance in these interpretations resulted in noncompliance with the regulations. Some cases were discussed earlier on engineering judgment. Additional discussion is provided on the use of interpretations in the Response to Public Comments. The proposed rule contained a discussion of NRC concerns related to ASME Code Interpretations, and referenced part 9900, Technical Guidance, of the NRC Inspection Manual. Part 9900 provides that licensees should exercise caution when applying Interpretations as they are not specifically part of the incorporation by reference into 10 CFR 50.55a and have not received NRC approval.

Twenty-two comments were submitted by 21 separate commenters. Interpretations were also discussed in Sections 2.3.1.2.1 and 2.5.1.1.1 as the use of engineering judgment and interpretations is intrinsically linked. Many of the commenters believe that the NRC position on ASME Code Interpretations is inconsistent. The NRC recognizes that the ASME is the official interpreter of the Code, but the NRC will not accept ASME interpretations that, in NRC's opinion, are contrary to NRC requirements or may adversely impact facility operations. It should be noted that, considering the large number of Code interpretations that are issued, there have been very few cases where the NRC has taken exception to an ASME interpretation. Interpretations have been of great benefit in clarifying the Code. The NRC is not restricting the use of ASME Code interpretations. A proposed limitation on their use was not placed in 10 CFR 50.55a; the discussion being limited to the Statement of Considerations. The purpose of the discussion was to merely alert Code users to be prudent when applying interpretations.

As discussed in Section 2.3.1.2.1, a meeting was held on November 12, 1996, between representatives from the ASME and the NRC (in part because of the continuing questions from the industry regarding ASME interpretations). The guidance given in NRC Inspection Manual, Part 9900, regarding ASME Code interpretations was discussed. ASME representatives stated that the guidance is consistent with the ASME's understanding of the relationship between the ASME Code and NRC regulations. There were discussions regarding the mechanism for the NRC to inform the ASME of Code interpretations to which the NRC takes exception. It was agreed that the NRC should not establish a formal method for reviewing ASME Code interpretations for acceptance. This conclusion was based primarily on the understanding that it would be tantamount to the NRC becoming the interpreter of the Code. It was agreed that any concerns the NRC has regarding specific ASME Code interpretations would be brought to the ASME's attention through the NRC

staff's normal interaction with the Code. This has been routine practice for many years.

Many commenters suggested that the NRC should adopt all interpretations because the ASME is the official interpreter of the Code. The NRC cannot a priori approve interpretations as suggested. This would delegate the NRC's statutory oversight responsibility to the ASME. In addition, the NRC cannot accept an interpretation when it conflicts with regulatory requirements. Finally, an interpretation may not be accepted that changes the requirements of the Code subsequent to the NRC endorsement of a particular edition or addenda in 10 CFR 50.55a. Several commenters stated that the NRC should accept interpretations because, interpretations do not change the Code, they clarify it. As discussed in the responses to the public comments, there is evidence in a few cases to the contrary.

2.7 Direction Setting Issue 13.

The proposed rule contained a discussion of issues under consideration relative to the Commission's endorsement of ASME Codes. The first item discussed was an October 21, 1993, Cost Beneficial Licensing Action (CBLA) submittal from Entergy Operations, Inc., requesting relief from the requirement to update ISI and IST programs to the latest ASME Code edition and addenda incorporated by reference into 10 CFR 50.55a. The underlying premise of the request was that a licensee should not be required to upgrade its ISI and IST programs without considering whether the costs of the upgrade are warranted in light of the increased safety afforded by the updated Code edition and addenda. The second item discussed was the National Technology Transfer and Advancement Act of 1995, Public Law 104–113. The Act directs Federal agencies to achieve greater reliance on technical standards developed by voluntary consensus standards development organizations. The third item was Direction Setting Issue (DSI) 13, which is part of an NRC Commission Strategic Assessment and Rebaselining Initiative. The Commission has directed the NRC staff to address how industry initiatives should be evaluated, and to evaluate several issues related to NRC endorsement of industry codes and standards. As part of this evaluation, the NRC staff is addressing issues relevant to the NRC's endorsement of the ASME Code, including periodic updating, the impact of 10 CFR 50.109 (the Backfit Rule), and streamlining the process for NRC review and endorsement of the ASME Code.

Thirty-five comments were received from 21 commenters. Eight of the commenters supported NRC endorsement of the ASME Code, but submitted comments encouraging more timely endorsement. The Nuclear Energy Institute (NEI), the ASME Board on Nuclear Codes and Standards, and one utility requested that the NRC hold public meetings regarding the proposed rule. The reasons cited were: (1) Difficulties in implementing Appendix VIII as modified by the NRC; (2) concerns with the number of modifications and limitations and their content; and (3) licensee use of ASME Code editions later than 1989 should be voluntary and NRC staff endorsement need not be reflected in revisions to 10 CFR 50.55a.

With regard to the comments related to difficulties in implementing Appendix VIII as modified by the NRC, as discussed under Section 2.4.1, the NRC staff met with representatives from PDI, EPRI, and NEI on May 12, 1998, and again on June 18, 1998, to discuss items such as the current status of the PDI program, and Appendix VIII as modified during the development of the PDI program. The final rule endorses the latest version of Appendix VIII as modified by PDI during the development of the PDI program which, the NRC believes, satisfies the industry's concerns relative to this issue.

Nine commenters stated that the modifications and limitations in the proposed rule violate or are contrary to the spirit of the National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, which codified OMB Circular A–119. However, the NRC disagrees that Pub. L. 104–113 requires, without exception, the use of industry consensus standards. Section 12(d)(3) clearly allows agencies to decline to adopt voluntary consensus standards if they are inconsistent with applicable law or otherwise impractical. Furthermore, the Commission believes that it is in keeping with the intent of the Act if industry consensus standards are endorsed with limitations, rather than failing to endorse them in their entirety because of a few objectionable provisions. Ten commenters suggested that the modifications and limitations, in effect, reject the ASME consensus process. Some further suggested that many of the issues had not previously been brought to the ASME's attention. The NRC disagrees that the limitations and modifications exemplify NRC's failure to accept the consensus process of standards development. There are several examples, such as the new Section III piping seismic design criteria, which illustrate that the consensus process failed to consider the NRC representatives' comments that the bases for some of the criteria were flawed. This has been conclusively confirmed through additional testing performed by ETEC. Nearly all of the issues had previously been brought to the attention of committee members directly or as a result of public issuances such as NUREGs and generic communications.

On April 27, 1999 (64 FR 22580), the NRC published a supplement to the proposed rule dated December 3, 1997 (63 FR 63892), that would eliminate the requirement for licensees to update their ISI and IST programs beyond a baseline edition and addenda of the ASME BPV Code. Under the proposed rule, licensees would continue to be allowed to update their ISI and IST programs to more recent editions and addenda of the ASME Code incorporated by reference in the regulations. In a Staff Requirements Memorandum dated June 24, 1999, the Commission directed the NRC staff to complete expeditiously the issuance of the final rule to incorporate by reference the 1995 Edition with the 1996 Addenda of the ASME BPV Code and the ASME OM Code with appropriate limitations and modifications, and to consider the elimination of the requirement to update ISI and IST programs every 120 months as a separate rulemaking effort. The NRC is currently reviewing the public comments received on the proposed rule dated April 27, 1999. The NRC will indicate the decision regarding the need for periodic updating of ISI and IST programs and, if necessary, an appropriate baseline edition of the ASME Code following the review of public comments.

2.8 Steam Generators.

ASME Code requirements for repair of heat exchanger tubes by sleeving were added to Section XI in the 1989 Addenda. This portion of the Code contains requirements for sleeving of heat exchanger tubes by several methods (e.g., explosion welding, fusion welding, expansion, etc.). The NRC has reviewed the Code requirements for sleeving and determined that they are acceptable. However, it should be recognized that, typically, there are other relevant requirements that need to be addressed for the application of sleeving to steam generator tubing. Some of the other requirements are as follows: periodic inservice inspections, repair of sleeves containing flaws exceeding the plugging limit (i.e., tube repair criteria), structural design and operational leakage limits. All of these sleeving requirements (ASME Code and

otherwise) would need to be addressed in the technical specifications sleeving license amendment request. Thus, the NRC determination that the ASME Code sleeving requirements are acceptable should be kept in perspective.

2.9 Future Revisions of Regulatory Guides Endorsing Code Cases.

Section 50.55a indicates the ASME Code edition and addenda which have been approved for use by the NRC. In addition, Footnote 6 to 10 CFR 50.55a references NRC Regulatory Guide 1.84, ''Design and Code Case Acceptability—ASME Section III Division 1,'' NRC Regulatory Guide 1.85, ''Materials Code Case Acceptability—ASME Section III Division 1,'' and NRC Regulatory Guide 1.147, ''Inservice Inspection Code Case Acceptability—ASME Section XI Division 1,'' which list the ASME Code cases that have been determined suitable by the NRC for use and may be applied to: (1) The design and construction of a particular component; or (2) the performance of inservice examination of systems and components. A determination has been made that the regulatory guide process must change in order to assure that the Code cases endorsed in the Regulatory Guides are incorporated by reference into the regulations and constitute legally-binding alternatives to the existing requirements in § 50.55a. Draft Revision 31 to Regulatory Guide 1.84, draft Revision 31 to Regulatory Guide 1.85, and draft Revision 12 to Regulatory Guide 1.147 were published for public comment in May 1997. The final regulatory guides were published in May 1999, in accordance with the present process. Future revisions to these regulatory guides, however, will be accompanied by rulemaking which will change the footnote reference to indicate the acceptable regulatory guide revisions, and to reflect approval for incorporation by reference of the endorsed Code cases by the Office of the Federal Register.

**3. Voluntary Consensus Standards**

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC is amending its regulations to incorporate by reference more recent editions and addenda of the ASME Boiler and Pressure Vessel Code and the ASME Code for Operation and Maintenance of Nuclear Power Plants for construction, inservice inspection, and inservice testing as identified in the **SUPPLEMENTARY INFORMATION** of this document.

**4. Finding of No Significant Environmental Impact**

Based upon an environmental assessment, the Commission has determined, under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule will not have a significant effect on the quality of the human environment and therefore an environmental impact statement is not required.

The final rule is one part of a regulatory framework directed to ensuring pressure boundary integrity and the operational readiness of pumps and valves. The final rule incorporates provisions contained in the ASME BPV Code and the OM Code for the construction, inservice inspection, and inservice testing of components used in nuclear power plants. These provisions have been updated to incorporate improved technology and methodology. Therefore, in the general sense, the final rule would have a positive impact on the environment.

The final rule endorses ASME BPV Code, Section XI, 1995 Edition with the 1996 Addenda. As most of the technical changes to this edition/addenda merely incorporate improved technology and methodology, imposition of these requirements is not expected to either increase or decrease occupational exposure. However, imposition of paragraphs IWF–2510, Table IWF–2500–1, Examination Category F–A, and IWF–2430, will result in fewer supports being examined which will decrease the occupational exposure compared to present support inspection plans. It is estimated that an examiner receives approximately 100 millirems for every 25 supports examined. Adoption of the new provisions is expected to decrease the total number of supports to be examined by approximately 115 per unit per interval. Thus, the reduction in occupational exposure is estimated to be 460 millirems per unit each inspection interval or 50.14 rems for 109 units.

The final rule endorses the 1995 Edition with the 1996 Addenda of the ASME OM Code. The provisions of the OM Code are not expected to either increase or decrease occupational exposure. The types of testing associated with the 1995 Edition with the 1996 Addenda of the OM Code are essentially the same as the OM standards contained in the 1989 Edition of Section XI referenced in a final rule published on August 6, 1992 (57 FR 34666).

Actions by applicants and licensees in response to the final rule are of the same nature as those applicants and licensees have been performing for many years. Therefore, this action should not increase the potential for a negative environmental impact.

The Commission has determined, in accordance with the National Environmental Policy Act of 1969, as amended and the Commission's regulations in subpart A of 10 CFR part 51, that this rulemaking is not a major action significantly affecting the quality of the human environment, and, therefore, an environmental impact statement is not required. This final rule amends the NRC regulations pertaining to ISI and IST requirements for nuclear power plant components. The current regulations in 10 CFR 50.55a incorporates by reference the 1989 Edition of the ASME BPV Code, Section III, Division 1; the 1989 Edition of the ASME BPV Code, Section XI, Division 1, for Class 1, Class 2, and Class 3 components; the 1992 Edition with the 1992 Addenda of the ASME BPV Code, Section XI, Division 1, for Class MC and Class CC components; and the 1989 Edition of the ASME BPV Code, Section XI, Division 1, for Class 1, Class 2, and Class 3 pumps and valves. The Commission is amending its regulations to incorporate by reference the 1989 Addenda, 1990 Addenda, 1991 Addenda, 1992 Edition, 1992 Addenda, 1993 Addenda, 1994 Addenda, 1995 Edition, 1995 Addenda, and 1996 Addenda of Section III, Division 1, of the ASME BPV Code with five limitations; the 1989 Addenda, 1990 Addenda, 1991 Addenda, 1992 Edition, 1992 Addenda, 1993 Addenda, 1994 Addenda, 1995 Edition, 1995 Addenda, and 1996 Addenda of Section XI, Division 1, of the ASME BPV Code with three limitations; and the 1995 Edition and 1996 Addenda of the ASME OM Code with one limitation and one modification. The final rule imposes an expedited implementation of performance demonstration methods for ultrasonic examination systems. The final rule permits the optional implementation of the ASME Code, Section XI, provisions for surface examinations of High Pressure Safety Injection Class 1 piping welds. The final rule also permits the use of evaluation criteria for temporary acceptance of flaws in ASME Code Class 3 piping (Code Case N–523–1); mechanical clamping devices for ASME Code Class 2 and 3 piping (Code Case N–513); the 1992 Edition including the 1992 Addenda of Subsections IWE and IWL

in lieu of updating to the 1995 Edition and 1996 Addenda; alternative rules for preservice and inservice testing of certain motor-operated valve assemblies (OMN–1) in lieu of stroke-time testing; a check valve monitoring program in lieu of certain requirements in Subsection ISTC of the ASME OM Code (Appendix II to the OM Code); and guidance in Subsection ISTD of the OM Code as part of meeting the ISI requirements of Section XI for snubbers. This final rule deletes a previous modification for inservice testing of containment isolation valves. The editions and addenda of the ASME BPV Code and OM Code incorporated by reference provide updated rules for the construction of components of light-water-cooled nuclear power plants, and for the inservice inspection and inservice testing of those components. This final rule permits the use of improved methods for construction, inservice inspection, and inservice testing of nuclear power plant components. For these reasons, the Commission concludes that this rule should have no significant adverse impact on the operation of any licensed facility or the environment surrounding these facilities.

The conclusion of this environmental assessment is that there will be no significant offsite impact to the general public from this action. However, the general public should note that the NRC has also committed to comply with Executive Order (EO) 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' dated February 11, 1994, in all its actions. Therefore, the NRC has also determined that there is no disproportionately high adverse impacts on minority and low-income populations. In the letter and spirit of EO 12898, the NRC is requesting public comment on any environmental justice considerations or questions that the public thinks may be related to this final rule. The NRC uses the following working definition of ''environmental justice': the fair treatment and meaningful involvement of all people, regardless of race, ethnicity, culture, income, or education level with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Comments on any aspect of the environmental assessment, including environmental justice may be submitted to the NRC.

The NRC will send a copy of this final rule including the foregoing Environmental Assessment to every State Liaison Officer.

The environmental assessment is available for inspection at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC. Single copies of the environmental assessment are available from Thomas G. Scarbrough, Division of Engineering, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–2794, or Robert A. Hermann, Division of Engineering, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–2768.

**5. Paperwork Reduction Act Statement**

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget approval number 3150–0011.

The public reporting burden for this information collection is estimated to average 85 person-hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

*Public Protection Notification*

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

**6. Regulatory Analysis**

The Commission has prepared a regulatory analysis on this final regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington DC. Single copies of the analysis may be obtained from Thomas G. Scarbrough, Division of Engineering, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–2794, or Robert A. Hermann, Division of Engineering, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–2768.

**7. Regulatory Flexibility Certification**

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. This final rule involves the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121. Public comment received on this section suggested that the implementation of Appendix VIII of ASME BPV Code, Section XI, on performance qualification for ultrasonic testing might negatively impact small entities that contract their examination personnel to nuclear power plants. However, the final rule permits licensees to implement either Appendix VIII as contained in the 1995 Edition with the 1996 Addenda of the ASME Code, or Appendix VIII as implemented by the industry's PDI program. As a result, the NRC is unaware of any small entities in this area of expertise that are adversely affected such that they cannot satisfy either Appendix VIII as written or as implemented by PDI and endorsed in the rule.

**8. Backfit Analysis**

The NRC regulations in 10 CFR 50.55a require that nuclear power plant owners—

(1) Construct Class 1, Class 2, and Class 3 components in accordance with the rules provided in Section III, Division 1, ''Requirements for Construction of Nuclear Power Plant Components,'' of the ASME BPV Code;

(2) Inspect Class 1, Class 2, Class 3, Class MC (metal containment) and Class CC (concrete containment) components in accordance with the rules provided in Section XI, Division 1, ''Requirements for Inservice Inspection of Nuclear Power Plant Components,'' of the BPV Code; and

(3) Test Class 1, Class 2, and Class 3 pumps and valves in accordance with the rules provided in Section XI, Division 1.

The amendment to 10 CFR 50.55a endorses the 1995 Edition with the 1996 Addenda of Section XI, Division 1, of the ASME BPV Code for ISI of Class 1, Class 2, Class 3, Class MC, and Class CC components; and the 1995 Edition with the 1996 Addenda of the ASME OM Code for IST of Class 1, Class 2, and Class 3 pumps and valves. The final rule requires licensees to implement Appendix VIII, ''Performance Demonstration for Ultrasonic Examination Systems,'' to Section XI, Division 1, as contained in the 1995 Edition with the 1996 Addenda of the ASME BPV Code, or Appendix VIII as

modified during the development of the PDI program.

Under § 50.55a(a)(3), licensees may voluntarily update to the 1989 Addenda through the 1996 Addenda of Section III of the BPV Code, with limitations. In addition, the modification for containment isolation valve inservice testing that applied to the 1989 Edition of the BPV Code has been deleted.

The NRC regulations currently require licensees to update their ISI and IST programs every 120 months to the version of Section XI incorporated by reference into 10 CFR 50.55a 12 months prior to the start of a new 10-year interval. In the past, the NRC position has consistently been that 10 CFR 50.109 does not ordinarily require a backfit analysis of the routine 120-month update to 10 CFR 50.55a. The basis for the NRC position is that

(1) Section III, Division 1, update applies only to new construction (i.e., the edition and addenda to be used in the construction of a plant are selected based upon the date of the construction permit and are not changed thereafter, except voluntarily by the licensee);

(2) Licensees understand that 10 CFR 50.55a requires that they update their ISI and IST programs every 10 years to the latest edition and addenda of the ASME Code that were incorporated by reference in 10 CFR 50.55a and in effect 12 months before the start of the next inspection interval; and

(3) The ASME Code is a national consensus standard developed by participants with broad and varied interests where all interested parties (including the NRC and utilities) participate; the consensus process includes an examination of the cost and benefits of proposed Code revisions.

This consideration is consistent with both the intent and spirit of the backfit rule (i.e., NRC provides for the protection of the public health and safety, and does not unilaterally impose undue burden on applicants or licensees). Finally, to ensure that any interested member of the public that may not have had an opportunity to participate in the national consensus standard process is able to communicate with the NRC, proposed rules are published in the **Federal Register**. However, it should be noted that the Commission's initial endorsement of new subsections or appendices which would expand the scope of 10 CFR 50.55a to, *e.g.*, include components that are not presently considered by the regulation (e.g., containment structures under Subsection IWE and Subsection IWL) would be subject to the Backfit Rule, unless one or more of the exceptions to 10 CFR 50.109(a)(4) apply.

The Nuclear Utility Backfitting and Reform Group (NUBARG) and the Nuclear Energy Institute (NEI) each raised a concern with regard to the NRC's position on routine updates to 10 CFR 50.55a. Both NUBARG and NEI believe that, contrary to the NRC's determination, the routine updating of 10 CFR 50.55a to incorporate by reference new ASME Code provisions for ISI and IST constitutes a backfit for which a backfit analysis is required. The NRC has reviewed all of NUBARG's and NEI's comments in detail and has concluded that neither NUBARG nor NEI raise legal concerns which would alter the previous legal conclusion that the Backfit Rule does not require a backfit analysis of routine updates to 10 CFR 50.55a to incorporate new ASME Code ISI and IST requirements. Based on the historical evolution of the ISI requirements in 10 CFR 50.55a, the NRC believes it manifest that the ''automatic update'' of ISI programs under § 50.55a(g) exists in tandem with the periodic updating and endorsement of new Code editions and addenda for ISI under § 50.55a(b), and that the Commission intended that they be treated as an integrated regulatory structure for ISI which should not be subject to the Backfit Rule except in limited circumstances as discussed above. However, even though the NRC has determined that updating and endorsement of new Code editions and addenda are not subject to the Backfit Rule, the NRC is still considering these issues in the context of DSI 13. In particular, on April 27, 1999 (64 FR 22580), the NRC published a supplement to the proposed rule dated December 3, 1997 (62 FR 63892), to eliminate the requirement for licensees to update their ISI and IST programs beyond a baseline edition and addenda of the ASME BPV Code. Under that proposed rule, licensees would continue to be allowed to update their ISI and IST programs to more recent editions and addenda of the ASME Code incorporated by reference in the regulations. Upon further review, the Commission decided to complete the issuance of this final rule endorsing the 1995 Edition with the 1996 Addenda of the ASME BPV Code and the ASME OM Code with appropriate limitations and modifications and to consider the elimination of the requirement to update ISI and IST programs every 120 months as a separate rulemaking effort. Following consideration of the public comments on the April 27, 1999, proposed rule, the NRC may prepare a final rule addressing the continued need for the requirement to update periodically ISI and IST programs and, if necessary, establishing an appropriate baseline edition of the ASME Code.

The provisions for IST of pumps and valves were originally contained in Section XI Subsections IWP and IWV of the ASME BPV Code, but have now been moved by ASME to a new OM Code. Section XI, 1989 Edition was incorporated by reference in the August 6, 1992, rulemaking (57 FR 34666). The 1990 OM Code standards, Parts 1, 6, and 10 of ASME/ANSI–OM–1987, are identical to Section XI, 1989 Edition. This amendment is an administrative change simply referencing the 1995 Edition with the 1996 Addenda of the OM Code. Therefore, imposition of the 1995 Edition with the 1996 Addenda of the OM Code is not a backfit.

Appendix VIII to ASME BPV Code, Section XI, or Appendix VIII as modified during the development of the PDI program will be used to demonstrate the qualification of personnel and procedures for performing nondestructive examination of welds in components of systems that include the reactor coolant system and the emergency core cooling systems in nuclear power facilities. These performance demonstration programs will greatly increase the reliability of detection and sizing of cracks and flaws. Current requirements have been demonstrated not to be able to consistently and accurately identify and size cracks and flaws and thus are not effective. The Appendix delineates a method for qualification of the personnel and procedures. Appendix VIII changes the Code rules from a prescriptive set of requirements to a performance based approach that allows for implementation of improved technology without changes to the regulations. Performance demonstration would normally be imposed by the 120-month update requirement but, because of its importance, implementation of Appendix VIII is being expedited by the rulemaking. Because of the fundamental change in the nature of the qualification requirements, Appendix VIII is being considered a backfit. The proposed rule would have required licensees to implement Appendix VIII, including the modifications, for all examinations of the pressure vessel, piping, nozzles, and bolts and studs which occur after 6 months from the date of the final rule. However, based on public comment, the final rule adopts a phased implementation approach for Appendix VIII, ranging from 6 months to 3 years, depending on the supplement. The final rule will not require any change to a licensee's ISI schedule for examination of these components, but will require

that the provisions of Appendix VIII as contained in the 1995 Edition with the 1996 Addenda (as supplemented by the final rule) or Appendix VIII as modified during the development of the PDI program (as supplemented by the final rule) be used for all examinations after that date rather than the UT procedures and personnel requirements presently being utilized by licensees.

On the basis of the documented evaluation required by § 50.109(a)(4), the NRC has concluded that imposition of Appendix VIII is necessary to bring the facilities described into compliance with GDC 14, 10 CFR Part 50, Appendix A, or similar provisions in the licensing basis for these facilities, and Criterion II, ''Quality Assurance Program,'' and Criterion XVI, ''Corrective Actions,'' of appendix B to 10 CFR part 50. Criterion II requires, in part, that a QA program shall take into account the need for special controls, processes, test equipment, tools, and skills to attain the required quality and the need for verification of quality by inspection and test. Evidence indicates that there are shortcomings in the qualifications of personnel and procedures in ensuring the reliability of the examinations. These safety significant revisions to the Code include specific requirements for UT performance demonstration, with statistically based acceptance criteria for blind testing of UT systems (procedures, equipment, and personnel) used to detect and size flaws. Criterion XVI requires that measures shall be established to assure that conditions adverse to quality, such as failures, malfunctions, deficiencies, deviations, defective material and equipment, and nonconformances, are promptly identified and corrected. Because of the serious degradation which has occurred, and the belief that additional occurrences of noncompliance with GDC 14, and Criteria II and XVI will occur, the NRC has determined that imposition of Appendix VIII beginning 6 months after the final rule has been published under the compliance exception to § 50.109(a)(4)(i) is appropriate. Therefore, a backfit analysis is not required and the cost-benefit standards of § 50.109(a)(3) do not apply. A complete discussion is contained in the documented evaluation.

The rationale for application of the backfit rule and the backfit justification for the various items contained in this final rule are contained in the regulatory analysis and documented evaluation. The regulatory analysis and documented evaluation are available for inspection at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC. Single copies of the regulatory analysis and documented evaluation are available from Thomas G. Scarbrough, Division of Engineering, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–2794, or Robert A. Hermann, Division of Engineering, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–2768.

### 9. Small Business Regulatory Enforcement Fairness Act

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

### List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 50.

## PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

**Authority:** Sections 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955 as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. Section 50.55a is amended as follows:

a. By removing paragraph (b)(2)(vii);

b. By redesignating and revising paragraphs (b)(2)(viii), (b)(2)(ix), and (b)(2)(x) as (b)(2)(vii), (b)(2)(viii), and (b)(2)(ix), respectively;

c. By adding paragraphs (b)(1)(i) through (b)(1)(v), (b)(2)(x) through (b)(2)(xvii), (b)(3), (g)(4)(iii), and (g)(6)(ii)(C); and

d. By revising the introductory paragraph, the introductory text of paragraph (b), paragraph (b)(1), the introductory text of paragraph (b)(2), paragraph (b)(2)(vi), the introductory text of paragraph (f), paragraphs (f)(1), the introductory text of paragraph (f)(3), paragraphs (f)(3)(iii), (f)(3)(iv), the introductory text of paragraph (f)(4), paragraph (g)(1), the introductory text of paragraph (g)(3), paragraph (g)(3)(i), the introductory paragraph of (g)(4), and paragraphs (g)(4)(v)(C), (g)(6)(ii)(B)(*1*), and (g)(6)(ii)(B)(*2*), to read as follows:

### § 50.55a Codes and standards.

Each operating license for a boiling or pressurized water-cooled nuclear power facility is subject to the conditions in paragraphs (f) and (g) of this section and each construction permit for a utilization facility is subject to the following conditions in addition to those specified in § 50.55.

* * * * *

(b) The ASME Boiler and Pressure Vessel Code, and the ASME Code for Operation and Maintenance of Nuclear Power Plants, which are referenced in the following paragraphs, were approved for incorporation by reference by the Director of the Federal Register. A notice of any changes made to the material incorporated by reference will be published in the **Federal Register**. Copies of the ASME Boiler and Pressure Vessel Code and the ASME Code for Operation and Maintenance of Nuclear Power Plants may be purchased from the American Society of Mechanical Engineers, Three Park Avenue, New York, NY 10016. They are also available for inspection at the NRC Library, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852–2738.

Copies are also available at the Office of the Federal Register, 800 N. Capitol Street, Suite 700, Washington, DC.

(1) As used in this section, references to Section III of the ASME Boiler and Pressure Vessel Code refer to Section III, Division 1, and include editions through the 1995 Edition and addenda through the 1996 Addenda, subject to the following limitations and modifications:

(i) *Section III Materials.* When applying the 1992 Edition of Section III, licensees must apply the 1992 Edition with the 1992 Addenda of Section II of the ASME Boiler and Pressure Vessel Code.

(ii) *Weld leg dimensions.* When applying the 1989 Addenda through the 1996 Addenda of Section III, licensees may not apply paragraph NB–3683.4(c)(1), Footnote 11 to Figure NC–3673.2(b)–1, and Figure ND–3673.2(b)–1.

(iii) *Seismic design.* Licensees may use Articles NB–3200, NB–3600, NC–3600, and ND–3600 up to and including the 1993 Addenda, subject to the limitation specified in paragraph (b)(1)(ii) of this section. Licensees shall not use these Articles in the 1994 Addenda through the 1996 Addenda.

(iv) *Quality assurance.* When applying editions and addenda later than the 1989 Edition of Section III, the requirements of NQA–1, ''Quality Assurance Requirements for Nuclear Facilities,'' 1986 Edition through the 1992 Edition, are acceptable for use provided that the edition and addenda of NQA–1 specified in NCA–4000 is used in conjunction with the administrative, quality, and technical provisions contained in the edition and addenda of Section III being used.

(v) *Independence of inspection.* Licensees may not apply NCA–4134.10(a) of Section III, 1995 Edition with the 1996 Addenda.

(2) As used in this section, references to Section XI of the ASME Boiler and Pressure Vessel Code refer to Section XI, Division 1, and include editions through the 1995 Edition and addenda through the 1996 Addenda, subject to the following limitations and modifications:

* * * * *

(vi) *Effective edition and addenda of Subsection IWE and Subsection IWL, Section XI.* Licensees may use either the 1992 Edition with the 1992 Addenda or the 1995 Edition with the 1996 Addenda of Subsection IWE and Subsection IWL as modified and supplemented by the requirements in § 50.55a(b)(2)(viii) and § 50.55a(b)(2)(ix) when implementing the containment inservice inspection requirements of this section.

(vii) *Section XI References to OM Part 4, OM Part 6 and OM Part 10 (Table IWA–1600–1).* When using Table IWA–1600–1, ''Referenced Standards and Specifications,'' in the Section XI, Division 1, 1987 Addenda, 1988 Addenda, or 1989 Edition, the specified ''Revision Date or Indicator'' for ASME/ANSI OM Part 4, ASME/ANSI Part 6, and ASME/ANSI Part 10 must be the OMa–1988 Addenda to the OM–1987 Edition. These requirements have been incorporated into the OM Code which is incorporated by reference in paragraph (b)(3) of this section.

(viii) *Examination of concrete containments.* Licensees applying Subsection IWL, 1992 Edition with the 1992 Addenda, shall apply all of the modifications in this paragraph. Licensees choosing to apply the 1995 Edition with the 1996 Addenda shall apply paragraphs (b)(2)(viii)(A), (viii)(D)(*3*), and (viii)(E) of this section.

(A) Grease caps that are accessible must be visually examined to detect grease leakage or grease cap deformations. Grease caps must be removed for this examination when there is evidence of grease cap deformation that indicates deterioration of anchorage hardware.

(B) When evaluation of consecutive surveillances of prestressing forces for the same tendon or tendons in a group indicates a trend of prestress loss such that the tendon force(s) would be less than the minimum design prestress requirements before the next inspection interval, an evaluation must be performed and reported in the Engineering Evaluation Report as prescribed in IWL–3300.

(C) When the elongation corresponding to a specific load (adjusted for effective wires or strands) during retensioning of tendons differs by more than 10 percent from that recorded during the last measurement, an evaluation must be performed to determine whether the difference is related to wire failures or slip of wires in anchorage. A difference of more than 10 percent must be identified in the ISI Summary Report required by IWA–6000.

(D) The licensee shall report the following conditions, if they occur, in the ISI Summary Report required by IWA–6000:

(*1*) The sampled sheathing filler grease contains chemically combined water exceeding 10 percent by weight or the presence of free water;

(*2*) The absolute difference between the amount removed and the amount replaced exceeds 10 percent of the tendon net duct volume;

(*3*) Grease leakage is detected during general visual examination of the containment surface.

(E) For Class CC applications, the licensee shall evaluate the acceptability of inaccessible areas when conditions exist in accessible areas that could indicate the presence of or result in degradation to such inaccessible areas. For each inaccessible area identified, the licensee shall provide the following in the ISI Summary Report required by IWA–6000:

(*1*) A description of the type and estimated extent of degradation, and the conditions that led to the degradation;

(*2*) An evaluation of each area, and the result of the evaluation, and;

(*3*) A description of necessary corrective actions.

(ix) *Examination of metal containments and the liners of concrete containments.*

(A) For Class MC applications, the licensee shall evaluate the acceptability of inaccessible areas when conditions exist in accessible areas that could indicate the presence of or result in degradation to such inaccessible areas. For each inaccessible area identified, the licensee shall provide the following in the ISI Summary Report as required by IWA–6000:

(*1*) A description of the type and estimated extent of degradation, and the conditions that led to the degradation;

(*2*) An evaluation of each area, and the result of the evaluation, and;

(*3*) A description of necessary corrective actions.

(B) When performing remotely the visual examinations required by Subsection IWE, the maximum direct examination distance specified in Table IWA–2210–1 may be extended and the minimum illumination requirements specified in Table IWA–2210–1 may be decreased provided that the conditions or indications for which the visual examination is performed can be detected at the chosen distance and illumination.

(C) The examinations specified in Examination Category E–B, Pressure Retaining Welds, and Examination Category E–F, Pressure Retaining Dissimilar Metal Welds, are optional.

(D) Section 50.55a(b)(2)(ix)(D) may be used as an alternative to the requirements of IWE–2430.

(*1*) If the examinations reveal flaws or areas of degradation exceeding the acceptance standards of Table IWE–3410–1, an evaluation must be performed to determine whether additional component examinations are required. For each flaw or area of degradation identified which exceeds acceptance standards, the licensee shall

provide the following in the ISI Summary Report required by IWA–6000:

(*i*) A description of each flaw or area, including the extent of degradation, and the conditions that led to the degradation;

(*ii*) The acceptability of each flaw or area, and the need for additional examinations to verify that similar degradation does not exist in similar components, and;

(*iii*) A description of necessary corrective actions.

(*2*) The number and type of additional examinations to ensure detection of similar degradation in similar components.

(E) A general visual examination as required by Subsection IWE must be performed once each period.

(x) *Quality Assurance.* When applying Section XI editions and addenda later than the 1989 Edition, the requirements of NQA–1, ''Quality Assurance Requirements for Nuclear Facilities,'' 1979 Addenda through the 1989 Edition, are acceptable as permitted by IWA–1400 of Section XI, if the licensee uses its 10 CFR Part 50, Appendix B, quality assurance program, in conjunction with Section XI requirements. Commitments contained in the licensee's quality assurance program description that are more stringent than those contained in NQA–1 must govern Section XI activities. Further, where NQA–1 and Section XI do not address the commitments contained in the licensee's Appendix B quality assurance program description, the commitments must be applied to Section XI activities.

(xi) *Class 1 piping.* Licensees may not apply IWB–1220, ''Components Exempt from Examination,'' of Section XI, 1989 Addenda through the 1996 Addenda, and shall apply IWB–1220, 1989 Edition.

(xii) Reserved.

(xiii) *Flaws in Class 3 Piping.* Licensees may use the provisions of Code Case N–513, ''Evaluation Criteria for Temporary Acceptance of Flaws in Class 3 Piping,'' Revision 0, and Code Case N–523–1, ''Mechanical Clamping Devices for Class 2 and 3 Piping.'' Licensees choosing to apply Code Case N–523–1 shall apply all of its provisions. Licensees choosing to apply Code Case N–513 shall apply all of its provisions subject to the following:

(A) When implementing Code Case N–513, the specific safety factors in paragraph 4.0 must be satisfied.

(B) Code Case N–513 may not be applied to:

(*1*) Components other than pipe and tube, such as pumps, valves, expansion joints, and heat exchangers;

(*2*) Leakage through a flange gasket;

(*3*) Threaded connections employing nonstructural seal welds for leakage prevention (through seal weld leakage is not a structural flaw, thread integrity must be maintained); and

(*4*) Degraded socket welds.

(xiv) *Appendix VIII personnel qualification.* All personnel qualified for performing ultrasonic examinations in accordance with Appendix VIII shall receive 8 hours of annual hands-on training on specimens that contain cracks. This training must be completed no earlier than 6 months prior to performing ultrasonic examinations at a licensee's facility.

(xv) *Appendix VIII specimen set and qualification requirements.* The following provisions may be used to modify implementation of Appendix VIII of Section XI, 1995 Edition with the 1996 Addenda. Licensees choosing to apply these provisions shall apply all of the provisions except for those in § 50.55a(b)(2)(xv)(F) which are optional.

(A) When applying Supplements 2 and 3 to Appendix VIII, the following examination coverage criteria requirements must be used:

(*1*) Piping must be examined in two axial directions and when examination in the circumferential direction is required, the circumferential examination must be performed in two directions, provided access is available.

(*2*) Where examination from both sides is not possible, full coverage credit may be claimed from a single side for ferritic welds. Where examination from both sides is not possible on austenitic welds, full coverage credit from a single side may be claimed only after completing a successful single sided Appendix VIII demonstration using flaws on the opposite side of the weld.

(B) The following provisions must be used in addition to the requirements of Supplement 4 to Appendix VIII:

(*1*) Paragraph 3.1, Detection acceptance criteria—Personnel are qualified for detection if the results of the performance demonstration satisfy the detection requirements of ASME Section XI, Appendix VIII, Table VIII–S4–1 and no flaw greater than 0.25 inch through wall dimension is missed.

(*2*) Paragraph 1.1(c), Detection test matrix—Flaws smaller than the 50 percent of allowable flaw size, as defined in IWB–3500, need not be included as detection flaws. For procedures applied from the inside surface, use the minimum thickness specified in the scope of the procedure to calculate a/t. For procedures applied from the outside surface, the actual thickness of the test specimen is to be used to calculate a/t.

(C) When applying Supplement 4 to Appendix VIII, the following provisions must be used:

(*1*) A depth sizing requirement of 0.15 inch RMS shall be used in lieu of the requirements in Subparagraphs 3.2(a) and 3.2(b).

(*2*) In lieu of the location acceptance criteria requirements of Subparagraph 2.1(b), a flaw will be considered detected when reported within 1.0 inch or 10 percent of the metal path to the flaw, whichever is greater, of its true location in the X and Y directions.

(*3*) In lieu of the flaw type requirements of Subparagraph 1.1(e)(1), a minimum of 70 percent of the flaws in the detection and sizing tests shall be cracks. Notches, if used, must be limited by the following:

(*i*) Notches must be limited to the case where examinations are performed from the clad surface.

(*ii*) Notches must be semielliptical with a tip width of less than or equal to 0.010 inches.

(*iii*) Notches must be perpendicular to the surface within ± 2 degrees.

(*4*) In lieu of the detection test matrix requirements in paragraphs 1.1(e)(2) and 1.1(e)(3), personnel demonstration test sets must contain a representative distribution of flaw orientations, sizes, and locations.

(D) The following provisions must be used in addition to the requirements of Supplement 6 to Appendix VIII:

(*1*) Paragraph 3.1, Detection Acceptance Criteria—Personnel are qualified for detection if:

(*i*) No surface connected flaw greater than 0.25 inch through wall has been missed.

(*ii*) No embedded flaw greater than 0.50 inch through wall has been missed.

(*2*) Paragraph 3.1, Detection Acceptance Criteria—For procedure qualification, all flaws within the scope of the procedure are detected.

(*3*) Paragraph 1.1(b) for detection and sizing test flaws and locations—Flaws smaller than the 50 percent of allowable flaw size, as defined in IWB–3500, need not be included as detection flaws. Flaws which are less than the allowable flaw size, as defined in IWB–3500, may be used as detection and sizing flaws.

(*4*) Notches are not permitted.

(E) When applying Supplement 6 to Appendix VIII, the following provisions must be used:

(*1*) A depth sizing requirement of 0.25 inch RMS must be used in lieu of the requirements of subparagraphs 3.2(a), 3.2(c)(2), and 3.2(c)(3).

(*2*) In lieu of the location acceptance criteria requirements in Subparagraph

2.1(b), a flaw will be considered detected when reported within 1.0 inch or 10 percent of the metal path to the flaw, whichever is greater, of its true location in the X and Y directions.

(*3*) In lieu of the length sizing criteria requirements of Subparagraph 3.2(b), a length sizing acceptance criteria of 0.75 inch RMS must be used.

(*4*) In lieu of the detection specimen requirements in Subparagraph 1.1(e)(1), a minimum of 55 percent of the flaws must be cracks. The remaining flaws may be cracks or fabrication type flaws, such as slag and lack of fusion. The use of notches is not allowed.

(*5*) In lieu of paragraphs 1.1(e)(2) and 1.1(e)(3) detection test matrix, personnel demonstration test sets must contain a representative distribution of flaw orientations, sizes, and locations.

(F) The following provisions may be used for personnel qualification for combined Supplement 4 to Appendix VIII and Supplement 6 to Appendix VIII qualification. Licensees choosing to apply this combined qualification shall apply all of the provisions of Supplements 4 and 6 including the following provisions:

(*1*) For detection and sizing, the total number of flaws must be at least 10. A minimum of 5 flaws shall be from Supplement 4, and a minimum of 50 percent of the flaws must be from Supplement 6. At least 50 percent of the flaws in any sizing must be cracks. Notches are not acceptable for Supplement 6.

(*2*) Examination personnel are qualified for detection and length sizing when the results of any combined performance demonstration satisfy the acceptance criteria of Supplement 4 to Appendix VIII.

(*3*) Examination personnel are qualified for depth sizing when Supplement 4 to Appendix VIII and Supplement 6 to Appendix VIII flaws are sized within the respective acceptance criteria of those supplements.

(G) When applying Supplement 4 to Appendix VIII, Supplement 6 to Appendix VIII, or combined Supplement 4 and Supplement 6 qualification, the following additional provisions must be used, and examination coverage must include:

(*1*) The clad to base metal interface, including a minimum of 15 percent T (measured from the clad to base metal interface), shall be examined from four orthogonal directions using procedures and personnel qualified in accordance with Supplement 4 to Appendix VIII.

(*2*) If the clad-to-base-metal-interface procedure demonstrates detectability of flaws with a tilt angle relative to the weld centerline of at least 45 degrees, the remainder of the examination volume is considered fully examined if coverage is obtained in one parallel and one perpendicular direction. This must be accomplished using a procedure and personnel qualified for single-side examination in accordance with Supplement 6. Subsequent examinations of this volume may be performed using examination techniques qualified for a tilt angle of at least 10 degrees.

(*3*) The examination volume not addressed by § 50.55a(b)(2)(xv)(G)(*1*) is considered fully examined if coverage is obtained in one parallel and one perpendicular direction, using a procedure and personnel qualified for single sided examination when the provisions of § 50.55a(b)(2)(xv)(G)(*2*) are met.

(*4*) Where applications are limited by design to single side access, credit may be taken for the full volume provided the examination volume is covered from a single direction perpendicular to the weld and the weld volume is examined from at least one direction parallel to the weld.

(H) When applying Supplement 5 to Appendix VIII, at least 50 percent of the flaws in the demonstration test set must be cracks and the maximum misorientation shall be demonstrated with cracks. Flaws in nozzles with bore diameters equal to or less than 4 inches may be notches.

(I) When applying Supplement 5, Paragraph (a), to Appendix VIII, the following provision must be used in calculating the number of permissible false calls:

(*1*) The number of false calls allowed must be D/10, with a maximum of 3, where D is the diameter of the nozzle.

(J) When applying the requirements of Supplement 5 to Appendix VIII, qualifications for the nozzle inside radius performed from the outside surface may be performed in accordance with Code Case N–552, ''Qualification for Nozzle Inside Radius Section from the Outside Surface,'' provided that 10 CFR 50.55a(b)(2)(xv)(I)(*1*) is also satisfied.

(K) When performing nozzle-to-vessel weld examinations, the following provisions must be used when the requirements contained in Supplement 7 to Appendix VIII are applied for nozzle-to-vessel welds in conjunction with Supplement 4 to Appendix VIII, Supplement 6 to Appendix VIII, or combined Supplement 4 and Supplement 6 qualification.

(*1*) For examination of nozzle-to-vessel welds conducted from the bore, the following provisions are required to qualify the procedures, equipment, and personnel:

(*i*) For detection, a minimum of four flaws in one or more full-scale nozzle mock-ups must be added to the test set. The specimens must comply with Supplement 6, Paragraph 1.1, to Appendix VIII, except for flaw locations specified in Table VIII S6–1. Flaws may be either notches, fabrication flaws or cracks. Seventy five percent of the flaws must be cracks or fabrication flaws. Flaw locations and orientations must be selected from the choices shown in § 50.55a(b)(2)(xv)(K)(*4*), Table VIII–S7–1—Modified, except flaws perpendicular to the weld are not required. There may be no more than two flaws from each category, and at least one subsurface flaw must be included.

(*ii*) For length sizing, a minimum of four flaws as in § 50.55a(b)(2)(xv)(K)(*1*)(*i*) must be included in the test set. The length sizing results must be added to the results of combined Supplement 4 to Appendix VIII and Supplement 6 to Appendix VIII. The combined results must meet the acceptance standards contained in § 50.55a(b)(2)(xv)(E)(*3*

(*iii*) For depth sizing, a minimum of four flaws as in § 50.55a(b)(2)(xv)(K)(*1*)(*i*) must be included in the test set. Their depths must be distributed over the ranges of Supplement 4, Paragraph 1.1, to Appendix VIII, for the inner 15 percent of the wall thickness and Supplement 6, Paragraph 1.1, to Appendix VIII, for the remainder of the wall thickness. The depth sizing results must be combined with the sizing results from Supplement 4 to Appendix VIII for the inner 15 percent and to Supplement 6 to Appendix VIII for the remainder of the wall thickness. The combined results must meet the depth sizing acceptance criteria contained in §§ 50.55a(b)(2)(xv)(C)(*1*), 50.55a(b)(2)(xv)(E)(*1*), and 50.55a(b)(2)(xv)(F)(*3*).

(*2*) For examination of reactor pressure vessel nozzle-to-vessel welds conducted from the inside of the vessel,

(*i*) The clad to base metal interface and the adjacent examination volume to a minimum depth of 15 percent T (measured from the clad to base metal interface) must be examined from four orthogonal directions using a procedure and personnel qualified in accordance with Supplement 4 to Appendix VIII as modified by §§ 50.55a(b)(2)(xv)(B) and 50.55a(b)(2)(xv)(C).

(*ii*) When the examination volume defined in § 50.55a(b)(2)(xv)(K)(*2*)(*i*) cannot be effectively examined in all four directions, the examination must be

augmented by examination from the nozzle bore using a procedure and personnel qualified in accordance with § 50.55a(b)(2)(xv)(K)(*1*).

(*iii*) The remainder of the examination volume not covered by § 50.55a(b)(*2*)(xv)(K)(*2*)(*ii*) or a combination of § 50.55a(b)(2)(xv)(K)(*2*)(i) and § 50.55a(b)(2)(xv)(K)(*2*)(*ii*), must be examined from the nozzle bore using a procedure and personnel qualified in accordance with § 50.55a(b)(2)(xv)(K)(*1*), or from the vessel shell using a procedure and personnel qualified for single sided examination in accordance with Supplement 6 to Appendix VIII, as modified by §§ 50.55a(b)(2)(xv)(D), 50.55a(b)(2)(xv)(E), 50.55a(b)(2)(xv)(F), and 50.55a(b)(2)(xv)(G).

(*3*) For examination of reactor pressure vessel nozzle-to-shell welds conducted from the outside of the vessel,

(*i*) The clad to base metal interface and the adjacent metal to a depth of 15 percent T, (measured from the clad to base metal interface) must be examined from one radial and two opposing circumferential directions using a procedure and personnel qualified in accordance with Supplement 4 to Appendix VIII, as modified by §§ 50.55a(b)(2)(xv)(B) and 50.55a(b)(2)(xv)(C), for examinations performed in the radial direction, and Supplement 5 to Appendix VIII, as modified by § 50.55a(b)(2)(xv)(J), for examinations performed in the circumferential direction.

(*ii*) The examination volume not addressed by § 50.55a(b)(2)(xv)(K)(*3*)(*i*) must be examined in a minimum of one radial direction using a procedure and personnel qualified for single sided examination in accordance with Supplement 6 to Appendix VIII, as modified by §§ 50.55a(b)(2)(xv)(D), 50.55a(b)(2)(xv)(E), 50.55a(b)(2)(xv)(F), and 50.55a(b)(2)(xv)(G).

(*4*) Table VIII–S7–1, ''Flaw Locations and Orientations,'' Supplement 7 to Appendix VIII, is modified as follows:

TABLE VIII–S7–1—MODIFIED

| Flaw Locations and Orientations | | |
|---|---|---|
| | Parallel to weld | Perpendicular to weld |
| Inner 15 percent ..... | X | X |
| OD Surface ..... | X | ..... |
| Subsurface ..... | X | ..... |

(L) As a modification to the requirements of Supplement 8, Subparagraph 1.1(c), to Appendix VIII, notches may be located within one diameter of each end of the bolt or stud.

(xvi) *Appendix VIII single side ferritic vessel and piping and stainless steel piping examination.*

(A) Examinations performed from one side of a ferritic vessel weld must be conducted with equipment, procedures, and personnel that have demonstrated proficiency with single side examinations. To demonstrate equivalency to two sided examinations, the demonstration must be performed to the requirements of Appendix VIII as modified by this paragraph and §§ 50.55a(b)(2)(xv) (B) through (G), on specimens containing flaws with non-optimum sound energy reflecting characteristics or flaws similar to those in the vessel being examined.

(B) Examinations performed from one side of a ferritic or stainless steel pipe weld must be conducted with equipment, procedures, and personnel that have demonstrated proficiency with single side examinations. To demonstrate equivalency to two sided examinations, the demonstration must be performed to the requirements of Appendix VIII as modified by this paragraph and § 50.55a(b)(2)(xv)(A).

(xvii) *Reconciliation of Quality Requirements.* When purchasing replacement items, in addition to the reconciliation provisions of IWA–4200, 1995 Edition with the 1996 Addenda, the replacement items must be purchased, to the extent necessary, in accordance with the owner's quality assurance program description required by 10 CFR 50.34(b)(6)(ii).

(3) As used in this section, references to the OM Code refer to the ASME Code for Operation and Maintenance of Nuclear Power Plants, and include the 1995 Edition and the 1996 Addenda subject to the following limitations and modifications:

(i) *Quality Assurance.* When applying editions and addenda of the OM Code, the requirements of NQA–1, ''Quality Assurance Requirements for Nuclear Facilities,'' 1979 Addenda, are acceptable as permitted by ISTA 1.4 of the OM Code, provided the licensee uses its 10 CFR part 50, Appendix B, quality assurance program in conjunction with the OM Code requirements. Commitments contained in the licensee's quality assurance program description that are more stringent than those contained in NQA–1 govern OM Code activities. If NQA–1 and the OM Code do not address the commitments contained in the licensee's Appendix B quality assurance program description, the commitments must be applied to OM Code activities.

(ii) *Motor-Operated Valve stroke-time testing.* Licensees shall comply with the provisions on stroke time testing in OM Code ISTC 4.2, 1995 Edition with the 1996 Addenda, and shall establish a program to ensure that motor-operated valves continue to be capable of performing their design basis safety functions.

(iii) *Code Case OMN–1.* As an alternative to § 50.55a(b)(3)(ii), licensees may use Code Case OMN–1, ''Alternative Rules for Preservice and Inservice Testing of Certain Electric Motor-Operated Valve Assemblies in Light Water Reactor Power Plants,'' Revision 0, 1995 Edition with the 1996 Addenda, in conjunction with ISTC 4.3, 1995 Edition with the 1996 Addenda. Licensees choosing to apply the Code case shall apply all of its provisions.

(A) The adequacy of the diagnostic test interval for each valve must be evaluated and adjusted as necessary but not later than 5 years or three refueling outages (whichever is longer) from initial implementation of ASME Code Case OMN–1.

(B) When extending exercise test intervals for high risk motor-operated valves beyond a quarterly frequency, licensees shall ensure that the potential increase in core damage frequency and risk associated with the extension is small and consistent with the intent of the Commission's Safety Goal Policy Statement.

(iv) *Appendix II.* The following modifications apply when implementing Appendix II, ''Check Valve Condition Monitoring Program,'' of the OM Code, 1995 Edition with the 1996 Addenda:

(A) Valve opening and closing functions must be demonstrated when flow testing or examination methods (nonintrusive, or disassembly and inspection) are used;

(B) The initial interval for tests and associated examinations may not exceed two fuel cycles or 3 years, whichever is longer; any extension of this interval may not exceed one fuel cycle per extension with the maximum interval not to exceed 10 years; trending and evaluation of existing data must be used to reduce or extend the time interval between tests.

(C) If the Appendix II condition monitoring program is discontinued, then the requirements of ISTC 4.5.1 through 4.5.4 must be implemented.

(v) *Subsection ISTD.* Article IWF–5000, ''Inservice Inspection Requirements for Snubbers,'' of the ASME BPV Code, Section XI, provides inservice inspection requirements for examinations and tests of snubbers at nuclear power plants. Licensees may

use Subsection ISTD, ''Inservice Testing of Dynamic Restraints (Snubbers) in Light-Water Reactor Power Plants,'' ASME OM Code, 1995 Edition up to and including the 1996 Addenda, in lieu of the requirements for snubbers in Section XI, IWF–5200(a) and (b) and IWF–5300(a) and (b), by making appropriate changes to their technical specifications or licensee controlled documents. Preservice and inservice examinations shall be performed using the VT–3 visual examination method described in IWA–2213.

* * * * *

(f) *Inservice testing requirements.* Requirements for inservice inspection of Class 1, Class 2, Class 3, Class MC, and Class CC components (including their supports) are located in § 50.55a(g).

(1) For a boiling or pressurized water-cooled nuclear power facility whose construction permit was issued prior to January 1, 1971, pumps and valves must meet the test requirements of paragraphs (f)(4) and (f)(5) of this section to the extent practical. Pumps and valves which are part of the reactor coolant pressure boundary must meet the requirements applicable to components which are classified as ASME Code Class 1. Other pumps and valves that perform a function to shut down the reactor or maintain the reactor in a safe shutdown condition, mitigate the consequences of an accident, or provide overpressure protection for safety-related systems (in meeting the requirements of the 1986 Edition, or later, of the Boiler and Pressure Vessel or OM Code) must meet the test requirements applicable to components which are classified as ASME Code Class 2 or Class 3.

* * * * *

(3) For a boiling or pressurized water-cooled nuclear power facility whose construction permit was issued on or after July 1, 1974:

* * * * *

(iii)(A) Pumps and valves, in facilities whose construction permit was issued before November 22, 1999, which are classified as ASME Code Class 1 must be designed and be provided with access to enable the performance of inservice testing of the pumps and valves for assessing operational readiness set forth in Section XI of editions of the ASME Boiler and Pressure Vessel Code and Addenda[6] applied to the construction of the particular pump or valve or the Summer 1973 Addenda, whichever is later.

(B) Pumps and valves, in facilities whose construction permit is issued on or after November 22, 1999, which are classified as ASME Code Class 1 must be designed and be provided with access to enable the performance of inservice testing of the pumps and valves for assessing operational readiness set forth in editions and addenda of the ASME OM Code referenced in paragraph (b)(3) of this section at the time the construction permit is issued.

(iv)(A) Pumps and valves, in facilities whose construction permit was issued before November 22, 1999, which are classified as ASME Code Class 2 and Class 3 must be designed and be provided with access to enable the performance of inservice testing of the pumps and valves for assessing operational readiness set forth in Section XI of editions of the ASME Boiler and Pressure Vessel Code and Addenda[6] applied to the construction of the particular pump or valve or the Summer 1973 Addenda, whichever is later.

(B) Pumps and valves, in facilities whose construction permit is issued on or after November 22, 1999, which are classified as ASME Code Class 2 and 3 must be designed and be provided with access to enable the performance of inservice testing of the pumps and valves for assessing operational readiness set forth in editions and addenda of the ASME OM Code referenced in paragraph (b)(3) of this section at the time the construction permit is issued.

* * * * *

(4) Throughout the service life of a boiling or pressurized water-cooled nuclear power facility, pumps and valves which are classified as ASME Code Class 1, Class 2 and Class 3 must meet the inservice test requirements, except design and access provisions, set forth in the ASME OM Code and addenda that become effective subsequent to editions and addenda specified in paragraphs (f)(2) and (f)(3) of this section and that are incorporated by reference in paragraph (b) of this section, to the extent practical within the limitations of design, geometry and materials of construction of the components.

* * * * *

(g) * * *

(1) For a boiling or pressurized water-cooled nuclear power facility whose construction permit was issued before January 1, 1971, components (including supports) must meet the requirements of paragraphs (g)(4) and (g)(5) of this section to the extent practical. Components which are part of the reactor coolant pressure boundary and their supports must meet the requirements applicable to components which are classified as ASME Code Class 1. Other safety-related pressure vessels, piping, pumps and valves, and their supports must meet the requirements applicable to components which are classified as ASME Code Class 2 or Class 3.

* * * * *

(3) For a boiling or pressurized water-cooled nuclear power facility whose construction permit was issued on or after July 1, 1974:

(i) Components (including supports) which are classified as ASME Code Class 1 must be designed and be provided with access to enable the performance of inservice examination of such components and must meet the preservice examination requirements set forth in Section XI of editions of the ASME Boiler and Pressure Vessel Code and Addenda[6] applied to the construction of the particular component.

* * * * *

(4) Throughout the service life of a boiling or pressurized water-cooled nuclear power facility, components (including supports) which are classified as ASME Code Class 1, Class 2 and Class 3 must meet the requirements, except design and access provisions and preservice examination requirements, set forth in Section XI of editions of the ASME Boiler and Pressure Vessel Code and Addenda that become effective subsequent to editions specified in paragraphs (g)(2) and (g)(3) of this section and that are incorporated by reference in paragraph (b) of this section, to the extent practical within the limitations of design, geometry and materials of construction of the components. Components which are classified as Class MC pressure retaining components and their integral attachments, and components which are classified as Class CC pressure retaining components and their integral attachments must meet the requirements, except design and access provisions and preservice examination requirements, set forth in Section XI of the ASME Boiler and Pressure Vessel Code and Addenda that are incorporated by reference in paragraph (b) of this section, subject to the limitation listed in paragraph (b)(2)(vi) of this section and the modifications listed in paragraphs (b)(2)(viii) and (b)(2)(ix) of this section, to the extent practical within the limitation of design, geometry and materials of construction of the components.

* * * * *

(iii) Licensees may, but are not required to, perform the surface examinations of High Pressure Safety

Injection Systems specified in Table IWB–2500–1, Examination Category B–J, Item Numbers B9.20, B9.21, and B9.22.

* * * * *

(v) * * *

(C) Concrete containment pressure retaining components and their integral attachments, and the post-tensioning systems of concrete containments must meet the inservice inspection, repair, and replacement requirements applicable to components which are classified as ASME Code Class CC.

* * * * *

(6) * * *

(ii) * * *

(B) *Expedited examination of containment.*

(*1*) Licensees of all operating nuclear power plants shall implement the inservice examinations specified for the first period of the first inspection interval in Subsection IWE of the 1992 Edition with the 1992 Addenda in conjunction with the modifications specified in § 50.55a(b)(2)(ix) by September 9, 2001. The examination performed during the first period of the first inspection interval must serve the same purpose for operating plants as the preservice examination specified for plants not yet in operation.

(*2*) Licensees of all operating nuclear power plants shall implement the inservice examinations which correspond to the number of years of operation which are specified in Subsection IWL of the 1992 Edition with the 1992 Addenda in conjunction with the modifications specified in § 50.55a(b)(2)(viii) by September 9, 2001. The first examination performed must serve the same purpose for operating plants as the preservice examination specified for plants not yet in operation. The first examination of concrete must be performed prior to September 10, 2001, and the date of the examination need not comply with the requirements of IWL–2410(a) or IWL–2410(b). The date of the first examination of concrete must be used to determine the 5-year schedule for subsequent examinations subject to the provisions of IWL–2410(c).

* * * * *

(C) *Implementation of Appendix VIII to Section XI.* (*1*) The Supplements to Appendix VIII of Section XI, Division 1, 1995 Edition with the 1996 Addenda of the ASME Boiler and Pressure Vessel Code must be implemented in accordance with the following schedule: Supplements 1, 2, 3, and 8—May 22, 2000; Supplements 4 and 6—November 22, 2000; Supplement 11—November 22, 2001; and Supplements 5, 7, 10, 12, and 13—November 22, 2002.

* * * * *

Dated at Rockville, MD this 26th day of August, 1999.

For the Nuclear Regulatory Commission.

**William D. Travers,**

*Executive Director for Operations.*

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# Part III

# Environmental Protection Agency

## Solicitation Notice; Environmental Education Grants Program

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6441–9]**

## Solicitation Notice; Environmental Education Grants Program; Fiscal Year 2000

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### Section I. Overview and Deadlines

*A. Purpose of Solicitation*

This document solicits grant proposals from education institutions, environmental and educational public agencies, and not-for-profit organizations to support environmental education projects, as defined in this document. This solicitation notice contains all the information and forms necessary to prepare a proposal. If your project is selected as a finalist after the evaluation process is concluded, EPA will provide you with additional Federal forms needed to process your proposal. These grants require non-federal matching funds for at least 25% of the total cost of the project.

**Please Note:** EPA has a new agencywide policy in effect this year to streamline the grant application process. Consequently, a number of changes have been incorporated into this grant program, including brevity in the workplans of proposals submitted to Headquarters.

The Environmental Education Grants Program provides financial support for projects which design, demonstrate, or disseminate environmental education practices, methods, or techniques, including assessing environmental and ecological conditions or specific environmental issues or problems. This program is authorized under Section 6 of the National Environmental Education Act of 1990 (the Act) (Public Law 101–619).

*B. Environmental Education versus Environmental Information*

Environmental Education

Increases public awareness and knowledge about environmental issues and provides the skills to make informed decisions and take responsible actions. It does not advocate a particular viewpoint or course of action. It teaches individuals how to weigh various sides of an issue through critical thinking and it enhances their own problem-solving skills.

Environmental Information

Proposals that simply disseminate ''information'' will not be funded. These would be projects that provide facts or opinions about environmental issues or problems, but may not enhance critical-thinking, problem solving or decision-making skills. Although information is an essential element of any educational effort, environmental information is not, by itself, environmental education.

*C. Due Date and Grant Schedule*

An original proposal signed by an authorized representative *plus one copy*, must be mailed to EPA *postmarked* no later than *November 22, 1999*. Proposals postmarked after that date will not be considered for funding. EPA expects to announce the grant awards in the early Summer of 2000. Applicants should anticipate project start dates for next Summer and, for planning purposes, may use July 1, 2000, as the earliest start date.

*D. Addresses for Mailing Proposals*

Proposals requesting over $25,000 in *Federal* environmental education grant funds must be mailed to EPA Headquarters in Washington, DC; proposals requesting $25,000 or less must be mailed to the EPA Regional Office where the project takes place. The Headquarters address and the list of Regional Office mailing addresses by state is included at the end of this notice.

*E. Funding Limits Per Proposal*

EPA anticipates funding of less than $3 million for this annual grant cycle, subject to appropriations and the availability of funds. Since implementation of this grants program in 1992, there has been a great deal of public enthusiasm for developing environmental education projects. Consequently, EPA has consistently received many more applications for these grants than can be supported with available funds. The competition for grants is intense, especially at Headquarters which usually receives about 300 proposals and is able to fund less than 5% of the applicants. Regional offices generally fund about 15% of proposals seeking over $5,000 and more than 30% of proposals for $5,000 or less.

Grants in excess of $150,000 have seldom been awarded through this program. Although the Act sets a maximum limit of $250,000 in environmental education grant funds for any one project, because of limited funds, EPA prefers to award smaller grants to more recipients. Also, Congress requires that at least 25% of available funds go to small grants of $5,000 or less. In summary, you will significantly increase your chance of being funded if you request $5,000 or less from a Regional Office or $100,000 or less from Headquarters.

### Section II. Eligible Applicants and Activities

*F. Eligible Applicants*

Any local education agency, state education or environmental agency, college or university, not-for-profit organization as described in section 501(C)(3) of the Internal Revenue Code, or noncommercial educational broadcasting entity may submit a proposal. ''Tribal education agencies'' which may also apply include a school or community college which is controlled by an Indian tribe, band, or nation, which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians and which is not administered by the Bureau of Indian Affairs. These terms are defined in section 3 of the Act and 40 CFR 47.105.

Applicant organizations must be located in the United States and the majority of the educational activities must take place in the United States, Canada and/or Mexico. A teacher's school district, an educator's nonprofit organization, or a faculty member's college or university may apply, but an individual teacher, educator, or faculty member *may not*. Tribal organizations also do not qualify unless they meet the criteria listed above.

*G. Multiple or Repeat Proposals*

An organization may submit more than one proposal if the proposals are for different projects. No organization will be awarded more than one grant for the same project during the same fiscal year. Applicants who received one of these grants in the past may submit a new proposal to expand a previously funded project or to fund an entirely different one. Each new proposal will be

evaluated based upon the specific criteria set forth in this solicitation and in relation to the other proposals received in this fiscal year. Due to limited resources, EPA does not generally sustain projects beyond the initial grant period. This grant program is geared toward providing seed money to initiate new projects or to advance existing projects that are ''new'' in some way, such as reaching new audiences or new locations. If you have received a grant from this program in the past, it is essential that you explain how your current proposal is ''new.''

*H. Restrictions on Curriculum Development*

EPA strongly encourages applicants to demonstrate or disseminate existing environmental education materials (curricula, training materials, activity books, etc.) rather than designing new materials, because experts indicate that a significant amount of quality educational materials have already been developed and are under-utilized. EPA will consider funding new materials *only* where the applicant demonstrates that there is a need, e.g., that existing educational materials cannot be adapted well to a particular local environmental concern or audience, or existing materials are not otherwise accessible. The applicant must specify what steps they have taken to determine this need, e.g., you may cite a conference where this need was discussed, the results of inquiries made within your community or with various educational institutions, or a research paper or other published document. Further, EPA recommends the use of a publication entitled *Environmental Education Materials: Guidelines for Excellence* which was developed in part with EPA funding. These guidelines contain recommendations for developing and selecting quality environmental education materials. Please visit our website at ''www.epa.gov/enviroed/resources.html'' for viewing these guidelines and for information about ordering copies.

*I. Ineligible Activities*

Environmental education funds cannot be used for:

1. Technical training of environmental management professionals;
2. Non-educational research and development;
3. Environmental ''information'' projects that have no educational component, as described in section I(B); and/or
4. Construction projects—EPA will not fund construction activities such as the acquisition of real property (e.g., buildings) or the construction or modification of any building. EPA may, however, fund activities such as creating a nature trail or building a bird watching station as long as these items are an integral part of the environmental education project, and the cost is a relatively small percentage of the total amount of federal funds requested.

**Section III. Funding Priorities**

*J. Educational Priorities*

All proposals must satisfy the definition of ''environmental education'' under Section I(B) and also address one of the following educational priorities. Headquarters will fund the proposals for larger grants (over $25,000 in Federal funds) that address any of the top three categories listed below; and regional offices will fund grants in any of seven categories listed below. The order of the list is random and does not indicate a ranking. Please read the definitions that are included in this section to prevent your application from being rejected for failure to correctly address a priority, especially ''Capacity Building'' which has been completely redefined this year.

Headquarters Priorities (Federal funds in excess of $25,000)

(1) *Capacity Building:* Increasing capacity to develop and deliver coordinated environmental education programs across a state or across multiple states.

(2) *Education Reform:* Utilizing environmental education as a catalyst to advance state, local, or tribal education reform goals.

(3) *Community Issues:* Designing and implementing model projects to educate the public about environmental issues and/or health issues in their communities through community-based organizations or through print, film, broadcast, or other media.

Regional Office Priorities ($25,000 or less in Federal funds)

(1–3) *All of the Above.*

(4) *Health:* Educating teachers, students, parents, community leaders, or the public about human-health threats from environmental pollution, *especially as it affects children.*

(5) *Teaching Skills:* Educating teachers, faculty, or nonformal educators about environmental issues to improve their environmental education teaching skills, e.g., through workshops.

(6) *Career Development:* Educating students in formal or nonformal settings about environmental issues to encourage environmental careers.

(7) *Environmental Justice:* Educating low-income or culturally-diverse audiences about environmental issues, thereby advancing environmental justice.

Definitions

The terms used above and in section IV are defined as follows:

*Wide application* pertains to a project that targets a large and diverse audience in terms of numbers or demographics; or that can serve as a model program elsewhere.

*Environmental issue* is one of importance to the community, state, or region being targeted by the project, e.g., one community may have significant air pollution problems which makes teaching about human health effects from it and solutions to air pollution important, while rapid development in another community may threaten a nearby wildlife habitat, thus making habitat or ecosystem protection a high priority issue.

*Partnerships* refers to the forming of a collaborative working relationship between two or more organizations such as governmental agencies, not-for-profit organizations, educational institutions, and/or the private sector. It may also refer to intra-organizational unions such as the science and art departments within a university collaborating on a project.

*Capacity Building* refers to developing effective leaders and organizations that design, implement, and link environmental education programs across a state or states to promote long-term sustainability of the programs. Effective efforts address both leadership and organizational needs, as well as coordination to decrease fragmentation of effort and duplication across programs. Coordination should involve all major education and environmental education providers (e.g., state education and natural resource agencies, tribal education agencies, schools and school districts, professional education associations, and nonprofit education and environmental education organizations). Examples of capacity building activities include identifying and assessing needs and setting priorities; identifying, evaluating and linking programs; developing and implementing strategic plans; identifying funding sources and resources; facilitating communication and networking; promoting sustained professional development; and sponsoring leadership seminars. For purposes of this definition, States and tribal lands are equivalent and thus capacity building can take place ''across'' either or both.

**Note:** *Proposals must identify existing capacity building efforts, if any, and discuss*

*how the proposed project will support these efforts.*

*Education Reform* refers to state, local, or tribal efforts to improve student academic achievement. Where feasible, collaboration with private sector providers of technology and equipment is recommended. Education reform efforts often focus on changes in curriculum, instruction, assessment or how schools are organized. Curriculum and instructional changes may include inquiry and problem solving, real-world learning experiences, project-based learning, team building and group decision-making, and interdisciplinary study. Assessment changes may include developing content and performance standards and realigning curriculum and instruction to the new standards and new assessments. School site changes may include creating magnet schools or encouraging parental and community involvement.

**Note:** *All proposals must identify existing educational improvement needs and goals and discuss how the proposed project will address these needs and goals.*

*Human health threats from environmental pollution* as used here is intended to address recommended actions stated in EPA's ''National Agenda to Protect Children's Health from Environmental Threats.'' The agenda reads as follows: ''An informed, involved local community does a better job of making environmental decisions than a distant bureaucracy—and never more so than when it comes to our children. Parents, teachers and community leaders can and should play a vital, day-to-day role in learning about the particular environmental hazards their children face in their own communities, and then use that knowledge to make more informed decisions that prevent environmental health problems and protect children.'' Therefore, EPA encourages environmental education projects to educate the public about environmental hazards and how to minimize human exposure to preserve good health.

*Environmental Justice* refers to EPA's goal to encourage applicants to submit proposals that include efforts to target low-income and culturally-diverse populations, thereby promoting environmental justice. The term environmental justice refers to the fair treatment of people of all races, cultures, and income with respect to the development, implementation and enforcement of environmental laws, regulations, and policies. Fair treatment means that no racial, ethnic, or socioeconomic group should bear a disproportionate share of the negative environmental consequences that might result from the operation of industrial, municipal, and commercial enterprises and from the execution of federal, state, local, and tribal programs and policies. An example would be an education project directed at an environmental problem with a disproportionately high and adverse human health or environmental impact on a low-income or culturally-diverse community.

## Section IV. Requirements for Proposals and Matching Funds

### *K. Contents of Proposal and Scoring*

The proposal must contain *two* standard federal forms, a work plan with budget, and appendices, as described below. Please follow instructions and do not submit additional items.

#### Federal Forms

*Application for Federal Assistance (SF–424) and Budget Information (SF–424A)*: The SF–424 and SF–424A are required for all federal grants and must be submitted as part of your proposal. These two forms, along with instructions and samples, are included at the end of this notice. Only finalists will be asked to submit additional federal forms needed to process their proposal. EPA will make copies of your proposal for use by grant reviewers. Unnecessary forms create a paperwork burden for the reviewers.

#### Work Plan and Appendices

A work plan describes your proposed project, and your appendices, establishes your timeline, your qualifications, and your partnerships with other organizations, where applicable. Include all five sections described below which will be evaluated and scored by reviewers. The total number of points possible for each proposal is 100. Each of the following five sections of the work plan are assigned points which add up to 90. Reviewers will be given the flexibility to provide up to 10 bonus points for exceptional projects based upon the overall quality of the proposal, evidence that educational priorities will be effectively advanced by the project, and that it will provide a good return on the investment. Examples of factors for bonus points include strong partnerships, creative use of resources, innovation, and sustainability of the project.

(1) *Project Summary:* Provide the following overview of your entire project in this format and on *one page only*:

(a) *Organization:* Describe: (1) Your organization, and (2) list your key partners for this grant, if applicable. Partnerships are encouraged and considered to be a major factor in the success of projects.

(b) *Summary Statement:* Provide an overview of your project that explains the concept and your goals and objectives. This should be a very basic explanation in layman's terms to provide a reviewer with an understanding of the purpose and expected outcome of your educational project.

(c) *Educational Priority:* Identify which priority listed in section III you will address, such as education reform. Proposals may address several educational priorities, however, EPA cautions against losing focus on projects. Evaluation panels often select projects with a clearly defined purpose, rather than projects that attempt to address multiple priorities at the expense of a quality outcome.

(d) *Delivery Method:* Explain how you will reach your audience, such as workshops, conferences, interactive programs, etc.

(e) *Audience:* Describe the demographics of your target audience including the number and types you expect to reach, such as, teachers, students, specific grade levels, ethnic composition, members of the general public, etc.

(f) *Costs:* List the types of activities for which the EPA portion of grant funds will be spent.

The project summary will be scored on how well you provide an overview of your entire project using the topics stated above.

#### Project Summary Maximum Score: 10 points

(2) *Project Description:* Describe precisely what your project will achieve—why, how, when, with what, and who will benefit. Explain each aspect of your proposal in enough detail to answer a grant reviewer's questions. This section is intended to provide you with the flexibility to be creative and does not require any specific format for describing your project. However, you should address the following to ensure that grant reviewers can fully comprehend and score your project. Address each criteria in any sequence that best demonstrates the strengths of your project.

This subsection will be scored on how well you design and describe your project and how effectively your project meets the following criteria:

(a) *Why:* Explain the purpose of your project and how it will address an educational priority listed in section III, such as education reform or children's

health; and address an environmental issue, such as clean air, ecosystem protection, or cross-cutting issues; and explain the importance to your community, state, or region;

(b) *Who:* Explain who will conduct the project and identify the target audience and demonstrate an understanding of the needs of that audience (including cultural diversity where appropriate); and specify if it has the potential for wide application, and/or can serve as a model for use in other locations with a similar audience;

(c) *How:* Explain your strategy, objectives, activities, delivery methods, and outcomes to establish for reviewers that you have realistic goals and objectives and will use effective methods for reaching the target audience; and

(d) *With What:* Demonstrate that the project uses or produces quality educational products or methods that teach critical-thinking, problem-solving, and decision-making skills. (Please note restrictions on the development of curriculum and educational materials in section H.)

Project Description Maximum Score: 40 points (10 points for each of (a) through (d))

(3) *Project Evaluation:* Explain how you will ensure that you are meeting the goals and objectives of your project. Evaluation plans may be quantitative and/or qualitative and may include, for example, evaluation tools, observation, or outside consultation.

The project evaluation will be scored on how well your plan will: (a) measure the project's effectiveness; and (b) apply evaluation data gathered during your project to strengthen it.

Project Evaluation Maximum Score: 10 points (5 points for each of (a) and (b))

(4) *Budget:* Clarify how EPA funds and non-federal matching funds will be used for specific items or activities, such as personnel/salaries, fringe benefits, travel, equipment, supplies, contract costs, and indirect costs. Include a table which lists each major proposed activity, and the amount of EPA funds and/or matching funds that will be spent on each activity. Smaller grants with uncomplicated budgets may have a table that lists only a few activities. Budget periods not to exceed *one-year* are preferred by EPA for all grants and are mandatory for small grants of $5,000 or less. Budget periods for larger grants cannot exceed two-years. PLEASE NOTE the following funding restrictions:

—Indirect costs may be requested *only* if your organization has already prepared an indirect cost rate proposal and has it on file, subject to audit.

—Funds for salaries and fringe benefits may be requested *only* for those personnel who are directly involved in implementing the proposed project and whose salaries and fringe benefits are directly related to specific products or outcomes of the proposed project. EPA strongly encourages applicants to request reasonable amounts of funding for salaries and fringe benefits to ensure that your proposal is competitive.

—EPA will *not* fund the acquisition of real property (including buildings) or the construction or modification of any building.

*Matching Funds Requirement:* Non-federal matching funds of *at least* 25% of the *total cost* of the project are required, and EPA encourages matching funds of greater than 25%. The 25% match may be provided by the applicant or a partner organization or institution, and may be provided in cash or by in-kind contributions and other non-cash support. In-kind contributions often include salaries or other verifiable costs and this value must be carefully documented. In the case of salaries, applicants may use either minimum wage or fair market value.

*IMPORTANT:* The matching non-federal share is a percentage of the *entire cost* of the project. For example, if the 75% federal portion is $10,000, then the entire project should, at a minimum, have a budget of $13,333, with the recipient providing a contribution of $3,333. To assure that your match is sufficient, simply divide the Federally requested amount by three. Your match must be at least one-third of the requested amount to be sufficient. For a $5,000 EPA grant your match cannot be less than $1,667. All grants are subject to Federal audit.

*Other Federal Funds:* You may use other Federal funds in addition to those provided by this program, but not for activities that EPA is funding. You may not use any federal funds to meet any part of the required 25% match described above, unless it is specifically authorized by statute. If you have already been awarded federal funds for a project for which you are seeking additional support from this program, you must indicate those funds in the budget section of the work plan. You must also identify the project officer, agency, office, address, phone number, and the amount of the federal funds.

This subsection will be scored on: (a) How well the budget information clearly and accurately shows how funds will be used; *and* (b) whether the funding request is reasonable given the activities proposed.

Budget Maximum Score: 15 points ((a) 5 points and (b) 10 points)

(5) Appendices:

(a) *Timeline*—Include a ''time line'' to link your activities to a clear project schedule and indicate at what point over the months of your budget period each action, event, product, development, etc. occurs.

(b) *Key Personnel*—Attach a one page resume for the key personnel conducting the project (Maximum of three resumes please).

(c) *Letters of Commitment*—If there are partners, include one page letters of commitment from partners *explaining their role* in the proposed project. Do *not* include letters of endorsement or recommendation or have them mailed in later; they will *not* be considered in evaluating proposals.

Please do not submit other appendices or attachments such as video tapes or sample curricula. EPA may request such items if your proposal is among the finalists under consideration for funding.

This subsection will be scored based upon: (1) Whether the timeline clarifies the workplan and allows reviewers to determine that the project is well thought out and feasible as planned; (2) whether the key personnel are qualified to implement the proposed project; and (3) whether letters of commitment are included (if partners are used) and the extent to which a firm commitment is made.

Appendices Maximum Score: 15 points (5 points for each of (a) through (c))

*L. Page Limits*

The Work Plan should not exceed 5 pages. ''One page'' refers to one side of a single-spaced typed page. The pages must be letter sized (8 ½ × 11 inches), with margins at least one-half inch wide and with normal type size, rather than extremely small type. This page limit applies to parts 1, 2, and 3 of the Work Plan, (i.e., the Summary, Project Description, and Project Evaluation). Parts 4 and 5 (i.e. Budget and Appendices) are not included in these page limits.

*M. Submission Requirements and Copies*

The applicant must submit one original and *one* copy of the proposal (a signed SF–424, an SF–424A, a work plan, a budget, and the appendices listed above). Do *not* include other attachments such as cover letters, tables

of contents, additional Federal forms or appendices other than those listed above. Grant reviewers often lower scores on proposals for failure to follow instructions. The SF–424 should be the first page of your proposal and *must be signed* by a person authorized to receive funds. Blue ink for signatures is preferred. Proposals must be reproducible; they should not be bound. They should be stapled or clipped once in the upper left hand corner, on white paper, and with page numbers. Mailing addresses for submission of proposals are listed at the end of this document.

*N. Regulatory References*

The Environmental Education Grant Program Regulations, published in the **Federal Register** on March 9, 1992, provide additional information on EPA's administration of this program (57 FR 8390; Title 40 CFR, part 47 or 40 CFR part 47). Also, EPA's general assistance regulations at 40 CFR part 31 applies to state, local, and Indian tribal governments and 40 CFR part 30 applies to all other applicants such as nonprofit organizations.

## Section V. Review and Selection Process

*O. Proposal Review*

Proposals submitted to EPA headquarters and regional offices will be evaluated using the same criteria, as defined in sections IV and V of this solicitation. Proposals will be reviewed in two phases—the screening phase and the evaluation phase. During the screening phase, proposals will be reviewed to determine whether they meet the basic requirements of this document. Only those proposals which meet all of the basic requirements will enter the full evaluation phase of the review process. During the evaluation phase, proposals will be evaluated based upon the quality of their work plans. Reviewers conducting the screening and evaluation phases of the review process will include EPA officials and external environmental educators approved by EPA. At the conclusion of the evaluation phase, the reviewers will score work plans based upon the scoring system described in more detail in section IV. In summary, the maximum score of 100 points can be reached as follows:

(1) Project Summary—10 Points
(2) Project Description—40 Points
(3) Project Evaluation—10 Points
(4) Budget—15 Points
(5) Appendices—15 Points
(6) Bonus Points—10 Points (Reviewers grant these for outstanding proposals)

*P. Final Selections*

After individual projects are evaluated and scored by reviewers, as described under section IV, EPA officials in the regions and at headquarters will select a diverse range of finalists from the highest ranking proposals. In making the final selections, EPA will take into account the following:

(1) Effectiveness of collaborative activities and partnerships, as needed to successfully develop or implement the project;
(2) Environmental and educational importance of the activity or product;
(3) Effectiveness of the delivery mechanism (i.e., workshop, conference, etc.);
(4) Cost effectiveness of the proposal; and
(5) Geographic distribution of projects.

*Q. Notification to Applicants*

Applicants will receive a confirmation that EPA has received their proposal once EPA has received all proposals and entered them into a computerized database, usually within two months of receipt. EPA will notify applicants about the outcome of their proposal when grant awards are announced in early summer.

## Section VI. Grantees Responsibilities

*R. Responsible Officials*

The Act requires that projects be performed by the applicant or by a person satisfactory to the applicant and EPA. All proposals must identify any person other than the applicant who will assist in carrying out the project. These individuals are responsible for receiving the grant award agreement from EPA and ensuring that all grant conditions are satisfied. Recipients are responsible for the successful completion of the project.

*S. Incurring Costs*

Grant recipients may begin incurring costs on the start date identified in the EPA grant award agreement. Activities must be completed and funds spent within the time frames specified in the document.

*T. Reports and Work Products*

Specific reporting requirements will be identified in the EPA grant award agreement. Grant recipients with a federal environmental education grant greater than $100,000 will be required to submit formal semi-annual progress reports; and grantees for less may be required to submit brief semi-annual reports. Grant recipients will submit two copies of their final report and two copies of all work products to the EPA project officer within 90 days after the expiration of the budget period. This report will be accepted as the final report unless the EPA project officer notifies you that changes must be made.

## Section VII. Resource Information and Mailing List

*U. Internet Access—www.epa.gov/enviroed*

Please visit our website where you can view and download this solicitation notice, a list of EPA environmental education contacts, tips for developing successful grant applications, descriptions of past projects funded under this program, and other education links and resource materials, such as *Excellence in EE—Guidelines for Learning (K–12)* which, among other things, will help you channel your environmental education efforts towards education reform goals. In addition, a tutorial for grant applicants is available at: http://www.epa.gov/seahome/grants/src/grant.htm

If you receive this solicitation electronically and if the standard federal forms for Application (SF–424) and Budget (SF–424A) cannot be printed by your equipment, you may locate them the following ways (but please read our instructions which have been modified somewhat for this grant program): the **Federal Register** in which this document is published contains the forms and is available to be copied at many public libraries; many federal offices use the forms and have copies available; or you may call or write the appropriate EPA office listed at the end of this document.

*V. Other Funding*

Please note that this is a very competitive grants program. Limited funding is available and many grant applications are expected to be received. Therefore, the Agency cannot fund all applications. If your project is not funded, you may wish to review a listing of other EPA grant programs in the *Catalog of Federal Domestic Assistance.* This publication is available at local libraries, colleges, and universities.

*W. Classification of Notice*

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, 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 this rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this solicitation under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2030–0006.

*X. Mailing List for Year 2001 Environmental Education Grants*

EPA develops an entirely new mailing list for the grants program each year. The Fiscal Year 2001 mailing list will automatically include all applicants who submit proposals for a FY 2000 grant and anyone who specifically requests the next Solicitation Notice. If you do not submit a proposal for the year 2000 and wish to be added to our future mailing list, mail your request—please do not telephone—along with your name, organization, address, and phone number to: Enviro Education Grant Program (Year 2001), EPA Office of Environmental Education, (1704), 401 M Street, SW, Washington, D.C. 20460.

Dated: September 16, 1999.

*David L. Cohen,*

**Acting Associate Administrator, Office of Communications, Education, and Media Relations.**

**Mailing Addresses and Information**

Applicants who need more information about this grant program or clarification about specific requirements in this Solicitation Notice, may contact the EPA Environmental Education Division in Washington, D.C. for grant requests of more than $25,000 or their EPA regional office for grant requests of $25,000 or less.

**U.S. EPA HEADQUARTERS—For Proposals Requesting More than $25,000**

Mail proposals to:
Environmental Education Grant Program, Office of Enviro Education (1704), 401 M Street, S.W., Room 364 WT, Washington, D.C. 20460
Information:
Diane Berger and Sheri Jojokian (202) 260–8619

**U.S. EPA REGIONAL OFFICES—For Proposals Requesting $25,000 or Less**

Mail the proposal to the Regional Office where the project will take place, rather than where the applicant is located, if these locations are different.

**EPA Region I—CT, ME, MA, NH, RI, VT**

Mail proposals to:
U.S. EPA, Region I
Enviro Education Grants (MGM)
1 Congress Street, Suite 1100
Boston, MA 02114
Hand-Deliver to:
10th Floor Mail Room
Boston, MA (M–F 8am–4pm)
Information:
Kristen Conroy, (617) 918–1069

**EPA Region II—NJ, NY, PR, VI**

Mail proposals to:
U.S. EPA, Region II
Enviro Education Grants
Grants and Contracts Management Branch
290 Broadway, 27th Floor
New York, NY 10007–1866
Information:
Teresa Ippolito
(212) 637–3671

**EPA Region III—DC, DE, MD, PA, VA, WV**

Mail proposals to:
U.S. EPA, Region III
Enviro Education Grants
Grants Management Section (3PM70)
1650 Arch Street
Philadelphia, PA 19103–2029
Information:
Nan Ides
(215) 814–5546

**EPA Region IV—AL, FL, GA, KY, MS, NC, SC, TN**

Mail proposals to:
U.S. EPA, Region IV
Enviro Education Grants
Office of External Affairs
61 Forsyth Street, S.W.
Atlanta, GA 30303
Information:
Janie Foy
(404) 562–8432

**EPA Region V—IL, IN, MI, MN, OH, WI**

Mail proposals to:
U.S. EPA, Region V
Enviro Education Grants
Grants Management Section (MC–10J),
77 West Jackson Boulevard
Chicago, IL 60604
Information:
Suzanne Saric
(312) 353–3209

**Region VI—AR, LA, NM, OK, TX**

Mail proposals to:
U.S. EPA, Region VI
Enviro Education Grants (6XA)
1445 Ross Avenue
Dallas, TX 75202
Information:
Jo Taylor,
(214) 665–2204

**Region VII—IA, KS, MO, NE**

Mail proposal to:
U.S. EPA, Region VII
Enviro Education Grants
Office of External Programs
901 N. 5th Street
Kansas City, KS 66101
Information:
Rowena Michaels
(913) 551–7003

**Region VIII—CO, MT, ND, SD, UT, WY**

Mail proposals to:
U.S. EPA, Region VIII
Enviro Education Grants
999 18th Street (80C)
Denver, CO 80202–2466
Information:
Cece Forget
(303) 312–6605

**Region IX—AZ, CA, HI, NV, American Samoa, Guam, Northern Marianas**

Mail proposals to:
U.S. EPA, Region IX
Enviro Education Grants
Communications & Gov't Relations (CGR–3)
75 Hawthorne Street
San Francisco, CA 94105
Information:
Matt Gaffney
(415) 744–1166

**Region X—AK, ID, OR, WA**

Mail proposals to:
U.S. EPA, Region X
Enviro. Education Grants
Public Environmental Resource Center
1200 Sixth Avenue (EXA–124)
Seattle, WA 98101
Information:
Sally Hanft
(800) 424–4372
(206) 553–1207

**Instructions for the SF 424-Application**

This is a standard Federal form to be used by applicants as a required face sheet for the Environmental Education Grants Program. These instructions have been modified for this program only and do *not* apply to any other Federal program.

1. Check the box marked ''Non-Construction'' under ''Application.''
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If you are currently funded for a related project, enter present Federal identifier number. If not, leave blank.
5. Legal name of applicant organization, name of primary organizational unit which will undertake the grant activity, complete address of the applicant organization, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service. You can obtain this number from your payroll office. It is the same Federal Identification Number which appears on W–2 forms. If your organization does not have a number, you may obtain one by calling the Taxpayer Services number for the IRS.
7. Enter the appropriate letter in the space provided.
8. Check the box marked ''new'' since all proposals must be for new projects.
9. Enter U.S. Environmental Protection Agency.
10. Enter 66.951 Environmental Education Grants Program
11. Enter a brief descriptive title of the project.
12. List only the largest areas affected by the project (e.g., State, counties, cities).
13. Self-explanatory (see section IV, K4 in Solicitation Notice).
14. In (a) list the Congressional District where the applicant organization is located; and in (b) any District(s) affected by the program or project. If your project covers many areas, several congressional districts

will be listed. If it covers the entire state, simply put in STATEWIDE. If you are not sure about the congressional district, call the County Voter Registration Department.

15. Amount requested or to be contributed during the funding/budget period by each contributor. Line (a) is for the amount of money you are requesting from EPA. Lines (b-e) are for the amounts either you or another organization are providing for this project. Line (f) is for any program income which you expect will be generated by this project. Examples of program income are fees for services performed, income generated from the sale of a brochure produced with the grant funds, or admission fees to a conference financed by the grant funds. The total of lines (b-e) must be at least 25% of line (g), as this grant has a match requirement of 25% of the TOTAL ALLOWABLE PROJECT COSTS. Value of in-kind contributions should be included on appropriate lines as applicable. If both basic and supplemental amounts are included, show breakdown on an attached Budget sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Check (b) (NO) since your application does not have to be sent through the state clearinghouse for review.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. The authorized representative is the person who is able to contract or obligate your agency to the terms and conditions of the grant. (Please sign with blue ink.) A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

**Instructions for the SF–424A—Budget**

This is a standard Federal form used by applicants as a basic budget. These instructions *have* been modified for this grant program only and do *not* apply to any other Federal Program.

Do NOT fill in section A—Budget Summary.

*Complete Section B—Budget Categories—Columns (1), (2) and (5).*

For each major program, function or activity, fill in the total requirements for funds by object class categories. Please round figures to the nearest dollar.

All applications should contain a breakdown by the relevant object class categories shown in Lines (a–h): columns (1), (2), and (5) of section B. Include Federal funds in column (1) and non-Federal (matching) funds in column (2), and put the totals in column (5). Many applications will not have entries in all object class categories.

Line 6(i)—Show the totals of lines 6(a) through 6(h) in each column.

Line 6(j)—Show the amount of indirect costs, but ONLY if your organization has already prepared an ''indirect cost rate'' proposal and has it on file, subject to audit.

Line 6(k)—Enter the total of amounts of Lines 6(i) and 6(j).

Line 7—Program Income—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Describe the nature and source of income in the detailed budget description.

Detailed Itemization of Costs

The proposal must also contain a detailed budget description as specified in the Notice in section IV, K4, and should conform to the following:

Personnel: List all participants in the project by position title. Give the percentage of the budget period for which they will be fully employed on the project (e.g., half-time for half the budget period equals 25%, full-time for half the budget period equals 50%, etc.). Give the annual salary and the total cost over the budget period for all personnel listed.

Travel: If travel is budgeted, show destination and purpose of travel as well as costs.

Equipment: Identify all equipment to be purchased and for what purpose it will be used.

Supplies: If the supply budget is less than 2% of total costs, you do not need to itemize.

Contractual: Specify the nature and cost of such services. EPA may require review of contracts for personal services prior to their execution to assure that all costs are reasonable and necessary to the project.

Construction: Not allowable for this program.

Other: Specify all other costs under this category.

Indirect Costs: Provide an explanation of how indirect charges were calculated for this project.

BILLING CODE 6560–50–P

## Appendices—Federal Forms and Instructions

OMB Approval No. 0348-0043

**APPLICATION FOR FEDERAL ASSISTANCE**

SAMPLE

| | |
|---|---|
| 2. DATE SUBMITTED: 11/1/99 | Applicant Identifier |
| 3. DATE RECEIVED BY STATE | State Application Identifier |
| 4. DATE RECEIVED BY FEDERAL AGENCY | Federal Identifier |

1. TYPE OF SUBMISSION:
Application: ☐ Construction ☒ Non-Construction
Preapplication: ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name: Wythe County School System

Organizational Unit: Office of Teacher Training

Address (give city, county, state, and zip code): 219 Main Street, Wytheville, VA 12345 (Wythe County)

Name and telephone number of the person to be contacted on matters involving this application (give area code): Janet Jones (TEL) (540)223-4567 (FAX) (540)223-7890

6. EMPLOYER IDENTIFICATION NUMBER (EIN): 1 2 – 3 4 5 6 7 8 9

7. TYPE OF APPLICANT: (enter appropriate letter in box) B
A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Non-Profit
O. Other (Specify)

8. TYPE OF APPLICATION:
☒ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY: U.S. ENVIRONMENTAL PROTECTION AGENCY

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 6 6 . 9 5 1
TITLE: ENVIRONMENTAL EDUCATION GRANT

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:
"Eco-Blue"
Teacher Training re: Ecosystems in the Blue Ridge Mountains

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):
3 Counties: Wythe, Smith, Green

13. PROPOSED PROJECT:

| Start Date | Ending Date |
|---|---|
| 7/1/00 | 6/30/01 |

14. CONGRESSIONAL DISTRICTS OF:

| a. Applicant | b. Project |
|---|---|
| 02 | 02, 04, 12 |

15. ESTIMATED FUNDING:

| | | |
|---|---|---|
| a. Federal | $ 10,000 | .00 |
| b. Applicant | $ 3,000 | .00 |
| c. State | $ | .00 |
| d. Local | $ | .00 |
| e. Other | $ 334. | .00 |
| f. Program Income | $ | .00 |
| g. TOTAL | $ 13,334. | .00 |

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:
DATE _____
b. NO. ☒ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

| | | |
|---|---|---|
| a. Typed Name of Authorized Representative: John Smith | b. Title: Superintendent of Schools | c. Telephone number: (540)223-4231 |
| d. Signature of Authorized Representative: John Smith | | e. Date Signed: 11/1/99 |

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SAMPLE

## BUDGET INFORMATION — Non-Construction Programs

| Grant Program Function or Activity (a) | Catalog of Federal Domestic Assistance Number (b) | Section A — BUDGET SUMMARY: Estimated Unobligated Funds (c) Federal (d) | Non-Federal (e) | New or Revised Budget (f) Federal (g) | Non-Federal (h) | Total (i) |
|---|---|---|---|---|---|---|
| [redacted] | | | | | | |
| [redacted] | | | | | | |
| [redacted] | | | | | | |
| [redacted] | | | | | | |
| [redacted] | | | | | | |
| Totals | | $ | $ | $ | $ | $ |

### SECTION B — BUDGET CATEGORIES

| 6. Object Class Categories | GRANT PROGRAM, FUNCTION OR ACTIVITY (1) Federal Funds | (2) Non-Federal Match | (3) [redacted] | (4) [redacted] | Total (5) |
|---|---|---|---|---|---|
| a. Personnel | $ 4,200 | $ 1,600 | [redacted] | | $ 5,800 |
| b. Fringe Benefits | 400 | 200 | [redacted] | | 600 |
| c. Travel | 500 | 200 | [redacted] | | 700 |
| d. Equipment | | | [redacted] | | |
| e. Supplies | 2,300 | 1,000 | [redacted] | | 3,300 |
| f. Contractual | 1,200 | | [redacted] | | 1,200 |
| g. Construction | XXXXXXXXXXX | XXXXXXXXXXX | [redacted] | | XXXXXXXXXXX |
| h. Other | 1,400 | 334 | [redacted] | | 1,734 |
| i. Total Direct Charges (sum of 6a - 6h) | 10,000 | 3,334 | [redacted] | | 13,334 |
| j. Indirect Charges | | | [redacted] | | |
| k. TOTALS (sum of 6i and 6j) | $ 10,000 | $ 3,334 | [redacted] | | $ 13,334 |
| [redacted] | | | | | |
| 7. Program Income | $ | $ | [redacted] | | $ |

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# APPLICATION FOR FEDERAL ASSISTANCE

| | |
|---|---|
| 2. DATE SUBMITTED | Applicant Identifier |
| 3. DATE RECEIVED BY STATE | State Application Identifier |
| 4. DATE RECEIVED BY FEDERAL AGENCY | Federal Identifier |

1. TYPE OF SUBMISSION:

| Application | Preapplication |
|---|---|
| ☐ Construction | ☐ Construction |
| ☒ Non-Construction | ☐ Non-Construction |

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address (*give city, county, state, and zip code*):

Name and telephone number of the person to be contacted on matters involving this application (*give area code*)

(TEL)

(FAX)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (*enter appropriate letter in box*) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Non-Profit
O. Other (Specify) _____

8. TYPE OF APPLICATION:

☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration

D. Decrease Duration Other (*specify*):

9. NAME OF FEDERAL AGENCY:

U.S. ENVIRONMENTAL PROTECTION AGENCY

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 6 6 . 9 5 1

TITLE: ENVIRONMENTAL EDUCATION GRANT

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (*cities, counties, states, etc.*):

13. PROPOSED PROJECT:

| Start Date | Ending Date |
|---|---|
| | |

14. CONGRESSIONAL DISTRICTS OF:

| a. Applicant | b. Project |
|---|---|
| | |

15. ESTIMATED FUNDING:

| | |
|---|---|
| a. Federal | $ .00 |
| b. Applicant | $ .00 |
| c. State | $ .00 |
| d. Local | $ .00 |
| e. Other | $ .00 |
| f. Program Income | $ .00 |
| g. TOTAL | $ .00 |

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☒ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

| a. Typed Name of Authorized Representative | b. Title | c. Telephone number |
|---|---|---|
| d. Signature of Authorized Representative | | e. Date Signed |

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## BUDGET INFORMATION — Non-Construction Programs

**Section A — BUDGET SUMMARY**

| Grant Program Function or Activity (a) | Catalog of Federal Domestic Assistance Number (b) | Estimated Unobligated Funds | | New or Revised Budget | | |
|---|---|---|---|---|---|---|
| | | Federal (c) | Non-Federal (d) | Federal (e) | Non-Federal (f) | Total (g) |
| 1. | | $ | $ | $ | $ | $ |
| 2. | | | | | | |
| 3. | | | | | | |
| 4. | | | | | | |
| 5. Totals | | $ | $ | $ | $ | $ |

**SECTION B — BUDGET CATEGORIES**

| 6. Object Class Categories | GRANT PROGRAM, FUNCTION OR ACTIVITY | | | | Total (5) |
|---|---|---|---|---|---|
| | (1) Federal Funds | (2) Non-Federal Match | (3) | (4) | |
| a. Personnel | $ | $ | $ | $ | $ |
| b. Fringe Benefits | | | | | |
| c. Travel | | | | | |
| d. Equipment | | | | | |
| e. Supplies | | | | | |
| f. Contractual | | | | | |
| g. Construction | XXXXXXXXXXX | XXXXXXXXXXX | | | XXXXXXXXXXX |
| h. Other | | | | | |
| i. Total Direct Charges (sum of 6a - 6h) | | | | | |
| j. Indirect Charges | | | | | |
| k. TOTALS (sum of 6i and 6j) | $ | $ | $ | $ | $ |
| | | | | | |
| 7. Program Income | $ | $ | $ | $ | $ |

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[FR Doc. 99–24691 Filed 9–21–99; 8:45 am]

BILLING CODE 6560–50–C

federal register

Wednesday
September 22, 1999

# Part IV

# The President

**Proclamation 7224—National Farm Safety and Health Week, 1999**

**Proclamation 7225—National Historically Black Colleges and Universites Week, 1999**

Federal Register
Vol. 64, No. 183
Wednesday, September 22, 1999

# Presidential Documents

**Title 3—**

**The President**

**Proclamation 7224 of September 17, 1999**

## National Farm Safety and Health Week, 1999

**By the President of the United States of America**

**A Proclamation**

President Franklin Roosevelt once called America's farmers and ranchers ''the source from which the reservoirs of our nation's strength are constantly renewed.'' It was during his Administration, in the critical years of World War II, that Americans began to realize that thousands of agricultural workers and their families suffered disabling and fatal injuries each year in their work of producing food for our Nation and the world. The tragic statistics were so troubling that President Roosevelt, with the encouragement of his Secretary of Agriculture and the President of the National Safety Council, signed the initial proclamation for National Farm Safety Week in 1944.

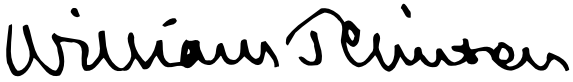
We have achieved substantial progress in the decades since that first proclamation. Farm equipment manufacturers have engineered safety features into their machinery that have decreased the likelihood of severe injuries among operators. Chemical manufacturers have reformulated pest control products to reduce the potential for poisoning incidents. Personal protective equipment is now available to protect farm and ranch workers. And safety and health professionals have made great strides in the development and implementation of educational initiatives that raise awareness among agricultural workers of measures and equipment they can use to reduce on-the-job injuries and health risks.

But we cannot afford to become complacent. Children continue to be the most vulnerable members of farming and ranching families. Those who work with livestock and around farm machinery should be carefully supervised and should be assigned chores that are commensurate with their level of awareness, knowledge, and ability to perform the job safely. Older Americans working in agriculture also are at risk; farmers and ranchers often work well past retirement age in a determined effort to maintain the farming heritage of their families and to continue contributing to the vocation they love. Many of these older men and women have suffered work-related hearing impairment over the years, and many also have limited mobility due to previous injuries or arthritis. Their families and coworkers should be vigilant in overseeing the activities of these older workers to help ensure their safety as they carry out their daily responsibilities.

America's farmers and ranchers are the backbone of our economy and the lifeblood of our land, and their skill, effort, and determination provide food and fiber for our country and the world. Our farming and ranching families stand for the values that have kept America strong for more than 220 years—hard work, faith and family, perseverance and patience. We all have a vital interest in their success, and we can all play an important role in ensuring their continued well-being. As we observe this year's theme of ''Protecting Agriculture in the Next Century,'' I urge all Americans to show their appreciation for the dedication and sacrifices of our Nation's farmers and ranchers by renewing our efforts to protect their safety and health. Together, we can ensure that the time-honored traditions of American farming and ranching will flourish in the new century.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 19 through September 25, 1999, as National Farm Safety and Health Week. I call upon government agencies, businesses, and professional associations that serve our agricultural sector to strengthen their efforts to promote safety and health programs among our Nation's farm and ranch workers. I ask agricultural workers to take advantage of the many diverse education and training programs and technical advancements that can help them avoid injury and illness. I also call upon our Nation to recognize Wednesday, September 22, 1999, as a day to focus on the risks facing young people on farms and ranches. Finally, I call upon the citizens of our Nation to reflect on the bounty we enjoy thanks to the labor and dedication of agricultural workers across our land.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of September, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-fourth.



[FR Doc. 99–24888
Filed 9–21–99; 9:16 am]
Billing code 3195–01–P

# Presidential Documents

**Proclamation 7225 of September 17, 1999**

## National Historically Black Colleges and Universities Week, 1999

**By the President of the United States of America**

**A Proclamation**

America's Historically Black Colleges and Universities (HBCUs) have provided a crucial avenue to educational and economic advancement for African American youth for more than 150 years. These institutions, dedicated to equality and excellence in higher education, have their roots in a segregated society; their survival in the face of limited financial resources or outside support stood as a beacon of hope for generations of African Americans.

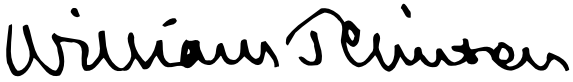
While our society has changed in the intervening decades, the need for these institutions has not. Our Nation's HBCUs have assisted African American and other students from low-income communities in achieving their educational goals and reaching their full potential, while keeping tuition costs affordable. The vast majority of African Americans with bachelor's degrees in engineering, computer science, life science, business, and mathematics have graduated from one of the 105 Historically Black Colleges and Universities. According to the Department of Education's National Center for Educational Statistics, HBCUs conferred 28 percent of all bachelor's degrees awarded to African American graduates in 1996, although enrollment at HBCUs constituted only 16 percent of all African American college students.

In addition to giving students the knowledge and skills they need to succeed in today's challenging global economy, HBCUs also offer students leadership opportunities that build self-confidence, a nurturing learning and social environment, and networks of successful alumni who serve as positive role models and mentors for graduates. Cultural programs and educational outreach to minority- and low-income areas in our Nation help preserve African American heritage and make HBCUs a source of pride and knowledge for the communities they serve.

By serving the African American community, HBCUs serve all Americans. These institutions embody many of our most deeply cherished values—equality, diversity, opportunity, and hard work. HBCUs prepare talented young men and women to succeed in every sector of our economy. And the alumni of HBCUs have contributed immeasurably to our Nation's success—as scientists, businesspeople, educators, public servants, and so much more. As education and diversity become increasingly important in the 21st century, graduates of HBCUs will continue to be at the vanguard of America's progress.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 19 through 25, 1999, as National Historically Black Colleges and Universities Week. I call upon the people of the United States, including government officials, educators, and administrators, to observe this week with appropriate programs, ceremonies, and activities honoring America's Historically Black Colleges and Universities and their graduates.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of September, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-fourth.



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Wednesday, September 22, 1999

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

## RULES GOING INTO EFFECT SEPTEMBER 22, 1999

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Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- 2,6-Diisopropylnapthalene; published 9-22-99
- Tebuconazole; published 9-22-99
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**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Food and Drug Administration**

Animal drugs, feeds, and related products:
- Milk-producing animals; labeling of drugs; published 9-22-99

**HOUSING AND URBAN DEVELOPMENT DEPARTMENT**

Acquisition regulations:
- Miscellaneous amendments; published 8-23-99

**NUCLEAR REGULATORY COMMISSION**

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- Components; construction, inservice inspection, and inservice testing; industry codes and standards; published 9-22-99

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

Airworthiness directives:
- Airbus; published 8-18-99
- Empresa Brasileira de Aeronautica S.A.; published 8-18-99

**TREASURY DEPARTMENT**

**Internal Revenue Service**

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- Adoption taxpayer identification numbers; use by individuals in process of adopting children; published 9-22-99

## COMMENTS DUE NEXT WEEK

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**Agricultural Marketing Service**

Cherries (tart) grown in—
- Michigan et al.; comments due by 9-27-99; published 7-27-99

Milk marketing orders:
- Eastern Colorado; comments due by 9-27-99; published 9-20-99

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- Florida; comments due by 9-27-99; published 9-17-99

Shell eggs; eligibility requirements; comments due by 9-27-99; published 7-27-99

**AGRICULTURE DEPARTMENT**

**Animal and Plant Health Inspection Service**

Noxious weeds:
- Permits and interstate movement; comments due by 9-27-99; published 7-29-99

Plant-related quarantine, domestic:
- Gypsy moth; comments due by 9-27-99; published 7-27-99

**AGRICULTURE DEPARTMENT**

**Commodity Credit Corporation**

Loan and purchase programs:
- Emergency livestock assistance
  - 1998 Flood Compensation Program; comments due by 9-27-99; published 8-31-99

**AGRICULTURE DEPARTMENT**

**Federal Crop Insurance Corporation**

Crop insurance regulations:
- Forage production crop and forage seeding crop; comments due by 9-27-99; published 8-26-99
- Potato crop; certified seed endorsement; comments due by 9-28-99; published 7-30-99

**AGRICULTURE DEPARTMENT**

**Farm Service Agency**

Special programs:
- Small hog operation payment program; comments due by 9-29-99; published 8-30-99

**BLIND OR SEVERELY DISABLED, COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE**

**Committee for Purchase From People Who Are Blind or Severely Disabled**

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**COMMERCE DEPARTMENT**

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**National Oceanic and Atmospheric Administration**

Fishery conservation and management:
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- Atlantic highly migratory species—
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- West Coast States and Western Pacific fisheries—
  - Northern anchovy; comments due by 9-27-99; published 9-2-99
  - Pacific Coast groundfish; comments due by 10-1-99; published 9-16-99

**COMMODITY FUTURES TRADING COMMISSION**

Commodity option transactions:
- Enumerated agricultural commodities; off-exchange trade options; comments due by 9-30-99; published 8-31-99

Commodity pool operators and commodity trading advisors:
- Performance data and disclosure; comments due by 10-1-99; published 8-2-99

**DEFENSE DEPARTMENT**

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- Commercial items; nongovernmental purposes; comments due by 9-27-99; published 7-27-99

**EDUCATION DEPARTMENT**

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**ENERGY DEPARTMENT**

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  - Regional Transmission Organizations; comments due by 9-29-99; published 7-27-99

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**FEDERAL COMMUNICATIONS COMMISSION**

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**FEDERAL EMERGENCY MANAGEMENT AGENCY**

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**Fiscal Service**

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