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federal register

Wednesday
March 26, 1986

Briefings on How To Use the Federal Register—
For information on briefing in Dallas, TX, see announcement on the inside cover of this issue.

Selected Subjects

Administrative Practice and Procedure
Nuclear Regulatory Commission

Air Pollution Control
Environmental Protection Agency

Aircraft
Federal Aviation Administration

Antitrust
Federal Trade Commission

Aviation Safety
Federal Aviation Administration

Civil Rights
Veterans Administration

Continental Shelf
Minerals Management Service

Credit Unions
National Credit Union Administration

Endangered and Threatened Species
Fish and Wildlife Service

Exports
International Trade Administration

Fisheries
National Oceanic and Atmospheric Administration

Loan Programs—Business
Small Business Administration

CONTINUED INSIDE

Selected Subjects

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Pesticides and Pests
Environmental Protection Agency

Recreation and Recreation Areas
Forest Service

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

DALLAS, TX

WHEN: April 23; at 1:30 pm.

WHERE: Room 7A23,
Earl Cabell Federal Building,
1100 Commerce Street, Dallas, TX.

RESERVATIONS: local numbers:

Dallas	214-767-8585
Ft. Worth	817-334-3624
Austin	512-472-5494
Houston	713-229-2552
San Antonio	512-224-4471, for reservations

Contents

Federal Register
Vol. 51, No. 58
Wednesday, March 26, 1986

Agriculture Department
See also Forest Service
NOTICES
Agency information collection activities under OMB review, 10416

Alcohol, Tobacco and Firearms Bureau
NOTICES
Organization, functions, and authority delegations:
Associate Director (Compliance Operations), 10489

Census Bureau
NOTICES
Voting age population, 1985; estimates, 10418

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Illinois, 10417
New York, 10417
Wisconsin, 10417

Commerce Department
See Census Bureau; International Trade Administration; National Oceanic and Atmospheric Administration

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

Conservation and Renewable Energy Office
NOTICES
Grant awards:
Economic Opportunity Research Institute, 10438

Economic Regulatory Administration
NOTICES
Powerplant and industrial fuel use; prohibition orders, exemption requests, etc.:
O.L.S. Energy-Camarillo, 10423
Remedial orders:
Monsanto Oil Co., 10424

Education Department
NOTICES
Meetings:
Women's Educational Programs National Advisory Council, 10423

Energy Department
See Conservation and Renewable Energy Office; Economic Regulatory Administration; Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Ohio, 10387
Pesticide programs:
Special review procedures, 10391
PROPOSED RULES
Pesticide chemicals in or on raw agricultural commodities; tolerances and exemptions, etc.:
1-(4-Chlorophenoxy)-3,3-dimethyl-1-(1H-1,2,4-triazol-1-yl)-2-butanone, 10411
NOTICES
Committees; establishment, renewals, terminations, etc.:
FIFRA Scientific Advisory Panel; nominations, 10438
Hazardous waste:
Confidential information and data transfer to contractors, 10441
Pesticide, food, and feed additive petitions:
Stauffer Chemical Co. et al., 10442
Pesticide programs:
Pesticide products, conditional registration applications; approval or denial policy; correction, 10443
Pesticide registration, cancellation, etc.:
BF Goodrich Co. et al., 10443
Pesticides; temporary tolerances:
E.I. duPont de Nemours & Co., Inc., 10443
Toxic and hazardous substances control:
Premanufacture notices review period extensions, 10444

Executive Office of the President
See Management and Budget Office

Farm Credit Administration
RULES
Farm credit system:
Farm Credit System Capital Corp.; charter and organization
Correction, 10353

Federal Aviation Administration
RULES
Airworthiness directives:
British Aerospace, 10364
Short Brothers, Ltd., 10363
VOR Federal airways; correction, 10365
PROPOSED RULES
Aircraft products and parts, certification:
American Aviation Industries, 10402
Airworthiness directives:
Boeing, 10406
Jet routes, 10409
Terminal control areas; correction, 10407, 10409 (2 documents)
Transition areas, 10409

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Washington, 10444

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Otter Tail Power Co. et al., 10426
Environmental statements; availability, etc.:
Aero Construction Inc. et al., 10427
Natural gas certificate filings:
ANR Pipeline Co. et al., 10429

Gas Gathering Corp. et al., 10432
Small power production and cogeneration facilities; qualifying status:
Bakers Falls Corp. et al., 10435
Long Lake Energy Corp., 10427
Applications, hearings, determinations, etc.:
Algonquin Gas Transmission Co., 10424, 10425 (2 documents)
Anadarko Production Co., 10425
ARCO Oil & Gas Co., 10425
MIGC, Inc., 10428
Mueller Engineering Corp., 10428
Shell Offshore Inc. et al., 10437
Union Texas Petroleum Corp., 10438

Federal Highway Administration
RULES
National minimum drinking age; State noncompliance; withholding of Federal-aid highway funds, 10376

Federal Home Loan Bank Board
NOTICES
Conservator appointments:
Ben Milam Savings & Loan Association, 10445
Mercury Savings Association of Texas, 10445

Federal Maritime Commission
NOTICES
Agreements filed, etc., 10445

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 10491
Applications, hearings, determinations, etc.:
Chase Manhattan Corp., 10445
Chase Manhattan National Holding Corp. et al., 10446
Wells Fargo & Co., 10446

Federal Trade Commission
RULES
Antitrust Improvement Act; notification and report form for certain mergers and acquisitions, 10368

Fish and Wildlife Service
RULES
Endangered and threatened species:
Achyranthes rotundata, 10518
Minnesota trout lily, 10518
PROPOSED RULES
Endangered and threatened species:
Loch Lomond coyote-thistle, 10412
Migratory bird hunting:
Waterfowl hunting—
Non-toxic shot requirements, 10415

Food and Drug Administration
PROPOSED RULES
Biological products:
Bacterial vaccines and toxoids; efficacy review implementation; correction, 10410
NOTICES
Medical devices; premarket approval:
CustomEyes-38 S ET-3/ET-4 (polymacon) Tinted Hydrophilic Extended Wear Contact Lens, 10447
Meetings:
Consumer information exchange, 10448

Forest Service
RULES
Recreation management:
Occupancy and use of sites and areas of concentrated public use, 10382
NOTICES
Environmental statements; availability, etc.:
Intermountain region noxious weed and poisonous plant control program, 10416
Tahoe National Forest, CA, 10417
Tahoe National Forest, CA and NV, 10417

General Services Administration
RULES
Federal Information Resources Management Regulation:
Federal information processing standards, etc.; update
Correction, 10392

Geological Survey
NOTICES
Meetings:
Interagency Arctic Research Policy Committee, 10449

Health and Human Services Department
See also Food and Drug Administration; National Institutes of Health
NOTICES
Meetings:
Private/Public Sector Advisory Committee on Catastrophic Illness, 10447

Interior Department
See Fish and Wildlife Service; Geological Survey; Land Management Bureau; Minerals Management Service

Internal Revenue Service
RULES
Income taxes:
Stock acquisitions; section 338 elections
Correction, 10381
PROPOSED RULES
Income taxes:
Beneficiaries of tax-exempt bond issues; $40 million limitation
Correction, 10411

International Trade Administration
RULES
Export licensing:
India; exports and reexports of national security controlled commodities, 10365
NOTICES
Export privileges, actions affecting:
Moller-Butcher, Brian A., et al., 10418

Justice Department
NOTICES
Agency information collection activities under OMB review, 10450

Land Management Bureau
NOTICES
Exchange of lands:
California, 10449
Sale of public lands:
Nevada, 10449

Libraries and Information Science, National Commission
NOTICES
Meetings; Sunshine Act, 10491

Management and Budget Office
NOTICES
Budget rescissions and deferrals, 10526

Minerals Management Service
RULES
Outer Continental Shelf; oil and gas information program:
Area adjacent to a State; definition, 10381
NOTICES
Meetings:
Outer Continental Shelf Advisory Board, 10450

Mississippi River Commission
NOTICES
Meetings; Sunshine Act, 10491
(4 documents)

National Commission on Libraries and Information Science
See Libraries and Information Science, National Commission

National Credit Union Administration
RULES
Federal credit unions:
Credit union service organization; investments and loans; statutory implementation, 10353
NOTICES
Agency information collection activities under OMB review, 10451

National Highway Traffic Safety Administration
RULES
National minimum drinking age; State noncompliance; withholding of Federal-aid highway funds, 10376

National Institutes of Health
NOTICES
Meetings:
General Research Support Review Committee, 10448

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Atlantic surf clam and ocean quahog, 10392
NOTICES
Permits:
Marine mammals, 10419, 10420
(2 documents)

Nuclear Regulatory Commission
PROPOSED RULES
Practice rules:
Ex parte communications, separation of functions applicable to formal adjudicatory proceedings, etc., 10393
NOTICES
Meetings:
Reactor Safeguards Advisory Committee, 10451
Meetings; Sunshine Act, 10492
Operating licenses, amendments; no significant hazards considerations:
Bi-weekly notices, 10451
Applications, hearings, determinations, etc.:
Florida Power Corp. et al., 10481
Texas Utilities Electric Co. et al., 10480
Virginia Electric & Power Co. et al.; correction, 10481

Office of Management and Budget
See Management and Budget Office

Pacific Northwest Electric Power and Conservation Planning Council
NOTICES
Meetings:
Mainstem Passage Advisory Committee; correction, 10482
State Agency Advisory Committee, 10482

Public Health Service
See Food and Drug Administration; National Institutes of Health

Securities and Exchange Commission
NOTICES
Applications, hearings, determinations, etc.:
Indiana & Michigan Electric Co., 10482
Mortgage Bankers Financial Corp. I, 10482
Universal Health Services, Inc., 10484

Small Business Administration
RULES
Business loan policy:
Cable TV and commercial radio and television broadcasters; eligibility for financial assistance (media policy rule), 10362
Surety bond guarantee, 10362
NOTICES
Agency information collection activities under OMB review, 10485
License surrenders:
Trammell Crow Investment Co., 10485
Small business investment companies:
Maximum annual cost of money; Federal Financing Bank rate, 10486

State Department
NOTICES
Hague International Child Abduction Convention; text and legal analysis, 10494

Textile Agreements Implementation Committee
NOTICES
Cotton, wool, and man-made textiles:
Sri Lanka, 10420
Thailand; correction, 10421
Textile consultation; review of trade:
Czechoslovakia, 10421
Mauritius, 10421
South Africa, 10422

Transportation Department
See also Federal Aviation Administration; Federal Highway Administration; National Highway Traffic Safety Administration
NOTICES
Aviation proceedings:
Hearings, etc.—
Imperial Airlines, Inc., et al., 10486

Treasury Department
See also Alcohol, Tobacco and Firearms Bureau; Internal Revenue Service

NOTICES
Notes, Treasury:
F-1993 series, 10488
N-1990 series, 10486

Veterans Administration
RULES
Nondiscrimination in federally-assisted programs and activities, 10383

Separate Parts In This Issue

Part II
State Department, 10494

Part III
Department of the Interior, Fish and Wildlife Service, 10518

Part IV
Office of Management and Budget, 10526

Reader Aids

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

CFR PARTS AFFECTED IN THIS ISSUE

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

10 CFR
Proposed Rules:
0 10393
2 10393

12 CFR
611 10353
701 10353

13 CFR
115 10362
120 10362

14 CFR
39 (2 documents) ... 10363, 10364
71 10365
Proposed Rules:
21 10402
39 10406
71 (3 documents) ... 10407, 10409
75 10409

15 CFR
374 10365
375 10365

16 CFR
803 10368

21 CFR
Proposed Rules:
610 10410

23 CFR
1208 10376

26 CFR
1 10381
602 10381
Proposed Rules:
1 10411

30 CFR
252 10381

36 CFR
291 10382

38 CFR
18 10383
18a 10383
18b 10383

40 CFR
52 10387
154 10391
Proposed Rules:
180 10411

41 CFR
201-8 10392

50 CFR
17 (2 documents) 10518
652 10392
Proposed Rules:
17 10412
20 10415

Rules and Regulations

Federal Register
Vol. 51, No. 58
Wednesday, March 26, 1986

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.

FARM CREDIT ADMINISTRATION

12 CFR Part 611

Farm Credit System Capital Corporation; Organization

Correction

In FR Doc. 86-5533 beginning on page 8665 in the issue of Thursday, March 13, 1986, make the following correction:

On page 8668, in the second column, in the fifth line of § 611.1141(b), "but" should read "out".

BILLING CODE 1505-01-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Investments in and Loans to Credit Union Service Organizations

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The Federal Credit Union Act (Act) authorizes Federal credit unions (FCU's), under certain limitations, to invest in and make loans to credit union service organizations (CUSO's) and subjects Federal credit union CUSO activity to National Credit Union Administration Board approval. The NCUA Board has determined to address Federal credit union involvement and the Board's own approval authority through the regulation process. This rule reflects the Board's determination on these matters and revises the NCUA's existing rule concerning CUSO's. The final rule expands and clarifies the permissible services and activities of CUSO's and provides a specific mechanism for the addition of new services and activities. The rule interprets the limitations of the Act, and addresses safety and soundness concerns, through provisions related to organizational structure, customer base, conflicts of interest, accounting practices, and NCUA access to CUSO books and records.

EFFECTIVE DATE: May 27, 1986.

ADDRESS: National Credit Union Administration, 1776 G Street NW., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: Robert M. Fenner, General Counsel, Steven R. Bisker, Assistant General Counsel, or Hattie Ulan, Staff Attorney, Office of General Counsel, at the above address or telephone: (202) 357-1030.

SUPPLEMENTARY INFORMATION:

Background

The Federal Credit Union Act authorizes Federal credit union investments in (sec. 107(7)(I), 12 U.S.C. 1757(7)(I)) and loans to (sec. 107(5)(D), 12 U.S.C. 1757(5)(D)) what have come to be known as credit union service organizations. Pursuant to the Act, the National Credit Union Administration Board is required to determine the types of organizations eligible to receive loans and investments from FCU's. The NCUA Board has interpreted sections 107(7)(I) and 107(5)(D) as applying to the same type of organizations. The Act provides only limited guidance as to the nature of these organizations. For example, section 107(7)(I) specifies that CUSO's provide services "associated with the routine operations of credit unions," and section 107(5)(D) requires that CUSO's be established "primarily to serve the needs of . . . member credit unions" and that a CUSO's business "[relate] to the daily operations of . . . credit unions."

The first CUSO regulation was promulgated in 1979. The rule placed many controls and restrictions on FCU involvement with CUSO's. The rule required NCUA approval prior to formation of a CUSO, and limited CUSO's to six specific activities. In 1982, NCUA substantially deregulated the CUSO rule, eliminating provisions with respect to issues such as organizational structure, customer base, and NCUA access to books and records. The 1982 rule also failed to provide clear guidelines concerning the permissible services and activities of CUSO's. In January, 1985, the Board determined that a reevaluation was necessary because of the lack of guidance provided by the regulation and the existence of significant supervisory problems involving CUSO's.

On January 24, 1985, the NCUA Board issued a proposed rule requesting public comment on several issues concerning the CUSO regulation (*see* 50 FR 4698, February 1, 1985). The January, 1985, proposal did *not* contain specific regulatory language. Some 90 comment letters were received. After reviewing the comments, on September 5, 1985, the NCUA Board issued a proposal containing specific regulatory language (*see* 50 FR 36998, September 11, 1985). Sixty-eight comment letters were received before the close of the comment period on November 8, 1985. Overall, the response to the proposed regulation was positive. Comment letters were received from: 31 Federal credit unions; 4 state-chartered credit unions; 8 CUSO's; 6 credit union trade associations and state leagues; and 19 others, including several law firms representing FCU's and CUSO's, a credit union mutual insurance company, trade groups representing insurers and realtors, a Congressman, and an economist.

The September 5 proposed rule contained four sections (proposed §§ 701.27(a)-(d)) involving the scope, statutory limitations and limited applicability of the regulation. The remainder of the proposal addressed the following six substantive CUSO issues: Structure and capitalization (proposed § 701.27(e)); customer base (proposed § 701.27(f)); services and activities (proposed § 701.27(g)); insider dealing (proposed § 701.27(h)); accounting procedures and NCUA access to information (proposed § 701.27(i)); and preexisting CUSO's (proposed § 701.27(j)).

The format of the final rule has been revised in order to shorten and further clarify the rule. The first four sections of the proposed rule (proposed §§ 701.27(a)-(d)) have been consolidated into two sections in the final rule §§ 701.27 (a) and (b)). Section 701.27(c), a definitional section, has been added. A new § 701.27(d) sets forth the six substantive issues previously addressed in proposed §§ 701.27(e)-(j). In addition to the changes in form, the Board has made certain substantive revisions to the rule in response to the comments received.

The following is a section-by-section analysis of the final rule with a discussion of the comments received and the changes that have been made.

Section-by-Section Analysis

Section 701.27(a)—Scope

Section 701.27(a) sets forth the scope of the regulation. It cities that statutory authority for FCU investments in and loans to CUSO's. The Board has clarified that § 701.27 does not directly regulate CUSO's but rather establishes conditions of FCU investments in and loans to such organizations. In general, the commenters found the provisions now contained in this section to be helpful.

Section 701.27(b)—Limits Imposed by the Federal Credit Union Act

This new subsection sets forth the CUSO lending and investment provisions of the FCU Act. The section is divided into two parts—§ 701.27(b)(1) addresses the provisions found in section 107(7)(I) of the Act (investment authority) and § 701.27(b)(2) addresses the provisions found in section 107(5)(D) of the Act (lending authority).

The information in this new section was set forth in three separate provisions of the proposed rule—§§ 701.27 (b), (c), and (g)(5). The commenters generally found a restatement of the statutory limitations to be helpful. One commenter suggested that the Board define what is meant by "control" and "financial institution" in the restatement (now found at § 701.27(b)(1)(iii)) of the statutory prohibitions against an FCU using the CUSO investment authority to acquire control of another financial institution. In view of the limited experience with this aspect of the CUSO authority, the Board has decided not to define these terms at this time. Regulatory definitions might not adequately address issues that arise in the future. The Board has previously stated a policy, however, that this authority may not be used to purchase shares of stock in other *deposit* taking institutions, and that policy will continue to apply.

Section 701.27(c)—Definitions

This section is new. All four of the definitions in this section appeared in various sections of the proposed rule. They have been consolidated in a "definition" section in order to improve the organization of the rule. One commenter suggested that the Board expand upon the definition of "paid-in and unimpaired capital and surplus." The definition remains as "shares and undivided earnings." A further explanation is found in Article XVIII, sections 1(g) and (h) of each FCU's Bylaws.

Section 701.27(d)—Regulatory Provisions

This section contains the provisions found in §§ 710.27(e)–701.27(j) of the proposed rule. The section is divided into eight numbered parts, each addressing a specific substantive issue. Each part is discussed separately below.

Section 701.27(d)(1)—Limits on Funding

The first sentence of this section clarifies that FCU's may invest in or loan to CUSO's in participation with other credit unions and non-credit union parties. This provision was set forth in the proposal as the first sentence of § 701.27(e). The provision has been reworded to clarify that an FCU need not invest in a CUSO before it can lend to it. The remainder of this section clarifies the point of time use to determine an FCU's unimpaired capital and surplus, for purposes of ascertaining compliance with the 1% limits on loans and investments. In response to the comments received, the rule provides that the figures reflected in the last calendar year-end financial report shall be used.

Section 701.27(d)(2)—Structure

The contents of this section were contained in § 701.27(e) of the proposed rule. As proposed, the final rule limits CUSO structure to either a corporation or a limited partnership (with FCU's serving only as limited partners). Also as proposed, CUSO's are required to be adequately capitalized and operated as separate entities. The Board believes that these requirements are the minimum necessary to ensure that FCU's will not be exposed to potential losses in excess of their funds invested in or lent to the CUSO. Twenty-one commenters specifically addressed this subsection of the proposal, with 14 basically agreeing with the subsection and only 3 totally opposed to it. The three in opposition believed that there should be no limit on CUSO structure.

Two other commenters believed that a corporation should be the only permitted CUSO structure. One of these commenters stated that an FCU limited partner can easily, and perhaps inadvertently, take part in the control of the business of the CUSO and thus lose its limited liability. While limited partnership CUSO's will be permitted, it is emphasized that FCU's must take care to limit their involvement and activities to those permitted under the law (State law) for limited partners. The rule sets forth a nonexclusive list of examples of those activities which, if engaged in by a limited partner, may cause the loss of the limited partner status and result in the partner being treated as a general partner with unlimited liability.

Several commenters asked who can be the general partner in a limited partnership CUSO, since FCU's are prohibited from serving as the general partner. The Board has not limited who, other than FCU's, may serve as the general partner. The general partner may, for example, be a credit union league, trade association, insurance company, or an individual, etc. Participating FCU's should ensure that the general partner has adequate capital and management capabilities.

One commenter suggested that CUSO's be permitted to have a cooperative corporate structure. This commenter reasoned that, since FCU's are financial cooperatives and cooperatives have the same limited liability as corporations, the cooperative corporate structure would be appropriate for CUSO's. The Board agrees. Statutes authorizing the cooperative corporate structure exist in all states and, for the most part, limit the liability of stockholders or members to the same extent as in a regular stock corporation. The cooperative corporate structure is a permissible one for CUSO's provided that appropriate state laws provide for limited liability of the members (owners) of the cooperative corporation.

At least three commenters, including one trade association, suggested that insurance coverage be obtained by the CUSO in order to protect affiliated FCU's and the National Credit Union Share Insurance Fund (NCUSIF). Property and casualty insurance should be obtained in the ordinary course of business. Other insurance, for example, against loss caused by mismanagement, may be impossible to obtain or prohibitively expensive. Accordingly, NCUA is not requiring such insurance at this time. The other safeguards of this regulation should provide adequate protection to the credit union, its members and the NCUSIF.

Several commenters stated their concern that a court will look to all the requirements that NCUA places on FCU's involvement with CUSO's and treat CUSO's as mere extensions of their investing FCU's, thus removing limited liability. As previously explained, the Board has revised the rule to make it clear that it places conditions on FCU loans and investments, rather than directly regulating CUSO's. A court decision to look past the CUSO and to the FCU would depend upon such

factors as: Inadequate capitalization; lack of separate corporate identity; common board of directors and employees; control of one corporation over another; and lack of separate books and records. These factors, as well as others, may be relied on by a court in deciding whether to pierce the corporate structure and hold the stockholders personally liable. If the CUSO is adequately capitalized and maintained as a separate entity, and the above conditions are avoided, a court is not likely to pierce the corporate veil. Of course, the courts and not the NCUA Board will be the ultimate arbiters of this issue.

Another issue addressed in the comments was whether CUSO's, once established, could form subsidiary corporations and partnerships. While CUSO's may establish corporations and partnerships, they may not be used as vehicles by which to circumvent this regulation. FCU's investing in or making loans to a CUSO that is merely a shell corporation for the purpose of forming other corporations with which to circumvent the regulation will be required to divest their investments and loans. The formation, by a CUSO, of a subsidiary corporation or a partnership should be done only in connection with carrying out permissible activities under the rule.

Section 701.27(d)(3)—Legal Opinion

Language similar to that found in this new section appeared in § 701.27(e) of the proposal. Federal credit unions must obtain written legal advice to help ensure that they are meeting the goal of limited liability in their investments in CUSO's. Since the factors to be considered may vary from state to state, it is advisable that FCU's obtain the opinion of local counsel on the issue of limited liability. While NCUA recognizes that it will not be possible to obtain a legal opinion providing absolute assurances against FCU liability, obtaining legal advice should help FCU's determine whether they have taken reasonable steps in light of applicable state law. One commenter asked how often an FCU should obtain or update this advice. FCU's should obtain a legal opinion prior to their initial investment in a CUSO and should update this information as conditions change or as otherwise warranted.

Section 701.27(d)(4)—Customer Base

Section 701.27(f) of the proposed rule limited the customer base of a CUSO to primarily affiliated credit unions (defined as those credit unions that have invested in or made loans to a CUSO) and the membership of such credit unions.

Twenty-six comments were received on the customer base issue. Eight commenters agreed with the section as written.

Sixteen commenters stated that CUSO's should be able to serve both affiliated and nonaffiliated credit unions. These commenters believed that the proposed rule was too restrictive and would not be beneficial to the credit union community. As an example, they argued that a small FUC should not be prevented from obtaining services from a CUSO specializing in data processing services because it has not invested in or made a loan to the CUSO. Other commenters pointed out that the "affiliated" restriction could be easily circumvented by an FCU making a *de minimus* investment in or loan to a CUSO.

Some of the commenters suggested that CUSO's "primarily serve credit unions and the membership of affiliated credit unions." Others urged that a broader customer base be adopted that would leave out any reference to "affiliation" and have CUSO's serve primarily credit unions and their memberships. One commenter suggested that CUSO's also be permitted to serve primarily other CUSO's. Only four commenters requested that "primarily" be defined in the regulation. However, a workable definition was not suggested.

The Board has modified the customer base subsection in the final rule, now § 701.27(d)(4), to enable CUSO's to serve both affiliated and nonaffiliated credit unions. Thus in the language of the final rule, FCU's may invest in and lend to CUSO's that serve "primarily credit unions and/or the membership of affiliated credit unions." FCU's are authorized to invest in and loan to a CUSO that serves other CUSO's financial institutions and their customers, other organizations, members of nonaffiliated credit unions, etc., *provided* the CUSO *primarily* serves credit unions and members of affiliated credit unions. FCU's cannot invest in or loan to CUSO's that *primarily* serve nonaffiliated credit union members. The Board believes that if any FCU's members seek the services of a CUSO, the FCU can either establish its own CUSO or become affiliated with an existing CUSO.

In light of the comments, the Board again considered providing a definition of the term "primarily." As it had concluded in the proposed rule, the Board believes that defining the term as a percentage of business or percentage of customers served would be arbitrary. The lack of a definition is not deemed critical since the wording in § 701.27(d)(4) reiterates the statutory requirement and will provided the Board with a sufficient basis to deal with any clear abuses.

Section 701.27(d)(5) Permissible Services and Activities

Section 701.27(d)(5) is a revised and amended version of § 701.27(g) in the proposed rule. As proposed, the subsection contained five subparts. Three of the subparts appear here. Proposed § 701.27(g)(3)—State and Local Law, has been moved to the end of the regulation (*see* § 701.27(e) of this final rule) and proposed § 701.27(g)(5)—Statutory Prohibitions, is now found in § 710.27(b)(1)(iii).

The first two subparts of § 710.27(d)(5) provide an exclusive listing of services and activities that CUSO may perform. Section 701.27(d)(5)(i) lists operational services and § 701.27(d)(5)(ii) lists financial services. Section 701.27(d)(5)(iii) sets forth the procedure for approval of additional services and activities not listed in the regulation.

Almost all of the commenters addressed the activities subsection in their letters. The vast majority of these commenters were in favor of a listing of CUSO activities. Several commenters suggested that the list be nonexclusive. Only twelve of the commenters suggested eliminating the activities list. Some of these commenters stated that a CUSO should be able to provide *any* service or activity that would benefit credit unions and their members. Other commenters argued that each FCU should be authorized to determine what is within its routine operations and its CUSO(s) should be authorized to provide those services. The majority of the commenters, however, preferred an expanded, exclusive list of services and activities.

It is important to note that sections 107(5)(D) and 107(7)(I) of the FCU Act place limits on the types of services a CUSO may provide. By statute, Federal credit unions may not invest in and lend to CUSO's that offer services beyond the limits of the Act. The final rule contains an expanded, exclusive list of service and activities. The list eliminates uncertainty by providing the NCUA Board's interpretation of the limits of the Act. All services and activities listed in the proposed rule appear in the final rule. Other services and activities have been added. They are discussed below.

Section 701.27(d)(5)(ii)—Operational Services

In response to recommendations of many commenters, the Board has added several activities to the list of operational services. The Board believes that these activities are related to an FCU's "daily operations" and are "associated with their routine operations" as required by sections 107(5)(D) and 107(7)(I) of the FCU Act. The majority of these services are self-explanatory and do not require further discussion. They include: Check cashing and wire transfers, internal audits for credit unions, shared credit union branch (service center) operations, sale of repossessed collateral, servicing of computer hardware or software, research services, record retention and storage, microfilm and microfiche services, alarm monitoring and other security services, and provision of forms and supplies.

Two activities added to the list of operational services do warrant further discussion. They are addressed below.

The single most requested activity was mortgage lending. Fourteen commenters asked that real estate mortgage origination, processing, service and sales be added to the activities list. Several reasons were given for the requested addition. Some of the commenters noted that pursuant to the former pilot program rule (former Part 723 of the NCUA Rules and Regulations), several CUSO's were approved for consumer mortgage lending. Under the pilot program, the consumer mortgage loans could only be made to members of those credit unions that had invested in the CUSO and such loans had to be made in conformance with NCUA's mortgage lending regulation. Although the pilot program regulation has been eliminated (*See* 50 FR 27417, July 3, 1985), there are FCU's that have investments and loans to CUSO's that continue to engage in mortgage lending under the prior grant of authority. These and other commenters stated that it is their belief that mortgage lending is within an FCU's routine operations and that it meets the needs of credit union members. They stressed that CUSO mortgage lending produces less liquidity risk and interest rate risk to FCU's and less risk to the NCUSIF than if the service is offered directly by the FCU. One commenter noted that a CUSO enables several credit unions to join together to offer their members consumer mortgage loans. Such an arrangement promotes the economies of scale which are essential to provide such service in a cost effective and professional manner.

In consideration of the comments, the Board has added "consumer mortgage loan origination" to the list of permissible services and activities. The reference to *consumer* mortgage loan origination is intended to clarify that the mortgage loan authority may not be used to engage in commercial real estate loans or real estate development loans. Also, the authority to engage in loan processing, which appeared in the proposed rule, has been expanded to allow loan "processing, servicing and sales," thus enabling CUSO's to provide a full range of support services for mortgage loans and for other loans originated by the credit union.

The second activity added to the list of operational services requiring further discussion is management, development, sale or lease of fixed assets. Although this activity did not appear in the proposed rule, the preamble to the rule did discuss sale and leaseback and CUSO participation in the purchase, sale, and leasing of real property with affiliated credit unions. At that time, the Board stated that, although such transactions were permissible for FCU's to enter into with CUSO's, they were not placed on the list of ongoing CUSO activities since such real property transactions can be considered a matter of general business operation. Credit unions involved in these transactions are subject to the fixed asset regulation (12 CFR 701.36) and the NCUA Interpretive Ruling and Policy Statement on Sale and Leaseback (IRPS 81-7). However, the NCUA Board now believes that these transactions should be added to the CUSO regulation both in the interest of clarity and for other reasons explained below.

A few commenters described a situation where the principal function of the CUSO is to construct, manage and maintain an office building to be leased by an FCU that has invested in and/or made loans to the CUSO. This arrangement would be faciliated by the CUSO forming a limited partnership, with the CUSO serving as the general partner, and credit union members and others as limited partners. Because of the tax shelter aspects of such an investment, and the small investment required, it would be of particular interest to members and other investors. Limited partnership interests as well as investment by the general partner CUSO would fund the project. The purpose of the limited partnership would be to acquire land, construct a building for the FCU, and to then lease the building to the FCU. Other than its involvement in the limited partnership to construct the building, and its continuing involvement in managing and servicing the building, the CUSO would not be engaging in any other significant activities.

Although this CUSO activity may be beneficial to FCU's and their members, such a project could result in significant losses to the CUSO and, correspondingly, to those FCU's that have invested in or lent funds to the CUSO. One of the commenters suggested guidelines which the Board believes represent necessary safeguards in order to ensure that an FCU engaging in this activity is in compliance with the requirements of the FCU Act and basic standards of safety and soundness. These requirements are: (1) The overall development cost of the project (e.g., the building and all attendant costs and expenses), when added to the fixed assets of the FCU involved, should not exceed 5% of the shares and retained earnings of the FCU. If more than one FCU is involved, the limit should take into account the ability of those FCU's, in the aggregate, to invest funds up to 5% of their shares and retained earnings, in fixed assets. This guideline would serve to ensure that, in the event the limited partnership (in which the CUSO is the general partner with unlimited liability) is unable to raise sufficient funds to complete the project, the FCU(s) could purchase the project from the limited partnership and complete it without violating the fixed asset regulation (*see* § 701.36 of the NCUA Rules and Regulations). (2) The maximum amount of investment by the CUSO, as general partner, should not exceed the amount of funds available to it from its affiliated credit unions (i.e., through their authority to invest in and make loans to CUSO's). The minimum level of investment participation by the limited partners that should be obtained before the project is started should be that amount which, when added to the amount available to the CUSO general partner from its affiliated credit unions, would be sufficient to complete the project without the necessity of borrowing funds from outside sources. If the limited partnership were forced to borrow additional funds from outside sources, the cost of the project (because of added interest costs) would increase and would impact on the cost effectiveness and, potentially, the economic viability of the project.

Additionally, FCU's should be aware of applicable Federal and state securities laws when they become involved in these types of projects. Further, FCU's engaging in sale and leaseback or straight lease arrangements with their CUSO must comply with IRPS 81-7 (Sale and

Leaseback) and the fixed asset regulation § 701.36 of the NCUA Rules and Regulations). It should be noted that the fixed asset rule is applicable to lease payments (e.g., for the FCU's building, etc.). Therefore, FCU's entering into transactions with their CUSO's, as discussed above, must ensure that they consider their lease payments for the space leased from the CUSO to determine that they are within the 5% limitation of § 701.36. Also, FCU's should be advised that the Board will critically review those instances where a CUSO is established as a vehicle to circumvent the limitations of the fixed asset rule. If necessary, appropriate administrative enforcement remedies will be taken.

Although not a regulatory requirement, it may be advisable for FCU's whose CUSO's are contemplating these types of transactions to be in contact with their NCUA Regional Office before engaging in such ventures to review potential safety and soundness problems. Before contacting its NCUA Regional Office, an FCU should have a preliminary plan prepared for review by the Agency.

Lastly, one commenter suggested that the Board add "building maintenance services" to the list of permissible operational services. The Board interprets building maintenance services as coming within management of fixed assets (contained in the list) and, therefore, has not separately listed this activity.

Section 701.27(d)(5)(ii)—Financial Services

Fewer comments were received with respect to the financial services section. The comments and changes that have been made are as follows:

Travel agency services have been added to the list of permissible activities. Ten commenters made this suggestion. Several of these commenters noted that some CUSO's are already providing travel agency services for their affiliated credit union members. The Board believes that travel agency services are associated with the routine credit union operations of making vacation and travel loans and issuing and selling travelers' checks. Further, such services are associated with vacation and travel savings programs.

Another service added to the list is acting as administrator for prepaid legal service plans. The Board believes that a plan which provides legal services to credit unions and/or credit union members is within a credit union's "routine operations." As part of their normal operations, credit unions have a need to obtain legal advice and services. Members may have such a need in connection with their personal financial decisions. This activity will allow a CUSO to administer a prepaid legal plan for credit unions and/or for members of affiliated credit unions providing a means by which legal services may be obtained at reduced cost.

A number of commenters suggested that "discount brokerage services" was unnecessarily limited and that FCU's should be allowed to participate in CUSO's offering a full range of securities services to credit unions and members of affiliated credit unions. The NCUA Board agrees and has substituted "securities brokerage services" for "discount brokerage services." CUSO's that choose to engage in securities activities should be aware of various Federal and state securities laws that may apply.

One commenter requested that "real estate agency services" be changed to "real estate brokerage services." Brokerage services is the term used in the industry. A trade association for real estate brokers commenting on the rule believes that real estate agency services should be eliminated from the list. They reasoned that permitting such activity would produce unfair competition and tying arrangements. Inasmuch as real estate brokerage services are associated with routine credit union operations (particularly related to FCU's mortgage lending), it has not been removed from the permissible list. The Board believes that there are adequate laws in place to protect realtors from unfair competition and, therefore, does not feel it is appropriate to prohibit such activity for CUSO's.

Three commenters representing the insurance industry recommended that the authority to act as agent for the sale of insurance be eliminated from the permissible list. They argued that involement by CUSO's in this activity was anti-competitive and anti-consumer. Acting as an agent for the sale of insurance is not a new activity for CUSO's. The Board is not aware of anti-consumer or anti-competitive practices in the sale of insurance either through a CUSO or through an FCU (pursuant to Part 721 of the NCUA Regulations). The sale of insurance is an area heavily regulated by the states, and any CUSO involvement in insurance activities will be subject to applicable state laws and regulations. Also, it should be noted that neither FCU's nor CUSO's with whom they are affiliated may underwrite (issue) insurance. This activity is *not* authorized for FCU's or CUSO's.

There were a few activities suggested by commenters that were not added to the permissible list of services. Sale of used cars was suggested by one commenter. The Board believes that this broad activity does not fall within routine credit union activities. However, sale of repossessed collateral has been added to the list. This would include sale of used cars that have been repossessed as a result of defaults by credit union members on their auto loans. Car rental was also suggested as a permissible activity. This has not been included in the final rule. However, personal property leasing (e.g., auto leasing) is in the final rule. While the courts have reocgnized auto leasing as the functional equivalent of making auto loans, it does not extend to short-term car rentals. One commenter suggested that CUSO's be permitted to offer all financial services allowed by FCU's. With such authority, a CUSO would, in effect, become a financial institution. The prohbition against an FCU acquiring control of another financial institution (*see* sect. 107(7)(I) of the FCU Act and § 701.27(b)(1)(iii) of this regulation) would preclude the addition of this authority to the permissible list.

Finally, with respect to the services offered by CUSO's, the Board has considered requiring that a formal business plan be developed both prior to formation of a CUSO and prior to offering any new service or activity. The Board believes that this is something that should always be done in the normal course of business, and that it will be done by any well-planned and well-operated CUSO. Thus, it need not be imposed as a regulatory requirement at this time. The Agency will, however, as a part of its regular examination of FCU's involved in CUSO's, determine whether this practice is followed, and will consider any necessary regulatory amendments if this appears to be a problem area in the future.

Section 701.27(d)(5)(iii)—NCUA Approval of Other Services

Section 701.27(d)(5)(iii) corresponds to § 701.27(g)(4) of the proposed rule and provides that a request to add a new service or activity not listed in the regulation will be treated as a petition to amend the regulation. The requests are to be submitted to the appropriate NCUA Regional Office and NCUA will request public comment or otherwise act on the petition within 60 days after receipt.

Nine commenters addressed this section in their comment letters. Several recommended that the time period be reduced from 60 to between 10–30 days. One commenter believed that NCUA staff approval rather than an amendment to the regulation was all

that was necessary. Another suggested that CUSO's be able to start up a new service or activity with the understanding that NCUA may object after the fact and stop activity. This commenter reasoned that waiting for NCUA approval will cause CUSO's to miss the market for new services and activities. The Board believes that "after the fact" approval is inappropriate. It is recognized that the procedure set forth in this regulation may cause some limited time delay in providing new services or activities. However, the Board believes this is preferable to the costs and other complications that would result if FCU's were to invest in or loan to a CUSO engaged in an activity that the Agency determined at a later date to be unauthorized.

One commenter asked that the Board clarify that requests to add a new service or activity are not limited to FCU's and could also be made by the credit union leagues, trade associations or any other interested parties. Leagues, trades, CUSO's themselves or others may make such requests. As note in the proposal and in the final rule, requests should be submitted to the NCUA Regional Office where the requestor is located. Requests should include a full explanation and complete documentation of the service or activity and how it is associated with routine credit union operations. Initial review will be completed by the Regional Offices. Inasmuch as the addition of a new activity to the list is a substantive change in the regulation, the requirements of the Administrative Procedure Act must be followed.

Section 701.27(d)(6)—Conflicts of Interest

Section 701.27(h) of the proposed rule addressed the issue of "insider dealing." The corresponding provisions of the final rule, now contained at § 701.27(d)(6), have been retitled "Conflicts of Interest," which the Board believes more accurately describes the scope of the provision.

The proposed section imposed a broad prohibition against FCU officials, employees, and their immediate family members receiving any type of income or compensation from an affiliated CUSO. Over 30 commenters addressed this subsection. While many of the commenters generally agreed with the proposal, there were others that, to a greater or lesser extent, disagreed.

Those in agreement with the proposal stated that to allow FCU directors and committee members to receive compensation from a CUSO would serve as an easy vehicle by which to avoid the prohibitions on compensation contained in sections 111 and 112 of the FCU Act (12 U.S.C. 1761 and 1761a). They also agreed that, without a prohibition, there would be a greater likelihood of conflicts of interest arising to the detriment of the FCU's. Decisions to establish, invest in, or loan to a CUSO, and the determination of the activities and services to be provided would be more a function of what would be most lucrative and provide greater commission income, salaries, etc. for the officials or employees, rather than that which would be most beneficial to the FCU.

Several commenters, on the other hand, expressed the view that this provision was too broad and overly restrictive. Many urged the Board to remove all restrictions on compensation. Those commenters argued that full disclosure and common law remedies (e.g., lawsuits brought against the officials for misappropriating a corporate opportunity of the FCU) would provide adequate protection to FCU's and their members. Some of the commenters agreed with the prohibition with respect to officials and upper level (management) employees but believed that it should not apply to lower level employees. Other commenters stated that the prohibition should not extend to family members of the officials and employees. Still other commenters noted that the prohibition should not apply to newly formed CUSO's.

The Board, after considering the comments, continues to believe that a strong prohibition against conflicts of interest is in the best interest of FCU's, their members, and the NCUSIF. It is axiomatic that the purpose of a CUSO is to provide services and benefits to credit unions and their members. Individuals who serve as officials and employees of Federal credit unions have the responsibility, therefore, when making decisions concerning the formation and operation of CUSO's, to base those decisions on the best interests of the credit union and its members. Motivations of personal financial gain from CUSO activities would present an inherent conflict of interest. These types of motivations have been a factor in most of the problem-case CUSO's that NCUA has encountered. Examples have included personal gain by officials from the sale and leaseback of an FCU's fixed assets, personal receipt of insurance commission income, preferential loans to CUSO's partially owned by credit union officials, and receipt by credit union officials, through a CUSO, of various types of fee income, including income on real estate closings, title searches and appraisals.

Considering the broad range of innovative services and activities permitted by the final rule, including real estate, insurance and securities services, the Board believes it is essential to ensure that the focus remain one of benefitting credit unions and their members. A clear prohibition against conflicts of interest is consistent with the cooperative nature of credit unions and longstanding principles of volunteer service by credit union officials. It will ensure that Federal credit union involvement with CUSO's does not lead to the types of problems that have arisen in some instances in the past, and that have recently marred the thrift industry in Maryland and elsewhere, related to self-dealing within affiliated businesses. At the same time, *nonvolunteer* officials and employees of the credit union properly can and should be compensated *by the credit union* based on their contribution to the overall performance of the credit union.

The Board does recognize the need of CUSO's, especially those that are newly formed, to have low cost help. The prohibitions imposed by 701.27(d)(6) would *not* preclude an FCU official or employee from working for a CUSO, provided the individual is not compensated by the CUSO. Further, the rule would not bar the CUSO from reimbursing the FCU for the services provided to it by such individual(s). Language has been added to the final rule clarifying this point. With respect to such practices, it should be noted that care should be taken to ensure that an official or employee that works for the CUSO is responsible to and takes direction from the CUSO's management when working at the CUSO.

The conflict of interest provision has been slightly modified to close some potential loopholes. The rule now provides that officials and employees may not receive direct or indirect compensation from the CUSO and that they may not receive compensation *from persons being served through the CUSO.* Thus, the rule now clearly prohibits credit union officials and employees, and their family members, from receiving commission or fee income or other compensation from the credit union's members in connection with the members' use of the CUSO.

Section 701.27(d)(7)—Accounting Procedures; Access to Information

The provisions contained in this section appeared in §§ 701.27(i)(1)–(4) of the proposed rule. The section has been reorganized but the requirements remain essentially unchanged.

The proposed and final regulation require FCU's to follow generally accepted accounting principles (GAAP) in connection with their involvement with CUSO's. Additionally, FCU's are required to obtain quarterly financial statements and an annual certified public accountant (CPA) audit report from CUSO's in which they have an outstanding investment or loan. The rule further requires that affiliated FCU's obtain written agreements from their CUSO's that they will follow GAAP *and* grant NCUA access to their books and records. The preamble to the proposed discussed certain requirements of GAAP (e.g., when filing of consolidated financial statements is necessary).

A total of twenty-three commenters addressed this subsection. The majority of the commenters agreed with the rule. Several commenters stated that the requirements of this subsection would provide protection for FCU's and the NCUSIF, but some felt that not all of the requirements were necessary (e.g., they agreed with the GAAP requirements, but believed the submission of quarterly financial reports was unnecessary). The provision of the proposed rule related to NCUA access to CUSO books and records engendered substantial controversy. Several commenters questioned the Board's authority to require access to a CUSO's books and records. One commenter inquired as to who will bear the cost of examination. Two commenters suggested that NCUA should only have access to CUSO records to the extent that they have access to records of other FCU investments.

The NCUA Board considers the requirements set forth in the rule to be necessary for the safety and soundness of FCU's and ultimately the NCUSIF. The Board believes that it has properly exercised its authority in reserving access to a CUSO's books and record. Section 204(a) of the FCU Act, 12 U.S.C. 1784(a), authorizes the NCUA Board to examine any insured credit union. Examiners are authorized to "make a thorough examination of all the affairs of the credit union. . . . " Section 204(b) of the FCU Act, 12 U.S.C. 1784(b), further authorizes the NCUA Board or its representatives to "take and preserve testimony under oath as to *any matter in respect to the affairs of any such [insured] credit union,* and to issue subpenas and subpenas duces tecum. . . ." (Emphasis added.) Such subpenas are to be enforced by the United States District Court "where the *principal office* of the credit union is located or *in which the witness* resides or *carries on business.*" (Emphasis added.)

It is clear that FCU investments in and loans to CUSO's are matters within the "affairs of the credit union." Pursuant to sections 204 (a) and (b) of the Act, NCUA is authorized to examine such credit union affairs, and if testimony and records cannot be obtained through such examination, to issue subpenas and subpenas duces tecum. This authority extends to those individuals (entities) who are involved with insured credit unions, as evidenced by the reference to "principal office. . . in which the witness. . . carries on business" in section 204(b). Therefore, in conjunction with the Board's authority to promulgate regulations (*see* sections 120(a) and 209(a)(11) of the Act), examine insured credit unions, and issue subpenas and subpenas duces tecum, the Board is within its authority to require, by regulation, the FCU's with investments in or loans to a CUSO obtain a written agreement granting NCUA access to the CUSO's books and records.

In response to the issues raised by the commenters, the cost of an examination of a CUSO's books and records would be borne by NCUA. The indirect effect, of course, is that the cost is borne by insured credit unions through the operating fees (FCU's) and insurance fees (all insured credit unions) assessed by the Agency. With respect to the issue of different treatment for this investment as compared to other FCU investments, the Board notes that the CUSO may be integrally involved in the daily operations of the investing credit union(s) and therefore, the CUSO's sound and efficient operation has significant implications for those credit unions with whom it does business. For these reasons, and others, the Board believes that different treatment is justified.

As to the requirement of following GAAP, the Board again notes that GAAP requires that entities (FCU's) holding a fifty percent or greater financial interest in another company (e.g., a CUSO) file consolidated financial statements with their subsidiary (e.g., CUSO). FCU's that do not control more than a fifty percent interest but that have sufficient control to influence the operation of financial decisions of a CUSO are advised to use the equity method of accounting. In both cases (consolidated financial statements and the equity method), inter-company transactions should be eliminated. While these specific requirements are not made a part of the final rule, they are required under GAAP. They are noted here because of their importance in representing the relationship between a CUSO and its affiliated FCU(s).

Section 701.27(d)(8)—Preexisting Credit Union Service Organizations

The proposed regulation (§ 701.27(j)) stated that FCU's affiliated with CUSO's that were not in compliance with the new final rule would have one year to come into compliance with it.

Only three commenters addressed this subsection. Two of the commenters suggested that the provision be changed to a permanent grandfather clause rather than a one year phase out. The third commenter suggested that the subsection contain a specific provision for hardship cases.

The subsection has been slightly modified. It now provides for a one year phase out and an extension for hardship cases with prior Board approval. Further, the rule differentiates between FCU investments in and loans to CUSO's. Section 701.27(d)(8) has been divided into two subparts, subpart (i) addressing FCU investments in CUSO's and subpart (ii) addressing FCU loans to CUSO's.

If an FCU's investments in a CUSO were in conformance with the prior CUSO regulation, but are not in conformance with the new final rule (e.g., FCU is a general partner of a CUSO), the FCU must divest within one year of the effective date of the new final rule or the investment must come into compliance within the year unless the FCU applies for and is granted an extension by the NCUA Board within the one year period. FCU loans to CUSO's made prior to the effective date of this final rule must conform with the rule unless the FCU applies for approval to extend the loan and such approval is granted by the NCUA Board, or the FCU cannot accelerate payment of the loan without breaching its loan contract with the CUSO. It is not the Board's intent to force FCU's to breach their loan contracts with CUSO's. A provision has been added to the final rule to clarify this position. FCU's are, however, required to accelerate repayment of these loans, if at all possible, within the terms and conditions of their loan contracts.

Section 701.27(e)—Other Laws

Section 701.27(g)(3) of the proposed rule stated that CUSO services and activities would be subject to compliance with applicable state and local laws. Several commenters noted that CUSO compliance with other laws, in addition to the FCU Act and the NCUA Rules and Regulations, is not

only relevant to services and activities, but to all aspects of CUSO operation (e.g., compliance with chartering procedure under a state corporation law for a corporate CUSO). For this reason, the provision has been removed from the services and activities section and is now in a separate section, § 701.27(e), which applies to all aspects of the final rule. Commenters also noted that other *Federal* laws, in addition to state and local laws, would be applicable to CUSO's. For example, CUSO's involved in brokerage services must comply with Federal, as well as state, securities laws. The Board agrees and has revised the rule accordingly.

Federally Insured State Chartered Credit Unions

Although this rule has direct applicability only to Federal credit unions, it may indirectly affect federally insured state chartered credit unions (FISCU's), as explained below.

Several states have provisions in their credit union statutes or regulations that allow their state chartered credit unions to make loans and/or investments that conform with the FCU Act and Regulations. FISCU's chartered under state acts having such a "wildcard" provision will, in most instances, be required under operation of state law to comply with this CUSO regulation.

A second instance where this rule may be applicable to FISCU's involves the Agreement for Insurance of Accounts (Agreement) that all FISCU's enter into with NCUA to obtain share insurance from the NCUSIF. Paragraph 8 of the Agreement requires that a FISCU establish and maintain an Investment Valuation Reserve Account for all of its investments except loans to its members or obligations or investments expressly authorized in Title I of the FCU Act. The Agreement specifies that the Reserve Account must be in an amount at least equal to the net excess of book value over current market value of the investments. If the market value cannot be determined, the Agreement requires that an amount equal to the full book value be established. FISCU's making loans to and investments in CUSO's that are not in conformance with this regulation (which implements sections 107 (5)(D) and (7)(I) of Title I of the FCU Act) must establish and maintain such Reserve Accounts.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board hereby certifies that the final rule will not have a significant impact on a substantial number of small credit unions. According to information available to NCUA, less than 300 FCU's are involved in CUSO's. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The preamble to the proposed regulation noted the collection of information requirements found in the proposal ("agree in writing"—proposal §§ 701.27(i) (3) and (4); in the final rule, the requirements are "obtain written agreements"—final rule § 701.27(d)(7)(ii)). The collection requirements were submitted to the Office of Management and Budget (OMB). The NCUA received notification from OMB that the requirements are exempt from the Paperwork Reduction Act and implementing regulation due to that fact that they are affirmations that entail no burden. (*See* 5 CFR 1320.7(k)(1).)

List of Subjects in 12 CFR Part 701

Credit unions, Credit union service organizations.

By the National Credit Union Administration Board on March 18, 1986.

Rosemary Brady,

Secretary of the Board.

PART 701—[AMENDED]

Accordingly, NCUA has amended Part 701 as follows:

1. **Authority:** The authority citation for Part 701 is revised to read as follows and the authority citations following all the sections in Part 701 are removed:

Authority: 12 U.S.C. 1755, 12 U.S.C. 1756, 12 U.S.C. 1757, 12 U.S.C. 1759, 12 U.S.C. 1761a, 12 U.S.C. 1761b, 12 U.S.C. 1766, 12 U.S.C. 1767, 12 U.S.C. 1782, 12 U.S.C. 1784, 12 U.S.C. 1787, 12 U.S.C. 1789, and 12 U.S.C. 1798.

In addition, § 701.31 is also authorized by 15 U.S.C. 1601, et seq., 42 U.S.C. 1981 and 42 U.S.C. 3601-3610.

2. Section 701.27 is revised to read as follows:

§ 701.27 Investments in and Loans to Credit Union Service Organizations.

(a) *Scope.* Sections 107(7)(I) and 107(5)(D) of the Federal Credit Union Act (12 U.S.C. 1757(7)(I) and 1757(5)(D)) authorize Federal credit unions to invest in and make loans to credit union service organizations. This regulation implements those sections by addressing various issues, including monetary limits on loans and investments, the structure of credit union service organizations, their customer base, and the range of services and activities that they may provide. The regulation also establishes prudential standards for Federal credit union involvement with credit union service organizations, through provisions concerning conflicts of interest, accounting practices, and NCUA access to books and records. The regulation applies only in cases where one or more Federal credit unions have invested in or made loans to an organization pursuant to section 107(7)(I) or 107(5)(D). The regulation does not regulate credit union service organizations directly but rather establishes conditions of Federal credit union investments in and loans to such organizations.

(b) *Limits imposed by the Federal Credit Union Act.* (1) Section 107(7)(I) of the Act:

(i) Authorizes a Federal credit union to invest in shares, stock or obligations of credit union service organizations in amounts not exceeding, in the aggregate, 1% of the credit unions's paid-in and unimpaired capital and surplus;

(ii) Limits credit union service organizations to providing services associated with the routine operations of credit unions; and

(iii) Prohibits a Federal credit union from utilizing this authority to acquire control, directly or indirectly, of another financial institution, or to invest in shares, stocks or obligations of an insurance company, trade association, liquidity facility, or other similar organization.

(2) Section 107(5)(D) of the Act:

(i) Authorizes a Federal credit union to make loans to credit union service organizations in amounts not exceeding, in the aggregate, 1% of its paid-in and unimparied capital and surplus (this is independent of the 1% investment limit pursuant to section 107(7)(I));

(ii) Requires that credit union service organizations exist primarily to meet the needs of their member credit unions; and

(iii) Limits credit union service organizations to business relating to the daily operations of the credit unions they serve.

(c) *Definitions.*— (1) *Affiliated credit unions* means those credit unions that have either invested in or made loans to a credit union service organization.

(2) *Official* means any director or committee member.

(3) *Immediate family member* means a spouse, or a child, parent, grandchild, grandparent, brother or sister, or the spouse of any such individual.

(4) *Paid-in and unimpaired capital and surplus* means shares and undivided earnings.

(d) *Regulatory provisions.*—(1) *Limits on funding.* A Federal credit union by itself, with other credit unions and/or

with non-credit union parties, may invest in and/or loan to a credit union service organization. A Federal credit union's investments in credit union service organizations may not exceed, in the aggregate, 1% of the Federal credit union's paid-in and unimpaired capital and surplus as of its last calendar year-end financial report. A Federal credit union's loans to credit union service organizations may not exceed, in the aggregate, 1% of the Federal credit union's paid-in and unimpaired capital and surplus as of its last calendar year-end financial report.

(2) *Structure.* A Federal credit union may invest in or loan to a credit union service organization only if the organization is structured as either a corporation or limited partnership.

(i) *Corporation.* A credit union service organization chartered as a corporation must be adequately capitalized and operated as a separate entity. A Federal credit union investing in or making loans to such a corporation must take those steps necessary to ensure that it will not be held liable for obligations of the corporation.

(ii) *Limited partnership.* A Federal credit union may participate only as a limited partner in a credit union service organization structured as a limited partnership. As a limited partner, the Federal credit union must not engage in those activities (e.g., control, management, decisionmaking), which, under state law, would cause the credit union to lose its status as limited partner, and correspondingly its limited liability, and be treated as a general partner.

(3) *Legal opinion.* A Federal credit union making an investment in or loan to a credit union service organization must obtain written legal advice as to whether the credit union service organization is established in a manner that will limit the credit union's potential exposure to no more than the loss of funds invested in or lent to the credit union service organization.

(4) *Customer base.* A Federal credit union may invest in or loan to a credit union service organization only if the organization primarily serves credit unions and/or the membership of affiliated credit unions (as defined in paragraph (c)(1) of this section).

(5) *Permissible services and activities.* A Federal credit union may invest in and/or loan to those credit union service organizations that provide only one or more of the following services and activities:

(i) *Operational services.* Credit card and debit card services; check cashing and wire transfers; internal audits for credit unions; ATM services; EFT services; accounting services; data processing; shared credit union branch (service center) operations; sale of repossessed collateral; management, development, sale or lease of fixed assets; sale, lease or servicing of computer hardware or software; management and personnel training and support; payment item processing; locator services; marketing services; research services; record retention and storage; microfilm and microfiche services; alarm-monitoring and other security services; debt collection services; credit analysis; consumer mortgage loan origination; loan processing, servicing and sales; coin and currency services; provision of forms and supplies.

(ii) *Financial services.* Financial planning and counseling; retirement counseling; investment counseling; securities brokerage services; estate planning; income tax preparation; acting as administrator for prepaid legal service plans; developing and administering IRA, Keogh, deferred compensation, and other personnel benefit plans; trust services; acting as trustee, guardian, conservator, estate administrator, or in any other fiduciary capacity; real estate brokerage services; travel agency services; agent for sale of insurance; personal property leasing; and provision of vehicle warranty programs.

(iii) *NCUA approval of other services.* Any service or activity which is not authorized in paragraph (d)(5)(i) or (ii) of this section must receive NCUA Board approval before a Federal credit union may invest in and/or loan to the credit union service organization that offers the service or activity. Any request for NCUA Board approval of a new service or activity should include a full explanation and complete documentation of the service or activity and how that service or activity is associated with routine credit union operations. The request should be submitted to the appropriate NCUA Regional Office. The request will be treated as a petition to amend paragraph (d)(5)(i) or (ii) of this section and NCUA will request public comment or otherwise act on the petition within 60 days after receipt.

(6) *Conflict of interest.* Individuals who serve as officials of, or are employed by, an affiliated Federal credit union (as defined in (c)(1)), and immediate family members of such individuals, may not receive any salary, commission, investment income, or other income or compensation from a credit union service organization either directly or indirectly, or from any person being served through the credit union service organization. This provision does not prohibit an official or employee of a Federal credit union from assisting in the operation of a credit union service organization, provided the individual is not compensated by the credit union service organization. Further, the credit union service organization may reimburse the Federal credit union for the services provided by the individual.

(7) *Accounting Procedures; Access to information.*—(i) *Federal credit union accounting.* A Federal credit union must follow generally accepted accounting principles (GAAP) in its involvement with credit union service organizations.

(ii) *Credit union service organization Accounting; audits and financial statements; NCUA access to books and Records.* An affiliated Federal credit union must obtain written agreements from a credit union service organization, prior to investing in or lending to the organization, that the organization will:

(A) Follow GAAP,

(B) Render financial statements (balance sheet and income statement) at least quarterly and obtain a Certified Public Accountant audit annually and provide copies of such to the affiliated Federal credit union, and

(C) Provide the NCUA Board, or its representatives, with complete access to any books and records of the credit union service organization, as deemed necessary by the Board in carrying out its responsibilities under the Federal Credit Union Act.

(8) *Preexisting credit union service organizations.* (i) Any Federal credit union investments in existence prior to the effective date of this regulation, May 27, 1986, must conform with this regulation not later than May 27, 1987, unless the NCUA Board grants its prior approval to continue such investment for a stated period.

(ii) Any Federal credit union loans in existence prior to the effective date of this regulation must conform with this regulation not later than May 27, 1987, unless:

(A) The NCUA Board grants its prior approval to continue the loan for a stated period, or

(B) Under the terms of its loan agreement the Federal credit union cannot require accelerated repayment without breaching the agreement.

(e) *Other laws.* A credit union service organization must comply with applicable Federal, state and local laws.

[FR Doc. 86-6476 Filed 3-25-86; 8:45 am]

BILLING CODE 7535-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 115

Surety Bond Guarantee

AGENCY: Small Business Administration.

ACTION: Policy statement; delay of effective date.

SUMMARY: On February 4, 1986, the Small Business Administration published a Policy Statement indicating that SBA intended to reduce its guarantees of surety bonds to 80 percent of the surety's loss on all contracts up to the statutory limit of $1 million. (See 51 FR 4297.) The effective date of that Policy Statement was to be March 6, 1986. SBA has decided to postpone the effective date of that action indefinitely pending further review of its position. This Notice is intended to provide the public with notice of that postponement.

EFFECTIVE DATE: Effective March 26, 1986, the effective date of the policy statement is delayed indefinitely.

ADDRESS: Comments may be addressed to Howard F. Huegel, Director, Office of Surety Guarantees, Small Business Administration, 4040 No. Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Howard F. Huegel, (703) 235-2900.

Dated: March 18, 1986.

James C. Sanders,

Administrator.

[FR Doc. 86-6351 Filed 3-25-86; 8:45 am]

BILLING CODE 8025-01-M

13 CFR Part 120

Business Loan Policy

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) is repealing 13 CFR § 120.101-2(b)(1)(v), "the broadcaster exception" to the general rule that SBA will grant no financial assistance to media applicants. The former rule permitted SBA financial assistance to commercial broadcasters (radio and television) and cable TV systems under the regulatory jurisdiction of the Federal Communications Commission (FCC) or to cable TV franchises granted in conformity with FCC standards.

EFFECTIVE DATE: March 26, 1986.

FOR FURTHER INFORMATION CONTACT: Charles Hertzberg, Deputy Associate Administrator for Financial Assistance, 1441 L Street, NW., Washington, DC 20416. Telephone 202-653-6574.

SUPPLEMENTARY INFORMATION: On April 11, 1985, SBA published a proposed rule to repeal the broadcaster exception (50 FR 14248). SBA received four timely comments in response to this proposal. All four commenters urged retention of the exception, arguing that the broadcast industry continues to be subject to extensive regulation, especially the "fairness" doctrine and the "equal time" rule.

I. Regulatory History

The Small Business Administration has for many years followed a policy of not granting financial assistance to otherwise eligible businesses engaged in the dissemination of intellectual property. The original regulation was based on a similar policy statement of the Reconstruction Finance Corporation, this Agency's predecessor. This "media policy" was most recently reiterated in a reorganization of the Agency's business loan regulations, 13 CFR 120.101-2(b)(1), (50 FR 12472, 12490 (March 28, 1985)). The purpose of the prohibition, as stated in the regulation, is to "avoid Government interference, or the appearance thereof, with the constitutionally protected freedoms of speech and press . . . ." The policy was adopted pursuant to the Agency's responsibility to consider the impact of loan programs on the public interest. 15 U.S.C. 633(d).

An exception to the media policy was made for commercial broadcasters and cable television in 1978. 43 FR 3701 (1978). SBA stated in its proposal that the basis for the exception was the extensive government regulation of those industries by the Federal Communications Commission (FCC). Therefore, it was assumed that evaluating, processing, and servicing loans "would not cause any significant increase in Government interference." 42 FR 58538 (1977). Then SBA published the final rule it again expounded on the rationale for the exception, pointing specifically to the "equal time" and "fairness" rules. SBA also noted that each participant could be licensed only as long as it operated in the "public interest." SBA argued that the pervasive regulation of the broadcast industry distinguished broadcasters from the other media.

II. Deregulation by FCC

SBA recognizes that broadcasters remain subject to many regulations. However, FCC, by its own assessment, has substantially deregulated the industry since the broadcaster exception was introduced.

Since 1977, the FCC has deregulated commercial radio and commercial television. 46 FR 13887 (1981); 49 FR 33588 (1984). In 1983 it instituted a lottery system instead of competitive licensing for some technologies, including low power television. 93 FCC 2d 952 (1983). In August 1985, the FCC issued a report on the fairness doctrine urging Congress to repeal it. 50 FR 35418. Deregulation has begun even before SBA implemented the broadcaster exception. FCC began a study of Broadcast Regulations in 1972. Independent UHF television stations were exempted from some regulations in 1976. 47 CFR 283(a)(7) (i)(A), and (ii)(A).

The FCC found that changes in technology and the marketplace make such regulation no longer necessary. In the field of commercial television, the FCC found that "market incentives will ensure the presentation of programming that responds to community needs . . . ." 49 FR 33588 (1984). The FCC specifically noted that, while the industry as a whole continued to serve the public interest, individual stations might not present programming that meets the previous standards.

III. Content Regulation by FCC or SBA

In proposing the broadcaster exception, SBA placed special reliance on "equal time" and "fairness" rules as well as the statutory mandate that broadcasters act in the public interest. SBA interpreted these rules to require FCC supervision of the content of broadcasters' programming. SBA relied on such oversight in promulgating the regulation.

FCC's enforcement of a broadcaster's "obligation of presenting all sides of important public questions, fairly, objectively and without bias" would insulate SBA from any editorial influence. *See* Mayflower Broadcasting Corp., 8 FCC 333, 340 (1940). A broadcaster subject to such regulation would not promote any one point of view over another. Therefore, SBA support of a broadcaster would likewise not promote any particular point of view.

However, a broadcaster's current public interest obligations are somewhat narrower than they once were. The FCC has chosen, in light of changes in the industry to "move away from the content/conduct type of regulation that may have been appropriate for other times, but that is no longer necessary in the context of radio broadcasting to assure operation in the public interest." 49 FR 13588, 13906. Compare, for example, the 1948 case of *Simmons* v. *FCC*, 169 F.2d 670 (DC Cir.), *cert. denied,*

335 U.S. 846, with the 1985 case, *KTTL*, FCC #85-226.

Accordingly, SBA cannot rely on FCC regulation to insure that each broadcaster receiving a loan will provide a broad spectrum of programming, appealing to all segments of its potential audience and providing equal exposition to all opinions on current affairs or controversies. Therefore, if SBA is to continue making loans to broadcasters, it must assume the responsibility for reviewing content. For the policy reasons previously discussed, SBA does not believe it would be appropriate to assume that oversight.

The fairness doctrine is also more limited than SBA may have realized. It does not prevent a broadcaster from editoralizing or otherwise expounding its own views. 13 FCC 1246 (1949). "Equal time" is also a term of art which applies only to political campaigns.

SBA takes notice of FCC's recent *Report on General Fairness Doctrine Obligations of Broadcast Licensees*, which refers to continuing proposals in Congress to revoke fairness requirements and urges adoption of those proposals. 50 FR 35418, 35422 (1985).

IV. Lender's Interference With Borrower's Business Judgment in the Absence of Intentional Content Oversight

Before approving a loan, the lender must subjectively estimate the borrower's likelihood of success in the marketplace. While servicing the loan, the lender must detect potential problems and their causes and identify possible solutions. Eventually, the lender may need to decide whether to attach borrower's business assets, or to forebear such action. All of these actions interfere with the borrower's business policy and have the potential to influence the final product. All lender's decisions are by nature subjective; yet a negative servicing decision can result in the liquidation of a business while a positive servicing response will allow an additional chance to succeed.

SBA found this inherent potential for discretionary interference with borrower's business intolerable when the borrower was engaged primarily in the exercise of First Amendment rights. Therefore, it established the media policy forbidding such loans. However, in 1978, SBA found its intrusion on broadcasters to be merely incremental, and therefore insignificant. On that basis, SBA allowed the broadcaster exception to the media policy.

As FCC withdraws from administrative and programming oversight, the broadcaster exception is no longer justified.

V. Conclusion

Upon review of the issues raised in the comments received, SBA finds that, although broadcasters are subject to continuing regulation, loans to the industry incur many of the problems which the media policy seeks to avoid.

Regulatory Impact

For purposes of E.O. 12291, SBA certifies that this final rule is not a major rule since it will not have an annual economic effect of $100 million or more. In this connection, we note that during FY 1984 SBA approved 70 loan applications averaging $248,861 for radio and TV broadcasters, cable systems and related industries (Standard Industrial Classification Manual 1972, Nos. 4832/3). The rule will not result in a cost increase for anyone or have an adverse effect on competition or employment anywhere.

For purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it may have a significant economic impact on a substantial number of small entities. Consequently, the following information is offered:

1. This amendment is needed to adapt SBA's media policy to changed conditions in the broadcasting industry. The objective of this rule is to treat all media the same.

2. The only significant alternatives to this rule would be to leave the rule unamended, or to remove all the restrictions of SBA's media policy. The reason against the first alternative is stated above. The second alternative is one of the options SBA will consider when the media is reviewed in its entirety.

3. There are no monetary costs or other adverse effects inherent in this amendment.

Since this amendment carries no recordkeeping or reporting requirement, it is not subject to the Paperwork Reduction Act of 1980, Pub. L. No. 98-551.

List of Subjects in 13 CFR Part 120

Loan programs—Business, Small businesses.

PART 120—[AMENDED]

1. The authority citations for Part 120 continues to read as follows:

Authority: 72 Stat. 387, as amended (15 U.S.C. 636); sec. 5, 72 Stat. 385 (15 U.S.C. 634(b)(6)).

§ 120.101-2 [Amended]

2. For the reasons set forth, and pursuant to the authority of sections 4(d) and 5(b)(6) of the Small Business Act, 15 U.S.C. 633(d) and 634(b)(6), 13 CFR Part 120 is amended by removing § 120.101-2(b)(2)(v).

[Catalog of Federal Domestic Assistance No. 59.012 Small Business Loans]

Dated: February 12, 1986.

James C. Sanders,

Administrator.

[FR Doc. 86-6271 Filed 3-25-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-70-AD; Amdt. 39-5262]

Airworthiness Directives; Short Brothers, Ltd., Model SD3-60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) that requires modification of the primary control cable guards to prevent foreign objects from interfering with the primary flight control cables on certain Model SD3-60 airplanes. This action was prompted by a report of a foreign object falling behind a furnishing panel and into the elevator control cables. The installation of additional guards is necessary to prevent objects dropped in the passenger cabin from jamming the control cables.

DATE: Effective May 2, 1986.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to Shorts Aircraft, 1725 Jefferson Davis Highway, Suite 510, Arlington, Virginia 22202. It may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-2909. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an

airworthiness directive which requires modification of the primary flight control cable guards to prevent jamming was published in the **Federal Register** on August 20, 1985 (50 FR 33559).

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

Two comments were received. Both commenters supported the AD; however, one commenter pointed out that a similar problem exists on the Model SD3-30 airplanes. The FAA has been advised that the manufacturer is aware of this problem and is preparing a service bulletin which prescribes similar corrective actions for the Model SD3-30. The FAA may consider future rulemaking on this subject once more information is available.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 33 airplanes will be affected by this AD, that it will take approximately 9 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD is estimated to be $11,880.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($360.). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Short Brothers, Ltd.: Applies to Short Brothers, Ltd., Model SD3-60 airplanes, serial number SH 3601 through SH 3665 inclusive, certificated in any category. Compliance is required within 90 days after the effective date of this AD, unless previously accomplished:

1. To prevent control system interference, install extended and additional guards in accordance with Short Brothers, Ltd., Service Bulletin SD360-27-04, dated March 1985.

2. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

3. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Shorts Aircraft, 1725 Jefferson Davis Highway, Suite 510, Arlington, Virginia 22202. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective May 2, 1986.

Issued in Seattle, Washington, on March 18, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-6616 Filed 3-25-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-85-AD; Amdt. 39-5263]

Airworthiness Directives; British Aerospace Aircraft Group Model HS 748 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) that requires a visual inspection and modification, as necessary, of the windshield wiper actuating arm on British Aerospace (BAe) Model HS 748 airplanes. This action is necessary to detect cracks in the actuating arm, which could allow the arm to detach and strike the propeller.

EFFECTIVE DATE: May 2, 1986.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC 20041. It may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-2909. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires inspection and modification, as necessary, of the windshield wiper actuating arm on certain BAe Model HS 748 airplanes was published in the Federal Register on September 5, 1985 (50 FR 36101).

Interested parties have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 4 airplanes will be affected by this AD, that it will take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Parts are estimated at $20 per airplane. Based on these figures, the total cost impact of this AD is estimated to be $880.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($220.). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircarft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace Aircraft Group: Applies to all BAe Model HS 748 airplanes, certificated in any category. Compliance is required within 60 days after the effective date of this AD. To prevent the detachment of the windshield wiper actuating arm, accomplish the following, unless already accomplished:

A. Inspect and modify, as necessary, the windshield actuating arm in accordance with Dunlap Limited Aviation Division Service Bulletin 30-92, dated March 7, 1985.

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to British Aerospace Inc., Librarian, Box 17414, Dulles Interntional Airport, Washington, DC 20041. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective May 2, 1986.

Issued in Seattle, Washington, on March 18, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-6615 Filed 3-25-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 86-AWA-5]

Redesignation of VOR Federal Airway, LA; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: An error was discovered in the description of Federal Airway V-305 associated with the redesignation of alternate airway V-69W. This action corrects that error.

EFFECTIVE DATE: 0901 U.t.c., May 8, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Brent A. Fernald, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-8626.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 86-4198 was published on February 27, 1986, to redesignate V-69W as V-305 as a new segment from Shreveport, LA, to El Dorado, AR (51 FR 6904). An error was discovered in the description of the El Dorado intersection radial, and this action corrects that error.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Precedures (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

Aviation safety, VOR Federal airways.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, the amendatory language in **Federal Register** Document 86-4198, as published in the **Federal Register** on February 27, 1986, (51 FR 6904) is corrected to read as follows:

PART 71—[CORRECTED]

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. § 71.123 is amended as follows:

V-305 [Amended]

By removing "218°" and substituting "233°".

Issued in Washington, DC, on March 19, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-6610 Filed 3-25-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 374 and 375

[Docket No. 60226-6026]

Exports to India; Export and Reexports of National Security Controlled Commodities

AGENCY: International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: The United States and the Government of India (GOI) have agreed to cooperate, consistent with their laws and regulations, in measures concerning the safeguarding of exports and reexports to India of U.S.-origin commodities that are subject to national security controls.

This rule changes the procedure for exporting and reexporting these strategic commodities to India. Under the new rule, a license application or reexport authorization request to transfer a national security controlled commodity to India must be accompanied by a certified copy of the corresponding Import License covering the commodity, issued by the GOI Controller of Imports and Exports. A certified copy of the Import License should be obtained from the GOI by the Indian importer and furnished to the license applicant. The Import License will contain safeguards on the transfer of the commodity to which the Indian importer must adhere.

Excepted from this new requirement are shipments authorized under any of the Special Licensing Procedures or commodities valued at less than $5,000.

EFFECTIVE DATE: March 26, 1986. Although there is no formal comment period, public comments on this rule are welcome on a continuing basis.

FOR FURTHER INFORMATION CONTACT: Marshall Thompson, Office of Technology and Policy Analysis, Strategic Planning and Policy Division, Export Administration, Telephone: (202) 377-3318.

SUPPLEMENTARY INFORMATION:

Grace Period

The requirement for submitting Indian Import Licenses with export license applications will take effect on May 12, 1986. Before that date, applications will be accepted if supported by a Form ITA-629P. However, applications already pending and those submitted before May 12, 1986 will receive more expeditious handling if an Indian Import License is submitted.

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, like other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Betty Ferrell, Regulations Branch, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule mentions collections of information requirements under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* These collections have been approved by the Office of Management and Budget under control numbers 0625-0001, 0625-0006, 0625-0009, 0625-0135 and 0625-0137. The Indian Import License requirement set forth in the new § 375.7 supersedes the requirement for Form ITA-629P, Statement by Ultimate Consignee and Purchaser (approved by the Office of Management and Budget under control number 0625-0136), to accompany license applications for exports and reexports to India. The Indian Import License issued by the Government of India and the certification required in § 375.7 of the Export Administration Regulations do not constitute a collection of information requirement under the Paperwork Reduction Act of 1980.

List of Subjects in 15 CFR Parts 374 and 375

Exports, Science and technology, India.

PARTS 374 AND 375—[AMENDED]

Accordingly, Parts 374 and 375 of the Export Administration Regulations (15 CFR Parts 368-399) are amended as follows:

1. The authority citation for Parts 374 and 375 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

2. Section 374.3 is amended by revising paragraph (c)(1)(ii) to read as follows:

§ 374.3 How to request reexport authorization.

* * * * *

(c) *Documentation requirements.* * * *

(1) * * *

(ii) The following destinations in Country Group V:

Afghanistan
China, People's Republic of
India
Liechtenstein
Singapore
South Africa, Republic of
Sweden
Switzerland
Yugoslavia

If the required document is a Yugoslav End-Use Certificate, a Swiss Blue Import Certificate, a People's Republic of China End-User Certificate or an Indian Import License and the same document must be furnished to the export control authorities of the country from which reexport will be made, Export Administration will accept a reproduced copy of the document being furnished to the country of reexport. If the required documentation cannot be obtained, waiver may be requested in accordance with the applicable provisions of the Export Administration Regulations. (See § 375.4(c) for waiver of a Swiss Blue Import Certificate, § 375.5(c) for waiver of a Yugoslav End-User Certificate and § 375.7(c) for waiver of an Indian Import License.

3. The chart in § 375.1 is amended by redesignating the sixth entry as "7" and adding a new entry "6" to read as follows:

§ 375.1 Introduction.

* * * * *

If the commodity is—	And the country of destination is—	Required document is—	For specific regulations see—
* * *	* * *	* * *	
6. Identified by the code letter A or B and has "national security" in the Reason for Control portion of the CCL entry.	India....	Indian Import License.	§ 375.7
* * *	* * *	* * *	

4. Section 375.2 is amended by revising paragraph (b)(1) to read as follows:

§ 375.2 Form ITA-629P, Statement by Ultimate Consignee and Purchaser.

* * * * *

(b) *Exemptions.* * * *

(1) An International Import Certificate (§ 375.3), a Swiss Blue Import Certificate (§ 375.4), a Yugoslav End-Use Certificate (§ 375.5), a People's Republic of China End-User Certificate (§ 375.6), or an Indian Import License (§ 375.7) is required in support of the application.

* * * * *

§ 375.3 [Amended]

5. The footnote No. 1 to § 375.3(b) is revised to read as follows:

[1] See § 375.4 for Swiss Blue Import Certificate requirements, § 375.5 for Yugoslav End-Use Certificate requirements, § 375.6 for People's Republic of China End-User Certificate requirements and § 375.7 for Indian Import License requirements.

§ 375.8 [Redesignated as § 375.9 and amended]

6. The existing § 375.8, "Special Provisions", is redesignated as new § 375.9 and references to "§ 375.8" are revised to read "§ 375.9" in the undesignated paragraph following § 375.3(e)(1)(iii), § 375.3(f)(3), the undesignated paragraph following § 375.4(c)(3), and § 375.5(c).

§ 375.7 [Redesignated as § 375.8 and amended]

7. The existing § 375.7, "Documents Accompanying Applications", is redesignated as § 375.8, and the reference to "§ 375.7" in § 372.6(d) is revised to read "§ 375.8".

8. A new § 375.7 is added, reading as follows:

§ 375.7 Indian Import License.

(a) *Requirement.* A license application to export or reexport commodities to India, regardless of consignee, generally must be accompanied by a Government of India (GOI)-certified copy of the Indian Import License. The Import License, inter alia, places certain obligations on the Indian importer against reexport or transfer of the commodities. The Import License requirement applies to all commodities identified by the code letter "A" on the Commodity Control List (CCL), and to those commodities identified by the code letter "B" that include "national security" in the Reason for Control portion of the CCL. This Import License is issued to the importer by the New Delhi Office of the Controller of Imports and Exports, Government of India, covering the proposed export from the United States. (The U.S. exporter, and where appropriate, the reexporter, should (1) tell his Indian customer that the GOI-certified copy of the Import License is required documentation in order to apply for a U.S. export license or reexport authorization and should (2) limit his request solely to those commodities that are subject to this Import License procedure, i.e., commodities under national security control. The exporter should be clear as to which commodities are covered. For example, where the Indian order is for a mixture of commodities, some requiring an Import License under this procedure, some requiring a Consignee/Purchaser Statement, and some exportable under general license G-DEST, the request for the certified copy of the Indian Import License should be limited to cover only those commodities that are subject to the Import License requirement as described above.) Where the Import License includes commodities for which more than one license application will be submitted, the Import License must be attached to the first such application. Each subsequent application must include the following certification in the space entitled "Additional Information" or on an attachment:

I (We) certify that the quantities of commodities shown on all export licenses based on the Indian Import License No. _____ when added to the quantities shown on all additional applications pending in the Office of Export Licensing based on the same Import License, including the present application and any licenses already issued, do not total more that the quantities shown on the Import License. This Import License was submitted in support of application number _____ (insert case number, or, if case number is unknown, the applicant's reference number, date of submission of application to which the Indian Import License was attached, and the Export Control Commodity Number and Processing Code Shown on that application).

(b) *Exemptions.*—(1) *Shipments with a total value of less than $5,000.* An Indian Import License need not be submitted to support a license application to export commodities classified in a single entry on the Commodity Control List, the total value of which, as shown on the export order, is less than $5,000. However, if a lesser transaction is part of a larger export order that is subject to this Import License procedure, such Import License shall be submitted in support of the application, or cited in a certification as described at the end of § 375.7(a). In limited circumstances the Office of Export Licensing may request an Import License for an order valued under $5,000. In such event, the exporter will be so notified specifically by the Office of Export Licensing.

(2) *Approved Form ITA-686P.* A license application to export commodities to India is exempted from this Import License requirement if such license application is supported by Form ITA-686P, Statement by Foreign Importer of Aircraft or Vessel Repair Parts, or the current Station Number or validation number of this form.

(3) *Temporary export.* An Indian Import License need not be submitted to support a license application to export commodities for temporary exhibition, demonstration, or testing purposes in India (see § 372.8(c)).

(4) *Applications for Special Licenses.* An Indian Import License need not be submitted to support an application for a special license, as described in Part 373, that is supported by a Form ITA-6052P or ITA-6026P.

(c) *Exceptions.* The Office of Export Licensing will consider the granting of an exception to the requirement for an Indian Import License in accordance with the provisions of § 375.7 where the requirements cannot be met due to circumstances beyond the applicant's control. An exception will not be granted contrary to the objectives of the U.S. export control program.

(d) *Delivery Verifications.* The Office of Export Licensing will on a selective basis require Delivery Verification documents for shipments to India that are subject to the Import License procedure. The exporter will usually be notified of the Delivery Verification requirement at the time of issuance of the export license. (See § 375.3(i) for background information on the Delivery Verification procedure.)"

Redesignated § 375.9 [Amended]

9. The phrase "Swiss Blue Import Certificates, Yugoslav End-Use Certificates, People's Republic of China End-User Certificates" in the introductory paragraph of the newly designated § 375.9 and in newly designated § 375.9(a) is revised to read "Swiss Blue Import Certificates, Yugoslav End-Use Certificates, People's Republic of China End-User Certificates and Indian Import Licenses".

10. The phrase "a Swiss Blue Import Certificate, a Yugoslav End-Use Certificate, or a People's Republic of China End-User Certificate" in paragraph (b)(3) of the newly designated § 375.9 is revised to read "a Swiss Blue Import Certificate, a Yugoslav End-Use Certificate, People's Republic of China End-User Certificate or an Indian Import License" and the title of § 375.8(b)(3) is revised to read "Swiss Blue Import Certificates, Yugoslav End-Use Certificates, People's Republic of China End-Use Certificates, or Indian Import Licenses".

11. The phrase "a Swiss Blue Import Certificate, a Yugoslav End-Use Certificate, or a People's Republic of China End-User Certificate" in paragraphs (c), (e), (f)(1), and (f)(2) of the newly designated § 375.9 is revised to read "Swiss Blue Import Certificate, Yugoslav End-Use Certificate, People's Republic of China End-User Certificate, or Indian Import License".

12. The phrase "a Swiss Blue Import Certificate, a Yugoslav End-Use Certificate, or a People's Republic of China End-User Certificate" in the second certification under paragraph (f)(2) of newly designated § 375.9 is revised to read "Swiss Blue Import Certificate, Yugoslav End-Use Certificate, People's Republic of China End-User Certificate, or Indian Import License".

13. The phrase "a Swiss Blue Import Certificate, a Yugoslav End-Use Certificate, or a People's Republic of China End-User Certificate" [2] in paragraph (g)(1) of the newly designated § 375.9 is revised to read "Swiss Blue Import Certificate, Yugoslav End-Use Certificate, People's Republic of China End-Use Certificate, or Indian Import License."

Dated: March 24, 1986.

Walter J. Olson,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 86-6693 Filed 3-24-86; 11:26 am]

BILLING CODE 3510-DT-M

[2] See § 375.2(c) for exceptions to a consignee/purchaser statement.

FEDERAL TRADE COMMISSION

16 CFR Part 803

Antitrust Improvements Act, Notification and Report Form for Certain Mergers and Acquisitions

AGENCY: Federal Trade Commission.

ACTION: Promulgation of Final Rule Revision.

SUMMARY: This final rule revises 16 CFR Part 803 Appendix, the Antitrust Improvements Act Notification and Report Form for Certain Mergers and Acquisitions (the "Form"). This Form must be completed and submitted by persons required to report mergers or acquisitions as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act"). The revised Form will require that 1982 revenue data be provided in response to certain questions on the Form relating to product lines that previously asked for 1977 data. Certain other related minor changes have been made on the Form.

EFFECTIVE DATE: March 26, 1986.

ADDRESS: All completed Forms, inlcuding any documents required to be supplied in response to any item on the Form, must be delivered to: Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580, and Director of Operations, Antitrust Division, Room 3218, Department of Justice, Washington, D.C. 20530, as specified by 16 CFR 803.10(c)(1985).

FOR FURTHER INFORMATION CONTACT: John M. Sipple, Jr., Senior Attorney, or Wayne E. Kaplan, Attorney, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, D.C. 20580. Telephone: (202) 523-3894.

List of Subjects in 16 CFR Part 803

Antitrust, Reporting and recordkeeping requirements.

The authority for 16 CFR Part 803 continues to read:

Authority: Section 7A(d), Clayton Act, 15 U.S.C. 18a(d) as added by section 201, Hart-Scott-Rodino Antiturst Improvements Act of 1976, Pub. L. 94-435, 90 Stat. 1390.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This change to the existing OMB clearance, Control No. 3084-0005, has been approved by the Office of Information and Regulatory Affairs, Office of Management and Budget.

Regulatory Flexibility Act

The proposed revision will not expand the coverage of the premerger notification rules in a way that would significantly affect small business. Therefore, pursuant to section 605(b) of the Administrative Procedure Act, 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Pub. L. 96-354, September 19, 1980, the Federal Trade Commission certifies that these rules will not have a significant economic impact on a substantial number of small entities. Section 603 of the Administrative Procedure Act, 5 U.S.C. 603, requiring a final regulatory flexibility analysis of this revision, is therefore inapplicable.

Background Information

The Hart-Scott-Rodino Antitrust Improvements Act of 1976 requires all persons contemplating certain mergers or acquisitions to file notification with the Federal Trade Commission ("the Commission") and the Antitrust Division of the Department of Justice and to wait designated periods of time before consummating such proposed transactions. Congress empowered the Commission, with the concurrence of the Assistant Attorney General in charge of the Antitrust Division ("the Assistant Attorney General"), to require "that the notification . . . be in such form and contain such documentary material and information . . . as is necessary and appropriate" to enable the agencies "to determine whether such acquisitions may, if consummated, violate the antitrust laws." (15 U.S.C. 18a(d) (1985)).

Pursuant to that section, the Commission, with the concurrence of the Assistant Attorney General, developed the Antitrust Improvements Act Notification and Report Form for Certain Mergers and Acquisitions. The Form is designed to provide the Commission and the Assistant Attorney General with the information and documentary material necessary and appropriate for an initial evaluation of the potential anticompetitive impact of significant mergers, acquisitions and certain similar transactions. The Form is not intended to elicit all potentially relevant information relating to an acquisition. Completion of the Form by all parties required to file will ordinarily permit both agencies to determine whether the waiting period should be allowed to expire or be terminated early upon request, or whether a request for additional information should be made under section 7A(e) of the Act and 16 CFR 803.20.

All acquiring and acquired persons required by the Act to file notification ust complete the Form, or a photostatic or other equivalent reproduction, in accordance with the attached instructions and the premerger notification rules.

The Form was first promulgated on July 31, 1978, 43 FR 33552, and became effective on September 5, 1978. It was revised to require data for 1977 as the base year in 1980. (45 FR 14205 (March 5, 1980)). Subsequently, new versions of the Form were approved by the Office of Management and Budget on December 29, 1981, February 23, 1983, September 14, 1984, and September 30, 1985. The most recent version has been in use since then and it was published in the **Federal Register** on November 12, 1985. (50 FR 46633).

The primary changes resulting from this revision concern the revenue data that must be submitted in response to Item 5 of the Form. Other changes reflect new reference materials cited in the Form or more precise identification of terms developed by the Bureau of the Census.

Item 5 of the Form is designed to elicit economic data classified by Standard Industrial Classification ("SIC") codes with respect to all those lines of commerce in which the reporting person derives any dollar revenues. Such revenue data is required by industry (4-digit SIC code), by product class (5-digit SIC based code), and by product (7-digit SIC based code). More specifically, item 5(a) requires that the reporting person provide 1977 revenue data for each 4-digit industry in which that filing person was engaged. Item 5(b)(i) requires that the reporting person engaged in manufacturing provide 1977 aggregate revenues for each 7-digit code product from which the reporting person derived any revenues. Item 5(b)(ii) requires the reporting person to identify each manufactured product that has been added or deleted since 1977. For those products added, the reporting person must provide the total revenue attributable to the added product for the most recent year. Item 5(b)(iii) requires that the reporting person engaged in manufacturing provide aggregate revenues for the most recent year derived from each 5-digit product class. Item 5(c) requires that the reporting person engaged in non-manufacturing industries provide 4-digit code revenue data for the most recent year.

When originally promulgated the premerger notification rules required revenue data for two time periods, 1972 and the most recent year for which the requested information is available. The use of the 1972 "base year" was designed to coincide with the then most

recent quinquennial economic census and the *Annual Survey of Manufactures.* These publications of the Bureau of the Census serve as the most readily available and reliable statistical sources of industry components and market universes to which individual company product and revenue data can be compared. When the original rules were promulgated the Commission and the Antitrust Division of the Department of Justice stated their intention to revise item 5 to require submission of 1977 revenue data as soon as the Bureau of the Census published the *1977 Census of Manufactures.* (43 FR 33526 (July 31, 1978)). Accordingly, the Commission amended item 5 on March 5, 1980, when it promulgated the revision in the **Federal Register.** (45 FR 14205 (March 5, 1980)). The revision became effective on publication, but the published notice provided for a sixty-day transitional period during which either 1972 or 1977 revenue data could be submitted.

The Bureau of the Census has now completed its publication of final paperbound reports for the *1982 Census of Manufactures.* Since most companies within the United States submit data to the Bureau of the Census for the economic censuses, reporting persons presumably have gathered, compiled and assembled 1982 revenue data in accordance with the SIC code format for the *1982 Census of Manufactures.* Furthermore, the Bureau of the Census has now completed the *Numerical List of Manufactured and Mineral Products, 1982 Census of Manufactures and Census of Mineral Industries* (MC 82 R-1) (*"1982 Numerical List"*). That publication is necessary for reference to final "5-digit" product class and "7-digit" product codes for 1982 and is currently available from the Government Printing Office. Because of this, and the fact that the 1982 aggregate data is now available to the Commission and the Antitrust Division of the Department of Justice, item 5 is hereby being revised to require 1982 data instead of 1977 data. As in the 1980 change to the 1977 base year, the change is effective immediately, with a sixty-day transitional period during which either 1977 or 1982 revenue data may be submitted.

The Commission is aware that the Bureau of the Census proposed extensive changes in the SIC codes and SIC based codes in 1982, and that those proposed changes were not implemented because of budget restrictions. Thus, although the Bureau of the Census collected data in anticipation of those changes, it published the data using codes that are in some instances different than the codes it used to collect the information.

Since the Commission and the Antitrust Division use the universe revenue figures published by the Bureau of the Census as the basis upon which to compare revenue data supplied by reporting persons in response to item 5, it is important that reporting persons submit information using the codes published by the Bureau of the Census. For this reason, the Commission has determined to require reporting persons to submit revenue information on the basis of the codes published by the Bureau of the Census in the *1982 Census of Manufacturers.* Accordingly, reporting persons will be required to convert the 1982 revenue data they submitted to the Bureau of the Census from the collected codes to the codes published by the Bureau of the Census. The *1982 Numerical List,* which is one of the two basic reference publications used to prepare responses to item 5, contains two parallel columns, "Product code published" and "Product code collected," which provide a basis for determining when the codes used to collect information differ from those used to publish the information. When the "Product code published" and the "Product code collected" differ, reporting persons will be able to comply, in most cases, by changing the code they used to submit information to the Bureau of the Census to the code used by the Bureau of the Census to publish the information. In a few extremely rare instances, the "Product code published" is derived from two or more collected codes. The Bureau of the Census has identified these codes by placing an asterisk in the "Product code collected" column in the *1982 Numerical List.* Reporting persons that have codes in this category may be able to comply by reviewing underlying records compiled in accordance with the 1982 census reports and retabulating such data according to the published codes.

The Commission has determined that any inconvenience resulting from this requirement is unavoidable in light of the antitrust agencies' need to be able to compare quickly an individual company's submission with published census universe data. The use of census data is currently the only feasible basis on which the agencies can perform a preliminary antitrust analysis within the time limits imposed by the Act.

At the request of the Bureau of the Census, we are also revising references in the Instructions to the Form to 5-digit product class and 7-digit product codes (presently referred to as SIC codes) which are technically SIC based codes. The Standard Industrial Classification developed by the Office of Management and Budget classifies establishments only to the 4-digit industry level by their primary type of activity.

The Commission believes that the notice and comment period ordinarily required by the Administrative Procedure Act ("the APA"), 5 U.S.C. 553(b), is unnecessary here. Section 553(b)(B) exempts from the notice and comment requirements of the APA, promulgation of a rule where the agency for good cause finds that the standard procedure would be "impracticable, unnecessary, or contrary to the public interest." Promulgation of the proposed revision falls within this exemption for several reasons.

The public was afforded the opportunity to comment on the original rules and Form in two notice and comment periods provided pursuant to the rulemaking requirements of the APA. The rulemaking culminated in the promulgation and publication of the premerger rules and Form, and was accompanied by a Statement of Basis and Purpose. (43 FR 33450 (July 31, 1978)). Since the amendment does not depart from or alter the substance of the prior rulemaking (i.e., it does not change the type or amount of information required by the Form), further opportunity for comment seems unnecessary. *See generally, Texaco, Inc.* v. *Federal Energy Administration,* 531 F.2d 1071 (Emer. Ct. App.), *cert. denied,* 426 U.S. 941 (1976); *Durkin* v. *Edward S. Wagner Co.,* 115 F. Supp. 118 (D.N.Y. 1953), *aff'd,* 217 F.2d 303 (2d Cir.), *cert. denied,* 348 U.S. 964 (1954).

Additionally, the agencies gave notice of their intention to revise item 5 in the original promulgation of the rules, as previously stated, in response to numerous comments received during the two comment periods of the rulemaking. Several comments opposed the requirement that 1972 data be supplied on the grounds that the compilation of 1972 data would be unduly cumbersome, burdensome and expensive. For the second time, the Commission is changing the requirements of item 5 consistent with its earlier notice. The change will lessen the compliance burden by requiring more recent revenue data that is generally more easily retrievable and readily available to reporting persons than 1977 data. The Commission finds that a separate notice and comment period at this time would be unnecessary and not in the public interest and, therefore, is not required by the APA.

Section 553(d) of the APA requires that 30 days' notice be provided to the

public before a rule becomes effective, but provides an exception from this requirement where good cause is found. (5 U.S.C. 553(d)(3)). Rather than delay the effective data of the new requirements by 30 days, the Commission has determined in the public interest to accommodate all reporting persons by instituting a 60-day transitional period (as was done in the prior changeover from the 1972 base year to the 1977 base year) during which reporting persons may submit either 1977 or 1982 revenue data in response to items 5(a), 5(b)(i) and 5(b)(ii). Thereafter, the Commission and the Antitrust Division of the Department of Justice will accept only 1982 revenue data. Forms which do not provide 1982 data after the 60-day period will be treated as deficient under section 803.10(c)(2) of the premerger notification rules. (16 CFR 803.10(c)(2)).

The Commission, with the concurrence of the Assistant Attorney General, hereby revises the Appendix to 16 CFR part 803.

PART 803—[AMENDED]

Appendix [Amended]

In 15 CFR Ch. I, the Appendix to Part 803 is amended by removing the current Instructions to the Antitrust Improvements Act Notification and Report Form for Certain Mergers and Acquisitions ("Instructions"), pages I–VI, in its entirety and substituting the following new Instructions, pages I–VI, and by deleting pages 6, 7, 8 and 10 of the Notification and Report Form for Certain Mergers and Acquisitions and substituting the following new pages 6, 7, 8 and 10.

BILLING CODE 6750-01-M

ANTITRUST IMPROVEMENTS ACT NOTIFICATION AND REPORT FORM for Certain Mergers and Acquisitions

INSTRUCTIONS

GENERAL

The Answer Sheets (pp. 1-16) constitute the Notification and Report Form ("the Form") required to be submitted pursuant to § 803.1(a) of the premerger notification rules ("the rules"). Filing persons need not, however, record their responses on the Form.

These Instructions specify the information which must be provided in response to the Items on the Answer Sheets. *Only* the completed Answer Sheets, together with all documentary attachments are to be filed with the Federal Trade Commission and the Department of Justice.

The term "documentary attachments" refers to materials supplied in responses to Item 2(f)(i), Item 4 and to submissions pursuant to §§ 803.1(b) and 803.11 of the rules.

Information—The central office for information and assistance concerning the rules, 16 CFR Parts 801-803, and the Form is Room 301, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, phone (202) 523-3894.

Definitions—The definitions and other provisions governing this Form are set forth in the rules, 16 CFR Parts 801-803. The governing statute, the rules, and the Statement of Basis and Purpose for the rules are set forth at 43 FR 33450 (July 31, 1978), 44 FR 66781 (November 22, 1979) and 48 FR 34427 (July 29, 1983).

Affidavit—Attach the affidavit required by § 803.5 to page 1 of the Form. Affidavits are not required if the person filing notification is an acquired person in a transaction covered by § 801.30. (See § 801.5(a).)

Responses—*Each answer* should identify the **Item** to which it is addressed. Use the reverse side of the corresponding answer sheet or attach separate additional sheets as necessary in answering each Item. Each additional sheet should identify at the top of the page the Item to which it is addressed. Voluntary submissions pursuant to § 803.1(b) should also be so identified.

Enter the name of the person filing notification appearing in Item 1(a) on page 1 of the Form and the date on which the Form is completed at the top of each page of the Form, at the top of any sheets attached to complete the response to any Item, and at the top of the first or cover page of each documentary attachment.

If unable to answer any Item fully, give such information as is available and provide a statement of reasons for non-compliance as required by § 803.3. If exact answers to any Item cannot be given, enter best estimates and indicate the sources or bases of such estimates. Estimated data should be followed by the notation, "est." All information should be rounded to the nearest thousand dollars.

Year—All references to "year" refer to calendar year. If the data are not available on a calendar year basis, supply the requested data for the fiscal year reporting period which most nearly corresponds to the calendar year specified. References to "most recent year" mean the most recent calendar or fiscal year for which the requested information is available.

SIC Data—This Notification and Report Form requests information regarding dollar revenues and lines of commerce at three levels with respect to operations conducted within the United States. (See § 803.2(c)(1).) *All persons* must submit certain data at the 4-digit (SIC code) *industry* level. To the extent that dollar revenues are derived from *manufactured operations* (SIC major groups 20-39), data must also be submitted at the *5-digit product class* and *7-digit product levels* (SIC based codes).

The term "dollar revenues" is defined in § 803.2(d).

References— In reporting information by "*4-digit (SIC code) industry*" refer to the 1972 edition of the *Standard Industrial Classification Manual* and its 1977 supplement published by the Executive Office of the President, Office of Management and Budget.

In reporting information by "*5-digit product class*" and "*7-digit product*" refer to one or both of the following reference publications published by the U.S. Bureau of the Census:

(a) Numerical List of Manufactured and Mineral Products, *1982 Census of Manufactures and Census of Mineral Industries* (MC82-R-1). Make sure that the Numerical List you use has MC82-R-1 printed on the cover.

Note: Submit information using the codes in the columns labeled "Product code published." Do not submit information using the codes in the columns labeled "Product code collected."

(b) Volume II, "Industry Series," (MC82-1-20 A2-39D), *1982 Census of Manufactures*.

Note: Do not submit information by product codes ending in 00 if the Numerical List of Manufactured and Mineral Products listed above contains a further breakdown. Furthermore, when the Numerical List refers to Appendix C for detail collected in a specified Current Industrial Report ("CIR") for the following SIC code industries, you should provide revenue information using the 7-digit product codes listed in the CIR in the columns labeled "Published."

SIC 2392 (CIR MQ-23X) SIC 3261 (CIR MQ-34E)
SIC 3312, 3315, 3316 and 3317 (CIR MA-33B)
SIC 3357 (CIR MQ-33L) SIC 3431 (CIR MQ-34E)

Privacy Act Statement - Section 18a(a) of Title 15 of the U.S. Code authorizes the collection of this information. The primary use of this information is to determine whether the merger or acquisition reported in the Notification and Report Form may violate the antitrust laws. Furnishing the information on this Form is voluntary. Consummation of an acquisition required to be reported by the statute cited above without having provided this information may, however, render a person liable to civil penalties up to $10,000 per day.

Items 5, 7, 8, 9 and the Insurance Appendix —Supply information *only* with respect to operations conducted within the United States, including its commonwealths, territories, possessions and the District of Columbia. (See §§ 801.1(k), 803.2(c)(1).)

Information need *not* be supplied regarding assets or voting securities currently being acquired, when the acquisition is exempt under the statute or rules. (See § 803.2(c)(2).)

Limited or separate responses may be required from the person filing notification (See § 803.2(b).)

Filing—Complete and return two notarized copies (with *one set* of documentary attachments) of this Notification and Report Form to the Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, and *three* notarized copies (with *one* set of documentary attachments) to Director of Operations, Antitrust Division, Department of Justice, Room 3218, 10th and Pennsylvania Avenue, N.W., Washington, D.C. 20530.

ITEM BY ITEM

Affidavit—Attach the affidavit required by § 803.5 to page 1 of the Answer Sheets. Acquiring persons in transactions covered by § 801.30 are required to also submit a copy of the notice served on the acquired person pursuant to § 803.5 (a)(1). (See § 803.5 (a)(3).)

Cash Tender Offer—Put an X in the appropriate box to indicate whether the acquisition is a cash tender offer.

Early Termination —Put an X in the yes box to request early termination of the waiting period. Notification of each grant of early termination will be published in the Federal Register as required by § 7A(b)(2) of the Clayton Act.

ITEM 1

Item 1(a)—Give the name and headquarters address of the person filing notification. The name of the person is the name of the ultimate parent entity included within that person.

Item 1(b) —Indicate whether the person filing notification is an acquiring person, an acquired person, or both an acquiring and acquired person. (See § 801.2.)

Item 1(c)—Give the names of all ultimate parent entities of acquiring and acquired persons which are parties to the acquisition whether or not they are required to file notification.

Item 1(d)—Put an X in all the boxes that apply to this acquisition.

Item 1(e)—*Acquiring* persons put an X in the box to indicate the highest threshold for which notification is being filed (see § 801.1 (h)): $15 million, 15%, 25%, or 50%.

Item 1(f)—All persons state the value of voting securities held as a result of the acquisition and/or the value of assets held as a result of the acquisition. (Insert responses to Item 3(c).)

Item 1(g)—Put an X in the appropriate box to indicate whether the entity in Item 1(a) is a corporation, partnership, or other (specify).

Item 1(h)—Put an X in the appropriate box to indicate whether data furnished is by calendar year or fiscal year. If fiscal year, specify period.

Item 1(i)—Put an X in the appropriate box to indicate if this Form is being filed on behalf of the ultimate parent entity by another entity within the same person authorized by it to file notification on its behalf pursuant to § 803.2(a), or if this Form is being filed pursuant to § 803.4 on behalf of a foreign person. Then provide the name and mailing address of the entity filing notification on behalf of the reporting person named in Item 1(a) on the Form.

Item 1(j)—If an entity within the person filing notification other than the ultimate parent entity listed in Item 1(a) is the entity which is making the acquisition, or if the assets or voting securities of an entity other than the ultimate parent entity listed in Item 1(a) are being acquired, provide the name and mailing address of that entity and the percentage of its voting securities held by the person named in Item 1(a) above. (If control is effected by means other than the direct holding of the entity's voting securities, describe the intermediaries or the contract through which control is effected (see § 801.1(b).)

ITEM 2

Item 2(a)—*Description of acquisition.* Briefly describe the transaction. Include a list of the name and mailing address of each acquiring and acquired person, whether or not required to file notification and a description of the assets or voting securities to be acquired by and/or the consideration to be received by each party. If voting securities are to be acquired from a holder other than the issuer (or an entity within the same person as the issuer) separately identify (if known) such holder and the issuer of the voting securities. Acquiring persons in tender offers should describe the terms of the offer.

Item 2(b)—State the scheduled consummation date of the transaction.

Item 2(c)—Describe the manner in which the transaction is to be carried out. The description should include the expected dates of any major events required in order to consummate the transaction (e.g., stockholders' meetings, filing of requests for approval, other public filings, terminations of tender offers).

Item 2(d)(i)—*Assets to be acquired.* This Item is to be completed only to the extent that the transaction is an acquisition of assets. Describe all general classes of assets (other than cash and securities) to be acquired by each party to the transaction giving approximate dollar values thereof. If the transaction is the formation of a joint venture or other corporation (see § 801.40), include assets to be acquired by the joint venture or other corporation.

Give the approximate total value or estimated total value of the assets to be acquired in this transaction.

Examples of general classes of assets other than cash and

securities are land, merchandising inventory, manufacturing plants (specify location and products produced), and retail stores. For each general class of assets, indicate the page or paragraph number of the contract or other document submitted with this Form in which the assets are more particularly described.

Item 2(d)(ii)—*Assets held by acquiring person.* (To be completed by acquiring persons.) If assets of the acquired person (see § 801.13) are presently held by the person filing notification, furnish a description of each general class of such assets in the manner required by Item 2(d)(i), and the dollar value or estimated dollar value at the time they were acquired.

Item 2(e)—*Voting securities to be acquired.* Furnish the following information separately for each issuer whose voting securities will be acquired in the acquisition:

Item 2(e)(i)—List each class of voting securities (including convertible voting securities) which will be outstanding after the acquisition has been completed. If there is more than one class of voting securities, include a description of the voting rights of each class. Also list each class of non-voting securities which will be acquired in the acquisition;

Item 2(e)(ii)—Total number of shares of each class of securities listed on page 3 which will be outstanding after the acquisition has been completed;

Item 2(e)(iii)—Total number of shares of each class of securities listed on page 3 which will be acquired in this acquisition. If there is more than one acquiring person for any class of securities, show data separately for each acquiring person;

Item 2(e)(iv)—Identity of each person acquiring any securities of any class listed on page 3. If there is more than one acquiring person for any class of securities, show data separately for each acquiring person;

Item 2(e)(v)—Dollar value of securities of each class listed on page 3 to be acquired in this transaction (see § 801.10). If there is more than one acquiring person of any class of securities, show data separately for each acquiring person; (If the exact dollar value cannot be determined at the time of filing, provide an estimated value and indicate the basis on which the estimate was made.)

Item 2(e)(vi)—Total number of each class of securities listed on page 3 which will be held by acquiring person(s) after the acquisition has been accomplished. If there is more than one acquiring person for any class of securities, show data separately for each acquiring person;

Item 2(e)(vii)—Percentage of each class of securities listed under 2(e)(vi) above which will be held by the acquiring person(s) after the acquisition has been completed (see § 801 12(b)). If there is more than one acquiring person for any class of security, show data separately for each acquiring person;

Item 2(e)(viii)—Dollar value (or estimated dollar value) of securities to be held as a result of the acquisition (see § 801.13).

Item 2(f)(i)—Furnish copies of final or most recent versions of all documents which constitute the agreement among the acquiring person(s) and the person(s) whose voting securities or assets are to be acquired. (Do not attach these documents to page 4 of the Answer Sheets.)

Item 2(f)(ii)—Index to ancillary documents. Furnish an index containing a brief description sufficient to identify each ancillary document or class of documents related to this agreement, such as those relating to personnel matters (e.g., union contracts, employment agreements), third-party financing agreements, leases, subleases and other documents relating to the transfer of realty, or other similar documents related to this transaction.

ITEM 3

Assets and voting securities held as a result of the acquisition (to be completed by both acquiring and acquired persons). State:

Item 3(a)- the percentage of the assets;

Item 3(b)- the percentage of the voting securities;

Item 3(c)- the aggregate total dollar amount of voting securities and assets of the acquired person to be held by each acquiring person, as a result of the acquisition (see §§ 801.12, 801 13, and 801.14).

ITEM 4

Furnish one copy of each of the following documents. For each entity included within the person filing notification which has prepared its own such documents different from those prepared by the person filing notification, furnish, in addition, one copy of each document from each such other entity. Furnish copies of:

Item 4(a)—all of the following documents which have been filed with the United States Securities and Exchange Commission (or are to be filed contemporaneously in connection with this acquisition): the most recent proxy statement and Form 10-K, each dated not more than three years prior to the date of this Notification and/Report Form; all Forms 10-Q and 8-K filed since the end of the period reflected by the Form 10-K being supplied; any registration statement filed in connection with the transaction for which notification is being filed; if the acquisition is a tender offer, Schedule 14D-1. Alternatively, if the person filing notification does not have copies of responsive documents readily available, identification of such documents and citation to date and place of filing will constitute compliance;

NOTE: In response to Item 4(a), the person filing notification may incorporate by reference documents submitted with an earlier filing as explained in the staff formal interpretations dated April 10, 1979, and April 7, 1981, and in § 803.2(e).

Item 4(b)—the most recent annual reports and most recent annual audit reports (of person filing notification and of each unconsolidated United States issuer included within such person) and, if different, the most recent regularly prepared balance sheet of the person filing notification and of each unconsolidated United States issuer included within such person;

Item 4(c)—all studies, surveys, analyses and reports which were prepared by or for any officer(s) or director(s) (or, in the case of unincorporated entities, individuals exercising similar functions) for the purpose of evaluating or analyzing the acquisition with respect to market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets, and indicate (if not contained in the document itself) the date of preparation, the name and title of each individual who prepared each such document.

Persons filing notification may provide an optional index of documents called for by Item 4 on page 5 of the Answer Sheets.

NOTE: If the person filing notification withholds any documents called for by Item 4(c) based on a claim of privilege, the person must provide a statement of reasons for such noncompliance as specified in the staff formal interpretation dated September 13, 1979, and § 803.3(d).

ITEMS 5 through 9 and the Appendix

NOTE: *For Items 5 through 9 and the Appendix limited or separate responses may be required of the person filing notification. (See § 803.2(b) and (c).)*

ITEM 5

ITEM 5(a) — 5(c): These Items request information regarding dollar revenues and lines of commerce at three levels with respect to operations conducted within the United States. (See § 803.2(c)(1).) All persons must submit certain data at the 4-digit (SIC code) *industry* level. To the extent that dollar revenues are derived from *manufacturing operations* (SIC major groups 20-39), data must also be submitted at the 5-digit *product class* and 7-digit *product levels* (SIC based codes).

Note: See the "References" listed in the General Instructions to the Form. Refer to the 1972 edition of the *Standard Industrial Classification Manual* and its 1977 supplement for the 4-digit (SIC Code) industry codes. Refer to the Numerical List of Manufactured and Mineral Products, *1982 Census of Manufactures and Census of Mineral Industries* (MC82-R-1) for the 5-digit product class and 7-digit product codes. Report revenues for the 5-digit and 7-digit codes using the codes in the columns labeled "Product code published." Do not report revenues using the columns labeled "Product code collected."

Insurance carriers (2-digit SIC major group 63) should supply the information requested only with respect to industries not within 2-digit major group 63. Credit agencies other than banks; security and commodity brokers, dealers, exchanges, and services; holding and other investment offices, and real estate companies (2-digit SIC major groups 61, 62, 67 and 65) should identify or explain the revenues reported (e.g., dollar sales, receipts).

Persons filing notification should include the total dollar revenues for 1982 derived by all entities included within the person filing notification at the time this Notification and Report Form is prepared (even if such entities have become included within the person since 1982). For example, if the person filing notification acquired an entity in 1984, it must include that entity's 1982 revenues in Items 5(a) and 5(b)(i).

Item 5(a)—*Dollar revenues by industry.* Provide aggregate 4-digit (SIC code) *industry* data for 1982.

Item 5(b)(i)—*Dollar revenues by manufactured product.* Provide the following information on the aggregate operations of the person filing notification for 1982 for each 7-digit product of the person in 2-digit SIC major groups 20-39 (manufacturing industries).

Do not provide 7-digit data for product codes ending in 00 if the Numerical List of Manufactured and Mineral Products contains a further breakdown. See also the 'NOTE' on page I of the these instructions concerning required references to Appendix C of the Numerical List.

Item 5(b)(ii)—*Products added or deleted.* Within 2-digit SIC major groups 20-39 (manufacturing industries), identify each product of the person filing notification added or deleted subsequent to 1982, indicate the year of addition or deletion, and state total dollar revenues in the most recent year for each product that has been added. Products may be identified either by 7-digit product code or in the manner ordinarily used by the person filing notification.

Do not include products added since 1982 by reason of mergers or acquisitions occurring since 1982. Dollar revenues derived from such products should be included in response to Item 5(b)(i). However, if an entity acquired since 1982 by the person filing notification (and now included within the person) itself has added any products since 1982, these products and the dollar revenues derived therefrom should be listed here. Products deleted by reason of dispositions of assets or voting securities since 1982 should also be listed here.

Item 5(b)(iii)—*Dollar revenues by manufactured product class.* Provide the following information about the aggregate operations of the person filing notification for the most recent year for each 5-digit *product class* of the person within SIC major groups 20-39 (manufacturing industries). If such data have not been compiled for the most recent year, estimates of dollar revenues by 5-digit product class may be provided if a statement describing the method of estimation is furnished.

Item 5(c)—*Dollar revenues by non-manufacturing industry.* Provide the following information concerning the aggregate operations of the person filing notification for the most recent year for each 4-digit (SIC code) industry in SIC major groups other than 20-39 in which the person engaged. If such data have not been compiled for the most recent year, estimates of dollar revenues by 4-digit industry may be provided if a statement describing the method of estimation is furnished. Industries for which the dollar revenues totaled less than one million dollars in the most recent year may be omitted.

NOTE: *This million dollar minimum is applicable only to Item 5(c).*

Insurance carriers (2-digit SIC major group 63) should supply the information requested only with respect to industries not within SIC major group 63, and, if voting securities of an insurance carrier are being acquired directly or indirectly should complete the Insurance Appendix to this Form.

JOINT VENTURE OR OTHER CORPORATIONS

Item 5(d)—Supply the following information only if the acquisition is the formation of a joint venture or other corporation. (See § 801.40.)

Item 5(d)(i)—List the name and mailing address of the joint venture or other corporation.

Item 5(d)(ii)(A)—List contributions that each person forming the joint venture or other corporation has agreed to make, specifying when each contribution is to be made and the value of the contribution as agreed by the contributors.

Item 5(d)(ii)(B)—Describe any contracts or agreements whereby the joint venture or other corporation will obtain assets or capital from sources other than the persons forming it.

Item 5(d)(ii)(C)—Specify whether and in what amount the persons forming the joint venture or other corporation have agreed to guarantee its credit or obligations.

Item 5(d)(ii)(D)—Describe fully the consideration which each person forming the joint venture or other corporation will receive in exchange for its contribution(s).

Item 5(d)(iii)—Describe generally the business in which the joint venture or other corporation will engage, including location of headquarters and principal plants, warehouses, retail establishments or other places of business, its principal types of products or activities, and the geographic areas in which it will do business.

Item 5(d)(iv)—Identify each 4-digit (SIC code) *industry* in which the joint venture or other corporation will derive dollar revenues. If the joint venture or other corporation will be engaged in manufacturing, also specify each 5-digit *product class* in which it will derive dollar revenues.

ITEM 6

This Item need not be completed by a person filing notification only as an acquired person if only assets are to be acquired.

Item 6(a)—*Entities within person filing notification.* List the name and headquarters mailing address of each entity included within the person filing notification. Entities with total assets of less than $1 million may be omitted.

Item 6(b)—*Shareholders of person filing notification.* For each entity (including the ultimate parent entity) included within the person filing notification the voting securities of which are held (see § 801.1(c)) by one or more other persons, list the issuer and class of voting securities, the name and headquarters mailing address of each other person which holds five percent or more of the outstanding voting securities of the class, and the number and percentage held by that person. Holders need not be listed for entities with total assets of less than $10 million.

Item 6(c)—*Holdings of person filing notification.* If the person filing notification holds voting securities of any issuer not included within the person filing notification, list the issuer and class, the number and percentage held, and (optionally) the entity within the person filing notification which holds the securities. Holdings of less than five percent of the outstanding voting securities of any issuers, and holdings of issuers with total assets of less tnan $10 million, may be omitted.

ITEM 7

If, to the knowledge or belief of the person filing notification, the person filing notification derived dollar revenues in the most recent year from operations in any 4-digit (SIC code) industries in which any other person which is a party to the acquisition also derived dollar revenues in the most recent year (or in which a joint venture of other corporation will derive dollar revenues), then for each such 4-digit (SIC code) industry:

Item 7(a)—supply the 4-digit SIC code and description for the industry;

Item 7(b)—list the name of each person which is a party to the acquisition which also derived dollar revenues in the 4-digit industry;

Item 7(c)—*Geographic market information*

Item 7(c)(i)—for each 4-digit industry within SIC major groups 20-39 (manufacturing industries) listed in Item 7(a) above, list the states (or, if desired, portions thereof) in which, to the knowledge or belief of the person filing notification, the products in that 4-digit industry produced by the person filing notification are sold without a significant change in their form, whether they are sold by the person filing notification or by others to whom such products have been sold or resold;

Item 7(c)(ii)—for each 4-digit industry within SIC major groups 01-17 and 40-49 (agriculture, forestry and fishing, mining, construction, transportation, communications, electric, gas and sanitary services) listed in Item 7(a) above, list the states (or, if desired, portions thereof) in which the person filing notification conducts such operations;

Item 7(c)(iii)—for each 4-digit industry within SIC major groups 50-51 (wholesale trade) listed in Item 7(a) above, list the states, (or, if desired, portions thereof) in which the customers of the person filing notification are located;

Item 7(c)(iv)—for each 4-digit industry within SIC major groups 52-62 and 64-89 (retail trade, finance, insurance other than insurance carriers, and real estate, and services) listed in Item 7(a) above, provide the address, arranged by state, county and city or town, of each establishment from which dollar revenues were derived in the most recent year by the person filing notification; and

Item 7(c)(v)—for each 4-digit industry within SIC 63 (insurance) listed in Item 7(a) above, list the state(s) in which the person filing notification is licensed to write insurance.

NOTE: Except in the case of those SIC major industry groups mentioned in Item 7(c)(iv) above, the person filing

notification may respond with the word "national" if business is conducted in all 50 states.

ITEM 8

Item 8—Put an X in the appropriate box to indicate if the acquired person and an acquiring person maintained a vendor-vendee relationship during the most recent year with respect to any manufactured product (or, if the acquisition is the formation of a joint venture or other corporation (see § 801.40), if the joint venture or other corporation will supply to any of the persons forming it any manufactured product which such person purchased from another such person during the most recent year) which the vendee either resells or consumes in or incorporates into the manufacture of any product. Persons filing notification which are *vendees* of such product(s) should list each product purchased, identify each vendor which is a party to the acquisition from which the product was purchased and state the dollar amount of the product purchased from that vendor during the most recent year.

Manufactured products are those within 2-digit SIC major groups 20-39. Any product purchased from the vendor in an aggregate annual amount not exceeding $1 million, or the manufacture, consumption or use of which is not attributable to the assets to be acquired, or to the issuer whose voting securities are to be acquired (including entities controlled by the issuer), may be omitted.

ITEM 9

Item 9—*Previous acquisitions* (to be completed by acquiring persons)—Determine each 4-digit (SIC code) industry listed in Item 7(a) above, in which the person filing notification derived dollar revenues of $1 million or more in the most recent year and in which either the acquired issuer derived revenues of $1 million or more in the most recent year, (or in which, in the case of the formation of a joint venture or other corporation, the joint venture or other corporation reasonably can be expected to derive dollar revenues of $1 million or more), or revenues of $1 million or more in the most recent year were attributable to the acquired assets.

For each such 4-digit industry, list all acquisitions made by the person filing notification in the ten years prior to the date of filing of entities deriving dollar revenues in that 4-digit industry. List only acquisitions of more than 50 percent of the voting securities or assets of entities which had annual net sales or total assets greater than $10 million in the year prior to the acquisition.

For each such acquisition, supply:
(a) the name of the entity acquired;
(b) the headquarters address of the entity prior to the acquisition;
(c) whether securities or assets were acquired;
(d) the consummation date of the acquisition;
(e) the annual net sales of the acquired entity for the year prior to the acquisition;
(f) the total assets of the acquired entity in the year prior to the acquisition; and
(g) the 4-digit (SIC code) industries (by number and description) identified above in which the acquired entity derived dollar revenues.

ITEM 10

Item 10(a)—Print or type the name and title, firm name, address, and telephone number of the individual to contact regarding this Notification and Report Form. (See § 803.20(b)(2)(ii).)

Item 10(b)—Foreign filing persons print or type the name and title, firm name, address, and telephone number of an individual located in the United States designated for the limited purpose or receiving notice of the issuance of a request for additional information or documentary material. (See § 803.20(b)(2)(iii).)

Certification—(See § 803.6.)

APPENDIX TO NOTIFICATION AND REPORT FORM: INSURANCE

Insurance carriers (2-digit SIC major group 63) are required to complete this Appendix if voting securities of an insurance carrier are being acquired directly or indirectly.

ITEM 1

Item 1(A)—*Life Insurance.* Provide for the most recent year the amount of premium receipts (calulated on the accrual basis) for each of the lines of insurance listed on page 16 of the Answer Sheets.

Item (B)—*New Business.* Provide for the most recent year the amount of new life insurance business issued in the United States (exclusive of revivals, increases, dividend additions and reinsurance ceded) for each of the lines of insurance listed on page 16 of the Answer Sheets.

ITEM 2

Item 2(A)—*Property Liability Insurance.* Provide for the most recent year the amount of direct premiums written in the United States for each line of insurance specified in Part 2 of the Underwriting and Investment Exhibit of your carrier's annual convention statement.

Item 2(B)—Provide for the most recent year the amount of net premiums written in the United States for each line of insurance specified in Part 2 of the Underwriting and Investment Exhibit of your carrier's annual convention statement.

ITEM 3

Item 3(A)—*Title Insurance.* Provide for the most recent year the amount of net direct title insurance premiums written in the United States.

Item 3(B)—Provide for the most recent year the amount of direct title insurance premiums earned in the United States.

NAME OF PERSON FILNG NOTIFICATION	DATE

ITEM 5 (See the "References" listed in the General Instructions to the Form. Refer to the 1972 edition of the *Standard Industrial Classification Manual* and its 1977 Supplement for the 4-digit (SIC Code) industry codes. Refer to the Numerical List of Manufactured and Mineral Products, *1982 Census of Manufactures and Census of Mineral Industries* (MC82-R-1) for the 5-digit product class and 7-digit product codes. Report revenues for the 5-digit and 7-digit codes using the codes in the columns labeled "Product code published." Do not report revenues using codes in the columns labeled "Product code Collected.")

5(a) DOLLAR REVENUES BY INDUSTRY

4-DIGIT INDUSTRY CODE *Product code published*	DESCRIPTION	1982 TOTAL DOLLAR REVENUES

NAME OF PERSON FILNG NOTIFICATION	DATE

ITEM 5(b)(1) DOLLAR REVENUES BY MANUFACTURED PRODUCTS

7-DIGIT PRODUCT CODE *Product code published*	DESCRIPTION	1982 TOTAL DOLLAR REVENUES

NAME OF PERSON FILNG NOTIFICATION | DATE

ITEM 5(b)(II) PRODUCTS ADDED OR DELETED

DESCRIPTION (7-DIGIT PRODUCT CODE	ADD	DELETE	YEAR OF CHANGE	TOTAL DOLLAR REVENUES

ITEM 5(b)(III) DOLLAR REVENUES BY MANUFACTURED PRODUCT CLASS

5-DIGIT PRODUCT CLASS CODE *Product code published*	DESCRIPTION	YEAR ___ TOTAL DOLLAR REVENUES

(Item 5(b)(III) continued on page 9)

BILLING CODE 6750-01-C

NAME OF PERSON FILING NOTIFICATION | DATE

5(d) COMPLETE ONLY IF ACQUISITION IS THE FORMATION OF A JOINT VENTURE OR OTHER CORPORATION

5(d)(i) NAME AND ADDRESS OF THE JOINT VENTURE OR OTHER CORPORATION

5(d)(ii)

(A) CONTRIBUTIONS THAT EACH PERSON FORMING THE JOINT VENTURE OR OTHER CORPORATION HAS AGREED TO MAKE.

(B) DESCRIPTION OF ANY CONTRACTS OR AGREEMENTS.

(C) DESCRIPTION OF ANY CREDIT GUARANTEES OR OBLIGATIONS

(D) DESCRIPTION OF CONSIDERATION WHICH EACH PERSON FORMING THE JOINT VENTURE OR OTHER CORPORATION WILL RECEIVE

5(d)(iii) DESCRIPTION OF THE BUSINESS IN WHICH THE JOINT VENTURE OR OTHER CORPORATION WILL ENGAGE

5(d)(iv)SOURCE OF DOLLAR REVENUES BY 4-DIGIT SIC CODE *(non-manufacturing)* AND BY 5-DIGIT PRODUCT CLASS *(manufacturing)*

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 86-6559 Filed 3-25-86; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Federal Highway Administration

23 CFR Part 1208

[Docket No. 85-12; Notice 2]

National Minimum Drinking Age

AGENCIES: National Highway Traffic Safety Administration (NHTSA), Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This rule clarifies the provisions which a State must incorporate or have incorporated into its laws in order to prevent the withholding of a portion of its Federal-aid highway funds for noncompliance with the National Minimum Drinking Age. This rule implements section 6 of Pub. L. 98-363.

EFFECTIVE DATE: This rule becomes effective March 26, 1986.

FOR FURTHER INFORMATION CONTACT:

NHTSA: Mr. George Reagle, Associate Administrator for Traffic Safety Programs, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-426-0837) or Kathleen C. DeMeter, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-426-1834).

FHWA: Mr. R. Clarke Bennett, Director, Office of Highway Safety, Federal Highway Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-426-1153) or Mr. David Oliver, Office of Chief Counsel, Federal Highway Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-426-0825).

SUPPLEMENTARY INFORMATION: On July 17, 1984, the President signed Public Law 98-363, which strongly encourages States to have laws prohibiting the purchase and public possession of alcoholic beverages by anyone under 21 years of age by withholding a portion of Federal-aid highway funds from States without such laws (23 U.S.C. 158, hereinafter called the National Minimum Drinking Age). The statute requires the Secretary of Transportation to withhold a portion of Federal-aid highway funds from any State whose laws permit the purchase or public possession of any alcoholic beverage by a person who is less than 21 years of age. If any such State does not enact a new law or amend its existing laws to make age 21 the legal minimum drinking age by October 1, 1986 (fiscal year 1987), five percent of its Federal-aid highway apportionment under 23 U.S.C. 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6), which are primary system, secondary system, Interstate system (including resurfacing, restoring, rehabilitating and reconstructing funds) and urban system funds, shall be withheld. If by October 1, 1987 (fiscal year 1988) no such law is adopted or amendments made, ten percent of its fiscal year 1988 Federal-aid highway apportionment under these sections will be withheld. Responsibility for administering the program has been delegated jointly to the National Highway Traffic Safety Administration and the Federal Highway Administration (the "Agencies"). 50 FR 43165 (October 24, 1985).

The Notice of Proposed Rulemaking (NPRM), which was issued on September 24, 1985 (50 FR 39140, September 27, 1985), sought comments on several issues that the Agencies were considering adopting in the final rule. The Agencies received comments from 17 States, State agencies and private organizations. Although most of the commenters support a national minimum drinking age of 21, many of those comments raised serious concerns about the ability of States that already have age 21 statutes to satisfy various particular provisions contained in the NPRM. As a result of these comments, and as a result of the Agencies' preliminary review of existing State minimum drinking age statutes, the Agencies have made several amendments to the proposal as it appeared in the NPRM. The issues which were addressed in the NPRM and additional changes made in the final rule are discussed below.

In analyzing the legislative history of the National Minimum Drinking Age, the Agencies believe that Congress did not intend to cause States, especially those that already had a minimum drinking age of 21, to lose a portion of their Federal-aid highway funds merely because of a technical, non-substantive difference between a State law and the literal language of the Federal law. Indeed, the legislative history of the statute suggests that Congress did not believe that this law would generally have any adverse affect on States which had already enacted 21 drinking age laws.

For example, Representative Howard, the sponsor of the age-21 legislation in the House of Representatives, said "The amendment I am offering would encourage those States *that have not yet done so* to raise their minimum drinking age to 21." (Emphasis supplied). (130 Cong. Rec. H5395, daily ed. June 7, 1984). During the Senate consideration of the age-21 legislation, Senator Danforth, one of the sponsors in the Senate, was engaged in a colloquy with Senator Leahy. Senator Leahy said, "But the Senator's amendment is *not penalizing any State which is already at 21.* It penalizes those below [21]." Senator Danforth responded, "Right." Senator Leahy then stated, "To that extent, the benefit of it, the not being penalized, *goes automatically to any State at 21.*" (Emphasis supplied). (130 Cong. Rec. S8219, daily ed., June 26, 1984). This sentiment was echoed several more times during the debates in both Houses of Congress.

Other comments made during the debate in both the House and Senate strongly support the agencies' conclusion that Congress considered it unlikely that the highway fund withholding sanctions would ever need to be applied. For example, Representative Anderson, who chairs the Surface Transportation Subcommittee of the House Public Works and Transportation Committee, discussed the highway funds withholding sanctions provided by the Clean Air Act and the National Maximum Speed Limit law as analogies to the age-21 legislation, and noted, "To date, the sanctioning process has never been used, indicating its effectiveness *and the unlikelihood that it will have to be employed.*" (Emphasis supplied.) (130 Cong. Rec. H5395, daily ed., June 7, 1984). Senator Lautenberg, one of the Senate sponsors of the age-21 legislation, said in response to a question from Senator Baucus, "As the Senator is aware, the Department of Transportation is always most reluctant to impose sanctions upon States whenever it can be reasonably avoided. If in fact, by fiscal year 1987, . . . if the State could not practically comply through the use of its normal and general procedures for amending its constitution and its statutes, *then all evidence would suggest that the Department should take this into account in its imposition of sanctions.*" (Emphasis supplied.) (130 Cong. Rec., S8214, daily ed., June 26, 1984). Thus, both House and Senate debates reflect a sense that Congress did not think it likely that the sanctions would need to be imposed and, in any event, that the

Department should administer the sanctions reasonably and flexibly.

Therefore, the Agencies are adopting the position that States which can demonstrate that their non-conformities are technical and non-substantive and which are otherwise in compliance, or that through actual practice provide compliance, will satisfy the requirements of the regulation and not have any of their Federal-aid funds withheld for such non-conformities. The procedure to be followed by States that believe they have technical, non-substantive non-conformities is set forth in Section 1208.6(b) of the final rule and is further described below under the subsection entitled "Technical Non-conformities".

Additionally, several New York State agencies (the Governor's Traffic Safety Committee, the Division of Alcoholism and Alcohol Abuse, the Department of Transportation and the Department of Motor Vehicles) requested an interpretation that any State which adopted a minimum drinking age of 21 prior to the adoption of the final rule be "grandfathered" from its application, without further consideration of the provisions in the rule. The NHTSA and FHWA recognize that a number of States acted promptly and decisively before the issuance of this rule to address the problem of drinking by individuals under age 21, and that others have age 21 laws that predate the Federal statute. Despite the fact that some Congressmen assumed that these States would comply with the Federal statute, the NHTSA and FHWA are constrained by the language of the statute and, where there are substantive non-conformities, cannot exempt from its application those States that do not meet its provisions.

Alcoholic Beverage

As noted in the NPRM, the definition of "alcoholic beverage" is prescribed in the Federal statute itself and that definition is incorporated into the final rule. No commenters addressed the definition; however, a review of existing State statutes revealed that a number of States have variations in their definitions that may not satisfy the Federal statute. Some State statutes are considerably out of compliance, such as those that appear to allow individuals under age 21 to purchase or possess 3.2 beer. Other State laws reflect technical drafting differences, such as defining an alcoholic beverage as having an alcoholic content of "*more than* one-half of one percent", whereas the Federal statute definition includes those beverages with an alcoholic content of "*not less than* one-half of one percent" by volume. (Emphasis added.)

Since the definition is prescribed by Federal statute and not subject to regulatory amendment, the Agencies do not have the authority to change the definition. However, the Agencies believe that certain definitional differences are technical and non-substantive. For example, the Agencies do not believe that a State law that defines alcohol as *more than* one-half of one percent is substantively different from the statutory definition of one-half of one percent *or more*. Therefore, the Agencies will consider a State law that defines alcohol as more than one-half of one percent to be in compliance with the statutory definition of alcohol without any need for further submissions by the State. However, if a State does not define 3.2 beer, for instance, as an alcoholic beverage, and permits individuals under age 21 to purchase or publicly possess 3.2 beer, this difference is substantive and would result in a withholding of Federal-aid highway funds for noncompliance.

However, the Agencies also believe that while some State statutes have substantive definitional differences from the Federal statute, their practices may in fact serve to prohibit the purchase or public possession of all "alcoholic beverages" by persons under age 21. The Agencies will, therefore, accept additional documentation from States to indicate whether their actual practices are in conformance with the Federal statute. Actual practice may be demonstrated by regulation, Attorney General opinions or appropriate evidence, as provided in § 1208.6 of the regulation. It should be noted that any finding of compliance based on actual practice rather than statutory language will be conditioned on that practice being continued.

Public Possession

The phrase "public possession" was not defined in the statute and the Agencies defined it in the NPRM to mean "the possession of any alcoholic beverage for any reason, including consumption, on any street or highway or in any public place or in any place open to the public." The Agencies specifically excluded from that proposed definition the possession of alcohol for an established religious purpose and the selling, transporting, delivering, serving or other handling of an alcoholic beverage in pursuance of a person's employment. No commercial objected to the exemption for employment purposes.

Two commenters, however, expressed concern over the religious exemption. The Wholesale Beer Distributors of Texas feared that the exemption would lead to subterfuge applications by allegedly religious institutions, and the Texas Alcoholic Beverage Commission was concerned that the rule contained no definition of "religious purpose." The Agencies are not convinced that individuals or groups would use this exemption to circumvent the statute's application, nor do they believe that the lack of a definition in the rule will defeat the exemption's application. For years States have enforced statutes that define religion for purposes of tax exemption with relatively little difficulty, and the Agencies expect they will apply similar definitions to "established religious purpose" for enforcement of their laws under this rule. Moreover, States concerned about an exemption for an "established religious purpose" are not required by the Federal statute to provide such an exemption and should not feel compelled to adopt such an exemption. The Texas Alcoholic Beverage Commission also asked whether a religious purpose could take place in a public facility. The exemption in the final rule for an "established religious purpose" is a blanket exemption, not limited to private facilities.

Furthermore, the Agencies requested comments on other parameters of the phrase "public possession." For example, they noted that several States have statutes that regulate private clubs similarly to other licensed business establishments and that some States permit minors to drink in public when accompanied by a parent, spouse or legal guardian age 21 or older.

Of the six organizations and individuals that commented on this issue, four (the Governor of Texas, Wholesale Beer Distributors of Texas, Texas Alcoholic Beverage Commission and the National Licensed Beverage Association) indicated their support for a provision exempting minors when accompained by a parent, spouse or guardian of legal drinking age. The Agencies' preliminary review of State laws indicated that Texas is one of 17 States that have such an exemption. Several of these 17 States had enacted their age-21 laws prior to the enactment of the Federal statute, and, as noted above, the legislative history suggests that Congress did not anticipate sanctions against existing age-21 laws. For example, Senator Evans of Washington stated during the debate on the age-21 legislation, "Now, we will not be affected by either of these proposals in the State of Washington. We already have a 21-year-old drinking law." (130 Cong. Rec. S8226, daily ed., June 26,

1984). Washington has had a 21 drinking age since 1934, which provides an exemption for minors accompanying a parent, guardian or spouse. The National Licensed Beverage Association further asserted that to adopt an exemption for religious purposes but not for this purpose would be arbitrary. Likewise, the Texas Alcoholic Beverage Commission (TABC) stated that the deliberate inclusion of certain exemptions and exclusion of other potential exemptions is capricious and unrelated to the intent of the statute. The TABC stated that strict inflexible adherence to the language of the Federal statute is not necessary to further legislative intent, which was to reduce drunk driving. The State of Florida and Senator Frank Lautenberg of New Jersey, one of the sponsors of the National Minimum Drinking Age, both supported the provision as it appeared in the NPRM.

As noted above, the Agencies have reviewed the legislative history of the National Minimum Drinking Age, and concluded that Congress passed the statute not to withhold funds but rather to reduce the deaths and crippling injuries attributed to drank driving by individuals under age 21 (130 Cong. Rec. S8206–8248 (daily ed. June 26, 1984) and H5394–5408 (daily ed. June 7, 1984)). Congress clearly envisioned that, with a few exceptions, such as the military exemption, those States which had already established 21 as the minimum legal drinking age were complying with the spirit of the Federal law. Therefore, the Agencies are providing certain exemptions that a State may allow under its laws without risking the loss of Federal-aid highway funds.

As proposed in the NPRM, the Agencies are exempting the public possession of alcoholic beverages for religious purposes and for job-related purposes when the selling, transporting, delivery, serving or other handling of an alcoholic beverage is in pursuance of a person's employment by a duly licensed manufacturer, wholesale or retailer of alcoholic beverages. Additionally, the Agencies are exempting the public possession of alcoholic beverages by minors when accompanied by a parent, spouse or legal guardian age 21 or older. Although the agencies had proposed not to adopt such an exemption, they have reconsidered their position in light of the comments and their preliminary review of State statues. Since the purpose of the Federal statute is to control drunk driving, the Agencies believe that this purpose will continue to be served because those individuals over 21 who have some responsibility toward the underage individual can ensure that the younger person in their company will not drive. Futher, as noted above, many States providing such an exemption enacted their age-21 statutes prior to enactment of the Federal statute, and the Agencies do not believe that Congress intended to apply sanctions to those States because of such an exemption. A preliminary review of State statutes revealed that some States also have an exemption for the use of alcoholic beverage when administered by a licensed physician or pharmacist for medicinal purposes. The Agencies see the validity in allowing such an exemption when medical judgment dictates that the use of an alcoholic beverage is a valid treatment for a medical condition and are, therefore, providing an exemption for "public possession" related to such use.

The Statute's use of the word "public" indicates that Congress chose not to require drinking age restrictions on possession in private settings. Consequently, the Agencies believe that Congress did not intend to extend the provisions of the Federal statute to cover possession in private establishments such as clubs. The Agencies emphasize, however, that any place which is *de facto* open to the public, such as a private club which admits persons upon the role requirement of payment of a nominal monetary membership fee or other equivalent consideration, is not considered private for purposes of this rule. Furthermore, the Agencies do not encourage such exemptions and remind States that they are not required by the Federal statute to permit a private club exemption (or any other exemption allowed by this rule).

The Agencies note that although Congress used the word "public" to modify the word "possession", it did not use a similar modification for "purchase". The Agencies, therefore, believe that Congress intended to extend the provisions of the Federal statute to include the purchase of alcoholic beverages in private clubs. In support of this, the Agencies preliminary review of State statutes indicates that many States apply their liquor laws to private clubs and these clubs operate much the same as public establishments that serve alcohol. Compliance with this requirement should not, therefore, create any difficulties for the States.

A preliminary review of the State laws also uncovered two States that have exemptions for educational purposes. The Agencies are unclear as to what is encompassed by those statutes; however, the Agencies will afford those States the opportunity to submit additional justification demonstrating the validity of the exemption. Two additional States have exemptions for the possession and transport for personal use, family and guests. Those States will also be afforded the opportunity to demonstrate the validity of that exemption. This information should be submitted in accordance with the procedures set forth in section 1208.6(b) of the final rule.

The NPRM noted that the legislative debate on this statute in both the House and the Senate included extensive discussions of whether individuals serving in the Armed Forces of the United States should be exempt from the provisions of the National Minimum Drinking Age. As expressed in the NPRM, the legislative history is clear that Congress views both drinking and driving to be privileges which are subject to reasonable regulation in the interests of public health and safety. Furthermore, there was concern that permitting a blanket exclusion within a State for members of the military would continue the problem of "blood borders". Consequently, the final rule, like the NPRM, contains no exemption for military personnel. It should be noted that State drinking age laws do not generally apply to alcohol consumed on premises controlled by the military and the scope of this rule extends only to State laws concerning those jurisdictions within the control of the States. The Agencies are, however, encouraged that the Department of Defense has taken substantial steps toward limiting the consumption of alcoholic beverages on military premises by individuals under age 21.

One commenter opposed excluding homes from the coverage of the regulation, but the Agencies would like to reiterate that homes are not covered by the plain language of the statute itself which refers to "public possession". In response to a concern raised by the Texas Alcoholic Beverage Commission which indicated that Texas law prohibits drinking by minors in private homes when parents are not there, the Agencies would like to point out that the States should not feel limited to the parameters set forth in this rule, but that they may include additional prohibitions.

Purchase

One commenter noted that the definition of "purchase" as used in the NPRM was meaningless because of the use of the word "purchase" in defining the word. The Agencies agree and have

redefined "purchase" in the final rule to mean "to acquire by the payment of money or other consideration."

The American Medical Association indicated that the definition of "purchase" should also include "sale". The Agencies considered the issue of whether the Statute requires that State law prohibit "sale" as well as "purchase." The Agencies also considered whether the statutory requirement that "purchase" be prohibited was satisfied if "sale" of alcoholic beverages to minors was prohibited.

On its face, the Federal statutory phrase does not include "sale" and there is no legislative history suggesting that "sale" must be prohibited. Additionally, the Agencies are aware of no State with 21 as the legal minimum drinking age which has a statute prohibiting the purchase of alcoholic beverages, but not the sale, thus rendering this addition unnecessary. In view of the language and legislative history of the statute, the Agencies have determined that it is neither necessary nor appropriate to require States to prohibit "sale" as well as "purchase and public possession." However, the Agencies will consider a statute that prohibits sale of an alcoholic beverage to an underage person, instead of purchase by such a person, to be in compliance with the Federal statute's requirement to prohibit purchase.

Purchase or Public Possession

As noted by the commenters from New York, section 158(a) of the Federal statute states that funds shall be withheld if the "purchase *or* public possession" by someone under age 21 is lawful, thus implying that both purchase and public possession must be prohibited in order to be in compliance and avoid a withholding of funds. However, section 158(b) states that any withheld funds are to be returned if a State makes unlawful the "purchase *or* public possession," which could be read as implying that if a State makes unlawful either the purchase or public possession it will have all withheld funds returned. These commenters support the disjunctive requirements as expressed in section 158(b), stressing that it should be up to each individual State as to how to achieve an acceptable age-21 drinking law. The commenters expressed their belief that Congress did not intend to dictate the specific manner in which States should control access to alcoholic beverages.

In light of Congress' apparent preference for a prohibition on both purchase and public possession, as evidenced by the withholding provisions of section 158(a), the Agencies believe that Congress did not intend to accept statutes that prohibit only one but not the other. Therefore, the final rule automatically accepts statutes requiring both. However, because of the ambiguity of the statute and the Agencies' desire to be as flexible as possible, the final rule also permits States to submit additional justification of either-or laws.

In view of the comments submitted to the NPRM, the Agencies appreciate that some States may be able to effectively control drinking by underage individuals with statutes that prohibit only the possession of alcoholic beverages. An individual cannot purchase an alcoholic beverage without also being in possession of it, therefore, possession appears to reach both aspects of the underage drinking problem that Congress wanted to eliminate. The Agencies are, however, requiring additional justification from those States which regulate possession and not purchase to show that their statutes are interpreted and enforced in such a manner that this limitation does not pose a detriment to controlling underage drinking. Such justification should be submitted in accordance with § 1208.6(b) of the final rule.

As to the converse situation, the Agencies are not convinced that statutes which prohibit only purchase, but not public possession, are sufficient to effectively control underage drinking. An individual in such a State could consume an alcoholic beverage in public, provided he or she did not purchase it, Thus, a major problem which Congress intended to control would still exist. However, the Agencies will entertain additional support for such laws on a State-by-State basis pursuant to the procedure set forth in § 1208.6(b) of the final rule.

Technical Non-conformities

If a State receives an initial notification of non-compliance pursuant to § 1208.6(a) of the final rule and believes that the items identified are technical non-conformities only, the State will have the opportunity to submit documentation demonstrating that the technical non-conformity is non-substantive and has little, if any, impact on the goal of prohibiting purchase and public possession of alcoholic beverages by those under 21. This information should be submitted in accordance with the procedures set forth in § 1208.6(b) of the final rule.

Apportionment of Withheld Funds

In the NPRM the Agencies noted that they sought the advice of the Office of Management and Budget (OMB) on the issue of how long the withheld funds would remain available for apportionment. OMB interpreted the interaction of the laws governing the National Minimum Drinking Age (23 U.S.C. 158) and the Federal-aid highway program funding (23 U.S.C. 118(b)) to mean that withheld funds would be subject to the standard periods of availability for Federal-aid highway funds. The Florida Department of Community Affairs expressed its belief that section 118(b) should not apply and that Congress intended for the funds to be returned at any time a State came into compliance. The National Licensed Beverage Association stated its belief that legislative intent was to make the funds available for a six-year period (four-year availability subsequent to the two fiscal years during which withholdings can take place). Senator Lautenberg, on the other hand, supported the NPRM's reading of the availability of funds and noted that the Senate on July 31, 1985, approved legislation (S. 1529) clarifying and confirming this interpretation. (The Agencies note, however, that the legislation has not been enacted into law as of the issuance of this rule.) The Agencies are retaining in the final rule the language as it appeared in the NPRM.

Grandfathering

The question was raised whether a State which adopts a minimum drinking age of 21 prior to the adoption of the final rule, but which also provides "grandfather" rights to continue drinking privileges for those persons under age 21, could in turn be "grandfathered" from the absolute age-21 requirement in the Federal statute. The statute provides that the Secretary "shall withhold" funds if the purchase or public possession of alcoholic beverages by a person under age 21 is lawful on October 1, 1986, and October 1, 1987, which would at first indicate that a State with under-21 "grandfather" rights in effect on those dates would be subject to withholding. However, the statute also provides that withheld funds are to be restored to the States as soon as all under-21 drinking is prohibited (i.e., when those "grandfather" rights expire).

The agencies have determined that no useful purpose would be served by withholding funds from an otherwise complying State merely by the presence of such "grandfather" rights, if the scheduled expiration of those rights would automatically trigger the restoration of funds. A preliminary

review of the five States which currently have "grandfather" provisions in the age-21 laws indicates that in all but one State all such rights will have expired—i.e., no further under-21 drinking would be permitted—by October 1, 1987. Since no withheld funds would have lapsed by that date for those four States, any withheld funds would at that point be restored, as long as the State was otherwise in compliance. The Agencies have determined that such withholding and subsequent return of funds would not further the purposes of the statute, and would also result in unnecessary administrative burdens on both the Federal government and the States. The Agencies do not, however, believe that it is consistent with the intent of Congress to allow States to retain funds which would have lapsed prior to the date on which the funds are to be restored. Accordingly, the Agencies will consider any State which has enacted a grandfather provision whose scheduled expiration would result in full restoration of funds to be in compliance, provided the State is otherwise in compliance with the National Minimum Drinking Age.

Notification of Compliance

The NPRM specified that each State would be notified of the Agencies' preliminary reviews of State statutes by March 1, 1986, and March 1, 1987, and of their final determinations of compliance by May 1, 1986 and May 1, 1987. Three commenters recommended changes in this time schedule to allow States to demonstrate compliance at later dates. The Agencies believe that the request to permit a State to demonstrate compliance at any time is reasonable. However, they also recognize some lead time is needed to review all State laws in the degree of detail necessary to make determinations of compliance. Therefore, States will be notified of the Agencies' preliminary reviews by March 28, 1986, and March 28, 1987, and of their final determinations by May 30, 1986 and May 30, 1987. Any State that has been notified of compliance in 1986 will not again be notified in 1987, provided its statute remains unchanged. Should any State found not to be in compliance subsequently change its laws or regulations such that it feels it is in compliance, that state may submit substantiating documentation at any time.

Every effort will be made to work closely with States that have apparent compliance problems in order that they will have adequate opportunity to comply with the rule before the withholding of any funds is required to take place.

Regulatory Evaluation

The agencies have determined that this rulemaking should be classified as significant under the Department's regulatory policies and procedures. The Agencies have not prepared a regulatory evaluation because the regulatory impact is not greater than $100 million. In addition, any economic impact that may occur is not attributable to this regulation, but will be instead the result of the Federal statute and of State decisions on whether to conform with the Federal Statute. The Agencies have determined that since this rule will not have an annual impact of $100 million on the economy, it is not a major rule within the meaning of Executive Order 12291.

Regulatory Flexibility Act

The Texas Alcoholic Beverage Commission requested that the Agencies prepare a Regulatory Flexibility Analysis pursuant to the Regulatory Flexibility Act (Public Law 98–354). The Agencies, however, certify that this rulemaking action will not have a significant economic impact on a substantial number of small entities. Any economic impact on liquor stores or other establishments will be the result of State decisions on whether to enact statutes that conform with the Federal statute. Such decisions are not mandated by this regulation. Therefore, preparation of a Regulatory Flexibility analysis is not necessary.

List of Subjects in 23 CFR Part 1208

Alcohol, Highway safety.

In consideration of the foregoing, a new Part 1208 is added to Title 23 of the Code of Federal Regulations to read as follows:

PART 1208—NATIONAL MINIMUM DRINKING AGE

Sec.

1208.1 Scope.
1208.2 Purpose.
1208.3 Definitions.
1208.4 Adoption of National Minimum Drinking Age.
1208.5 Apportionment of withheld funds.
1208.6 Notification of compliance.

Authority: 23 U.S.C. 158

§ 1208.1 Scope.

This part prescribes the requirements necessary to implement 23 U.S.C. 158, which establishes the National Minimum Drinking Age.

§ 1208.2 Purpose.

The purpose of this part is to clarify the provisions which a State must have incorporated into its laws in order to prevent the withholding of Federal-aid highway funds for noncompliance with the National Minimum Drinking Age.

§ 1208.3 Definitions.

As used in this part:

"Alcoholic beverage" means beer, distilled spirits and wine containing one-half of one percent or more of alcohol by volume. Beer includes, but is not limited to, ale, lager, porter, stout, sake, and other similar fermented beverages brewed or produced from malt, wholly or in part or from any substitute therefor. Distilled spirits include alcohol, ethanol or spirits or wine in any form, including all dilutions and mixtures thereof from whatever process produced.

"Public possession" means the possession of any alcoholic beverage for any reason, including consumption on any street or highway or in any public place or in any place open to the public (including a club which is *de facto* open to the public). The term does not apply to the possession of alcohol for an established religious purpose; when accompanied by a parent, spouse or legal guardian age 21 or older; for medical purposes when prescribed or administered by a licensed physician, pharmacist, dentist, nurse, hospital or medical institution; in private clubs or establishments; or to the sale, handling, transport, or service in dispensing of any alcoholic beverage pursuant to lawful employment of a person under the age of twenty-one years by a duly licensed manufacturer, wholesaler, or retailer of alcoholic beverages.

"Purchase" means to acquire by the payment of money or other consideration.

§ 1208.4 Adoption of National Minimum Drinking Age.

(a) The Secretary shall withhold five percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5) and 104(b)(6) of title 23 of the United States Code on the first day of the fiscal year succeeding the fiscal year beginning after September 30, 1985, in which the purchase or public possession in such State of any alcoholic beverage by a person who is less than twenty-one years of age is lawful.

(b) The Secretary shall withhold ten percent of the amount required to be apportioned to any State under each of

sections 104(b)(1), 104(b)(2), 104(b)(5) and 104(b)(6) of title 23 of the United States Code on the first day of the fiscal year succeeding the second fiscal year beginning after September 30, 1985, in which the purchase or public possession in such State of any alcoholic beverage by a person who is less than twenty-one years of age is lawful.

§ 1208.5 Apportionment of withheld funds.

Funds withheld pursuant to § 1208.4 shall be apportioned to a State, subject to the availability of such funds under 23 U.S.C. 118(b), if such State makes unlawful the purchase and public possession of any alcoholic beverage by a person who is less than twenty-one years of age.

§ 1208.6 Notification of compliance.

(a) Each State will be notified by certified mail of NHTSA's and FHWA's preliminary review of its statutes for compliance or non-compliance with 23 U.S.C. 158 for fiscal year 1987 by March 28, 1986. States with apparent compliance problems for fiscal year 1987 will be notified of NHTSA's and FHWA's preliminary review of their statutes for compliance or non-compliance for fiscal year 1988 by March 28, 1987.

(b) If NHTSA and FHWA initially find the State has apparent compliance problems, the notice shall state the reasons for those problems and shall inform the State that it may, within 30 days of its receipt of the notification, submit documentation showing why it is in compliance. Such documentation shall be submitted to the Director, Office of Alcohol and State Programs, NHTSA, 400 Seventh Street, S.W., Washington, D.C. 20590.

(c) Each State will be notified by certified mail of NHTSA's and FHWA's final determination of the State's compliance or non-compliance with 23 U.S.C. 158 for fiscal year 1987 by May 30, 1986. States found in non-compliance for fiscal year 1987 will be notified of NHTSA's and FHWA's final determination of compliance or non-compliance for fiscal year 1988 by May 30, 1987.

Issued on: March 24, 1986.

Diane K. Steed,

National Highway Traffic Safety Administrator.

R.A. Barnhart,

Federal Highway Administrator.

[FR Doc. 86-6576 Filed 3-24-86; 4:00 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8068]

Income Taxes; Stock Acquisitions; Temporary Regulations Under Section 338(h)(10) of the Internal Revenue Code of 1954 and Extension of Time To Make Certain Elections

Correction

In the issue of Thursday, March 13, 1986, on page 8671 in the second column, a correction to FR Doc. 86-60 appeared. Make the following changes in correction 2c. In the third line, "5" should read "7" and in the third and fourth lines, the section symbol should have been a dollar sign.

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 252

Outer Continental Shelf (OCS) Oil and Gas Information Program

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: This rule amends the definition of "area adjacent to a State" to deem the States of New York and Rhode Island adjacent to the North Atlantic Planning Area even though the States do not physically border that particular planning area.

EFFECTIVE DATE: April 25, 1986.

FOR FURTHER INFORMATION CONTACT: David A. Schuenke; Chief, Rules, Orders, and Standards Branch; Offshore Rules and Operations Division; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646; Reston, Virginia 22091; Telephone (703) 860-7916 or (FTS) 928-7916.

SUPPLEMENTARY INFORMATION: Section 26 of the Outer Continental Shelf Lands Act (OCSLA) permits the Governor of any affected State to designate an official to inspect any privileged data and information received by the Department of the Interior (DOI) regarding activity adjacent to the State. The information is used to evaluate any impacts on the State caused by the offshore activity. The OCSLA does not define the phrase "area adjacent to a State"; therefore, the rules were amended effective April 23, 1984 (published March 22, 1984, 49 FR 10666), to deem a State adjacent to an OCS planning area for the purpose of inspection of privileged data and information within the planning area if the State borders on any portion of the planning area. The 1984 definition also deemed the Navarin Basin Planning Area as adjacent to the State of Alaska even though it does not physically border on Alaska because Alaska is the first State landward of the planning area.

Comments were received in response to the 1984 solicitation and in separate communications to DOI that certain States would be affected by activity in planning areas on which they do not border and, therefore, would not be permitted to inspect data and information from those areas under the 1984 rule. It is anticipated that Rhode Island will be used as an onshore support area for activities in the North Atlantic Planning Area and would be affected, and New York would be affected because of tankering into New York harbor. Therefore, on October 24, 1985 (50 FR 43256), the Minerals Management Service (MMS) proposed to deem them adjacent to the North Atlantic Planning Area as well as the Mid-Atlantic Planning Area on which they do border.

Comments

Three timely comments were received in response to the notice of proposed rulemaking. Two were from the regulated industry, and one was from an affected State.

Difference Between Proposed and Final rule

There is no difference between the proposed rule and the final rule.

Discussion of Comments

The commenters represented opposite views. The industry commenters disagreed with the inclusion of the two States into the definition of area adjacent while the State agreed. The industry expressed the opinion that the provisions of the OCSLA were designed to protect the confidentiality of proprietary and privileged data and information with very circumscribed methods under which they could be disseminated. While DOI agrees that such data and information should only be disseminated under protective conditions, States that might be affected by offshore activities need to be apprised of those activities. States need to be able to prepare for onshore impacts on the community and on public services. The States' need to know and

the industry's need to protect privileged data and information are both accommodated by the requirement for an agreement with a State to protect the data. Furthermore, only a specifically designated official of the State can inspect the data and information. The DOI feels that this is adequate protection for the industry while accommodating the legitimate needs of the affected States. As a prospective onshore base for offshore work in the North Atlantic and a tankering harbor, the States of New York and Rhode Island have a legitimate need to know.

The DOI has determined that this action does not constitute a major Federal action affecting the quality of the human environment; therefore, an environmental impact statement is not required.

The DOI has also determined that this document is not a major rule under Executive Order 12291 because there is no economic effect expected from a change in a definition.

The DOI certifies that the rule will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) as the rule neither imposes new requirements nor deletes existing ones. In addition, neither of the two States affected by the rule nor the overwhelming majority of operations involved in offshore activities who own the data and information are small entities.

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

Author: This document was prepared by Jane A. Roberts, Offshore Rules and Operations Division, Minerals Management Service.

List of Subjects in 30 CFR Part 252

Continental shelf, Freedom of information, Intergovernmental relations, Oil and gas exploration, Public lands/mineral resources, Reporting and recordkeeping requirements.

Dated: February 19, 1986.

Wm. D. Bettenberg,

Director, Minerals Management Service.

PART 252—[AMENDED]

For the reasons set forth above, 30 CFR Part 252 is amended as follows:

1. The authority citation for Part 252 continues to read as follows:

Authority: Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq., as amended, Pub. L. 95–372: Freedom of Information Act (5 U.S.C. 552).

2. Section 252.2(e) is revised to read as follows:

§ 252.2 Definitions.

* * * * *

(e) "Area adjacent to a State" means all of that portion of the OCS included within a planning area if such planning area is bordered by that State. The portion of the OCS in the Navarin Basin Planning Area is deemed to be adjacent to the State of Alaska. The States of New York and Rhode Island are deemed to be adjacent to both the Mid-Atlantic Planning Area and the North Atlantic Planning Area.

* * * * *

[FR Doc. 86–6603 Filed 3–25–86; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 291

Recreation Management; Occupancy and Use of Sites and Areas of Concentrated Public Use

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture hereby establishes regulations to recover Federal costs associated with administration of user reservation systems on some National Forest System recreation areas and sites. This action is necessary to continue protection of resources and to preserve opportunities for high quality recreation experiences at heavily used areas.

EFFECTIVE DATE: This rule is effective April 25, 1986.

FOR FURTHER INFORMATION CONTACT: Thomas P. Lennon, Recreation Staff, Forest Service, USDA, P.O. Box 2417, Washington, DC 20013, (202) 447-2311.

SUPPLEMENTARY INFORMATION: Some highly popular National Forest recreation areas, recreation sites, and Wilderness Areas have reached their use capacity. Further increases in the numbers of people using these areas and sites will result in crowded conditions, unavailable facilities, a degraded recreation or Wilderness experience, and damage to the resource. In such cases, the Forest Service sometimes institutes a reservation system. By controlling numbers of recreation visitors through reservations, the Forest Service ensures that the area or site continues to be available for use, that the quality of the recreation opportunity remains at the desired level, and that recreationists will be able to participate in the activity when they arrive at the area or site.

The Forest Service cost for processing requests and issuing and checking reservations (permits) on an area or site has risen sharply over the last several years. On one Wild and Scenic River, the cost of administering a reservation system has grown to $40,000 a year.

Because issuance of a reservation is a special service to the user, the agency has proposed revising its regulations to permit recovery of Federal costs associated with this service. The proposed rule was published on Nov. 15, 1984, at 49 FR 45177.

Under the proposed rule, fee levels would be based upon anticipated costs, which are forecasted to range from $2.00 to $8.00. Fees would be nonrefundable. The proposed rule would also require posting areas subject to fees.

Comments on the proposed rule were received from 29 parties: Federal agencies (5), private industry (2), citizens' groups (10), and individuals (12). Major comments and responses are summarized below.

Public Comments and Responses

Comment: The reservation fee singles out certain National Forest user groups for inequitable treatment and will create an unnecessary burden upon those users from the standpoint of costs and time to get a permit.

Response: The fee system will apply to a limited group of users. However, these same users are receiving the benefits from the reservation service and those benefits are costing significant amounts above the normal operation and maintenance costs. The operational and maintenance costs will continue to be financed by appropriated funds. Direction developed to implement this rule will establish the importance of applying the fee in situations where it may be done without burdensome time and cost impacts to the user and the administrator.

Comment: Tax monies have already been paid for the management of National Forests, therefore, additional fees should not be required.

Response: The intent of Congress is clearly stated in 31 U.S.C. 9701. Where special services are provided for a particular group of users, a fee may be charged for the service. The agency has determined that, in the situations described above, there are users who are getting the benefits of reservations and that the costs of the reservations are sufficient to warrant recovery of the costs.

Comment: Several reviewers asked where the money collected for reservations would go and if it will be

available for use on the unit that collects it.

Response: By law, the money must be deposited in the U.S. Treasury and will not be directly available for use on the unit. Returning the monies to the local unit would require new legislation.

Comment: Implementation of the rule should be delayed until the entire Forest Service fee proposal can be coordinated and examined by the President's Commission on Americans Outdoors.

Response: The Forest Service has been actively considering a proposal for a general use fee. That proposal is of much broader scope with extensive policy ramifications and would require legislation. It has been placed before the President's Commission as an item that the Forest Service would like to see throughly discussed. The subject of this rulemaking is of a different nature and much narrower in scope and implication, is based upon existing law, and meets a current resource management need. Therefore, we fell it is advisable to move forward with implementation of this rule.

Comment: Additional details are needed to understand how the rule will be applied.

Response: Implementation instructions have been developed for issuance in the Forest Service Manual, the principal source of direction to Forest Service personnel. Included in the instructions are delegations of authority to Forest Supervisors to collect fees, as well as a list of criteria Supervisors are to use in determining where fees will be collected. The criteria are: a substantial number of people use the site or area; recreation use is near or above the use capacity of the site or area; costs of the permit reservation system are significant; and conditions exist which lend themselves to the implementation of a reservation fee without burdensome and costly requirements on the user and agency. The full text of this directive appears as a separate notice in this issue of the **Federal Register.**

Additional Comments: In addition to the preceding major comments received on the proposed rule, reviewers made a number of suggestions:

—Distinguish between recreation areas and Wilderness Areas.
—Broaden the scope of the rule to include recreation sites.
—Include a citation to Pub. L. 97-258 concerning fees and charges.
—Explain what is meant by "other special services."

Response: The final rule adopts the first three suggestions and deletes the phrase "other special services."

The following comments were received that relate to aspects of the overall reservation (permit) process:

—No limits on use should be imposed unless users stay overnight.
—Permit systems discourage use and over-regulate users.
—Reservation fees should not be used as a method to adjust allocations between publics served by outfitters and guides and those that are not.

Response: These comments relate to matters beyond the scope of this rule and cannot be dealt with as part of this rulemaking.

Except as noted in the foregoing discussion of comments received, the final rule is identical to the proposed rule.

Regulatory Impact

This rule has been reviewed under USDA procedures and Executive Order 12291, and it has been determined that the regulation is not a major rule. It will result in an insignificant increase in costs to individual users of the selected sites and areas while permitting the Government to recoup administrative expenses for the reservation system. Because the regulation applies to individual recreation users in a limited situation, it will not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in foreign markets.

The Assistant Secretary of Agriculture for Natural Resources and the Environment has determined that this action will not have a significant economic impact on a substantial number of small entities.

This rule is determined to be limited in context and intensity and to produce little or no environmental effects, individually or cumulatively, to either the biological or physical component of the human environment. Therefore, it is unnecessary to prepare an environmental assessment or an environmental impact statement.

Lists of Subjects in 36 CFR Part 291

Recreation and recreation areas.

Therefore, for the reasons set forth above, Part 291 of Chapter II of Title 36 of the Code of Federal Regulations is hereby amended as follows:

1. Part 291 is amended by adding the following Table of Contents and authority citation. The authority citation which follows § 291.9 is removed.

PART 291—OCCUPANCY AND USE OF DEVELOPED SITES AND AREAS OF CONCENTRATED PUBLIC USE

Sec.
291.9 Admission fees and recreation use fees.
291.10 Reservation fees.

Authority: 30 Stat. 35, as amended (16 U.S.C. 551); Sec. 1, 33 Stat. 628 (16 U.S.C. 472); Sec. 4(b,c) Pub. L. 92-347, 86 Stat. 460 (16 U.S.C. 4601-6a(b,c)); Sec. 10(d), Pub. L. 90-542, 82 Stat. 916 (16 U.S.C. 1281(d)); Sec. 7(i), Pub. L. 90-543, 82 Stat. 925, as amended (16 U.S.C. 1246(i)); Sec. 4(b), Pub. L. 88-577, 78 Stat. 893 (16 U.S.C. 1133(b)); Sec. 4(a), Pub. L. 95-495, 92 Stat. 1650; 65 Stat. 290 (31 U.S.C. 9701).

2. Add a new section 291.10 to read as follows:

§ 291.10 Reservation fees.

(a) The Forest Service may charge fees to recover expenses incurred in providing reservation services for the public use of recreation areas and sites and Wilderness Areas where limitations on use are deemed necessary or desirable to achieve the management purposes of an area of the National Forest System. The Chief of the Forest Service or his delegate shall establish the amount of such fees.

(b) Forest Service officials shall prominently post clear notice that a reservation fee has been established at each area, site or Wilderness Area and at appropriate locations therein. Publications distributed at such areas, sites, and Wilderness Areas shall also include such notice.

Dated: March 20, 1986.

Peter C. Myers,

Assistant Secretary, Natural Resources and Environment.

[FR Doc. 86-6628 Filed 3-25-86; 8:45 am]
BILLING CODE 3410-11-M

VETERANS ADMINISTRATION

38 CFR Parts 18, 18a and 18b

Nondiscrimination in Federally-Assisted Programs; Technical Amendments

AGENCY: Veterans Administration.

ACTION: Final Technical Amendments.

SUMMARY: The VA (Veterans Administration) amends its regulations for the enforcement of nondiscrimination in programs and activities receiving Federal financial assistance to: (1) Eliminate sexually biased language; (2) change the title of hearing examiner to administrative law judge, consistent with Pub. L. 95-251, 92

Stat. 183; (3) update the appendices to the regulations which provide a listing of the Federal financial assistance programs administered by the VA; and (4) correct references to the Department of Health, Education and Welfare, which was reorganized in 1980 into two independent departments: The Department of Health and Human Services and the Department of Education.

EFFECTIVE DATE: March 26, 1986.

FOR FURTHER INFORMATION CONTACT: Ms. Ana Matilde Del Toro, Equal Employment Specialist, Office of Equal Opportunity (006B5), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420; (202) 389-2150.

SUPPLEMENTARY INFORMATION: The VA finds that good cause exists for making these regulation amendments final without previous publication of a notice of proposed rulemaking. All the changes contained in these regulations are technical ones designed to correct erroneous references and eliminate sexually biased language. There are no substantive changes. Public participation in this rulemaking is therefore unnecessary.

Since a notice of proposed rulemaking is unnecessary and will not be published, these amendments do not come within the term "rule" as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2), and are therefore not subject to the requirements of the Act. Nevertheless, these amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612.

The Administrator hereby determines that these regulations do not contain a major rule as the term is defined by Executive Order 12291, Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs and prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete in domestic or export markets.

These amendments do not impose any additional reporting or recordkeeping requirements on the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects in 38 CFR Parts 18, 18a, and 18b

Administrative practice and procedure, Age discrimination, Authority delegations, Civil rights, Handicapped, Veterans.

Approved: March 19, 1986.

Everett Alvarez, Jr.,

Acting Administrator.

PART 18—[AMENDED]

38 CFR Part 18, nondiscrimination in Federally-Assisted Programs of the Veterans Administration—Effectuation of Title VI of the Civil Rights Act of 1964, is amended as follows:

§ 18.3 [Amended]

1. In § 18.3, paragraph (b)(1) is amended by removing "his" in (b)(1)(iii); by removing the words "he satisfies" and adding the words "is satisfied." at the end of the sentence in (b)(1)(v); and by removing "him" in (b)(1)(vi).

§ 18.4 [Amended]

2. Section 18.4 is amended by changing "he" to "the recipient" in paragraph (a)(1); and changing "him" to "the official" in (c).

§ 18.6 [Amended]

3. Section 18.6 is amended by removing "his" in paragraphs (b) and (c) and by changing "him" to "the official" in paragraph (b).

4. Section 18.7 is amended by removing "his" in paragraphs (a), (c), and (d) (1) and (2); by changing "he" to "the individual" in paragraph (e) and by revising paragraph (b) to read as follows:

§ 18.7 Conduct of investigations.

* * * * *

(b) *Complaints.* Any person or any specific class of individuals who believe they have been subjected to discrimination prohibited by this part may themselves, or by a representative, file with the responsible agency official or designee a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination unless the time for filing is extended by the responsible agency offical or designee.

* * * * *

§ 18.8 [Amended]

5. Section 18.8 is amended by removing the word "his".

§ 18.9 [Amended]

6. In §18.9(b) the word "he" is changed to "the official"; "his" is changed to "the official's"; and "hearing examiner" is changed to "an administrative law judge".

7. In §18.10, paragraphs (a), (b), (d), (e) and (g) (2) are revised to read as follows:

§ 18.10 Decisions and notices.

(a) *Procedure on decisions by an administrative law judge.* If the hearing is held by an administrative law judge such administrative law judge shall either make an initial decision, if so authorized, or certify the entire record including recommended findings and proposed decision to the responsible agency official for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the administrative law judge the applicant or recipient may within 30 days of the mailing of such notice of initial decision file with the responsible agency official exceptions to the initial decision with reasons therefor. In the absence of exceptions, the responsible agency official may within 45 days after the initial decision serve on the applicant or recipient a notice that the decision will be reviewed. Upon the filing of such exceptions or of such notice of review the responsible agency official shall review the initial decision and issue a decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the responsible agency official.

(b) *Decisions on record or review by the responsible agency official.* Whenever a record is certified to the responsible agency official for decision or the official reviews the decision of an administrative law judge pursuant to paragraph (a) of this section, or whenever the responsible agency official conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with the official briefs or other written statements of its contentions, and a written copy of the final decision of the responsible agency official shall be sent to the applicant or recipient and to the complainant, if any.

* * * * *

(d) *Rulings required.* Each decision of an administrative law judge or responsible agency official shall set forth a ruling on each finding, conclusion, or exception presented, and shall identify the requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by Administrator.* Any final decision by an administrative law judge which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction

available under this part of the Act, shall promptly be transmitted to the Administrator personally, who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

* * * * *

(g) *Post termination proceedings.* * * *

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the responsible agency official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the responsible agency official determines that those requirements have been satisfied, the official shall restore such eligibility.

* * * * *

§ 18.13 [Amended]

8. Section 18.13 is amended by removing the word "his" in paragraph (c).

9. Appendix A to Part 18, Subpart A, is revised to read as follows:

Appendix A to Subpart A—Statutory Provisions to Which This Subpart Applies

1. Payments to State homes (38 U.S.C. 641–643).
2. State home facilities for furnishing domiciliary, nursing home, and hospital care (38 U.S.C. 5031–5037).
3. Space and office facilities for representatives of recognized national organizations (38 U.S.C. 3402(a)(2)).
4. All-volunteer force educational assistance, vocational rehabilitation, post-Vietnam era veterans' educational assistance, survivors' and dependents' educational assistance, and administration of educational benefits (38 U.S.C. chs. 30, 31, 32, 34, 35 and 36, respectively).
5. Sharing of medical facilities, equipment, and information (38 U.S.C. 5051–5057).
6. Approval of educational institutions (38 U.S.C. 104).
7. Space and office facilities for representatives of State employment services (38 U.S.C. 244(1)).
8. Medical care for survivors and dependents of certain veterans (38 U.S.C. 613).
9. Transfers for nursing home care; adult day health care (38 U.S.C. 620).
10. Treatment and rehabilitation for alcohol or drug dependence or abuse disabilities (38 U.S.C. 620A).
11. Aid to States for establishment, expansion, and improvement of veterans cemeteries (38 U.S.C. 1008).
12. Assistance in establishing new medical schools; grants to affiliated medical schools; assistance to health manpower training institutions (38 U.S.C. Ch. 82).
13. Veterans Administration health professional scholarship program (38 U.S.C. 4141–4146).
14. Emergency veterans job training (Pub. L. 98–77, 97 Stat. 443–452).

§ 18.405 [Amended]

10. Section 18.405 is amended by changing "he or she considers" to "considered" in paragraph (d)(3).

§ 18.412 [Amended]

11. Section 18.412 is amended by changing "him or her" to "that person" in paragraph (a).

§ 18.433 [Amended]

12. In § 18.433, paragraph (c) is amended by changing "or to his or her" to "," in paragraphs (c)(1), (2) and (3); and by changing "his or her" to "a" in paragraph (c)(2).

§ 18.454 [Amended]

13. Section 18.454 is amended by changing the cite "§ 18.433(d)" to § 18.433(b)".

14. Appendix A to Part 18, Subpart D, is amended by revising provisions 3, 10 and 12 and by adding new provisions 13 and 14 to read as follows:

Appendix A to Subpart D—Statutory Provisions To Which This Subpart Applies

* * * * *

3. Transfers for nursing home care; adult day health care (38 U.S.C. 620).

* * * * *

10. All-volunteer force educational assistance, vocational rehabilitation post-Vietnam era veterans educational assistance; veterans educational assistance, survivors' and dependents' educational assistance, and administration of educational benefits (38 U.S.C. chs. 30, 31, 32, 34, 35 and 36 respectively).
11. Treatment and rehabilitation for alcohol or drug dependence or abuse disabilities (38 U.S.C. 620A).
12. Aid to States for establishment, expansion, and improvement of veterans cemeteries (38 U.S.C. 1008).
13. Veterans Administration health professional scholarship program (38 U.S.C. 4141–4146).
14. Emergency veterans job training (Pub. L. 98–77, 97 Stat. 443–452).

PART 18a—[AMENDED]

38 CFR Part 18a, Delegation of Responsibility in Connection With Title VI, Civil Rights Act of 1964 is amended as follows:

15. The table of contents to Part 18a is amended by revising the title of § 18a.1 to "Delegations of responsibility between the Administrator and the Secretary, Department of Health and Human Services and the Secretary, Department of Education."

16. In § 18a.1 the section heading, introductory text of paragraph (b) and paragraph (b)(2) are amended by changing the title "Secretary, Department of Health, Education and Welfare" to "Secretary, Department of Health and Human Services and the Secretary, Department of Education"; paragraph (b)(2)(iii), the paragraph following, and paragraphs (c), (d) and (e) are amended by changing the title "Department of Health, Education and Welfare" to Department of Health and Human Services or the Department of Education"; and paragraph (a) is revised to read as follows:

§ 18a.1 Delegations of responsibility between the Administrator and the Secretary, Department of Health and Human Services and the Secretary, Department of Education.

(a) Authority has been delegated to the Administrator of Veterans Affairs by the Secretary, Department of Health and Human Services, and the Secretary, Department of Education to perform responsibilities of those Departments and of the responsible Departmental officials under Title VI of the Civil Rights Act of 1964 and the Departments' regulations issued thereunder (45 CFR Part 80 and 34 CFR Part 100) with respect to: proprietary (i.e., other than public or nonprofit) educational institutions, except if operated by a hospital; and post secondary, nonprofit, educational institutions other than colleges and universities, except if operated by a college or university, a hospital, or a unit of State or local government (i.e., those operating such institutions as an elementary or secondary school, an area vocational school, a school for the handicapped, etc.)

(1) The compliance responsibilities so delegated include:

(i) Soliciting, receiving, and determining the adequacy of assurances of compliance under 45 CFR 80.4 and 34 CFR 100.4;

(ii) All actions under 45 CFR 80.6 including mailing, receiving, and evaluating compliance reports under § 80.6(b) and 34 CFR 100.6(b); and

(iii) All other actions related to securing voluntary compliance, or related to investigations, compliance reviews, complaints, determinations of apparent failure to comply, and resolutions of matters by informal means.

(2) The Department of Health and Human Services and the Department of Education specifically reserve to themselves the responsibilities for the effectuation of compliance under 45 CFR 80.8, 80.9, 80.10 and 34 CFR 100.8, 100.9 and 100.10.

* * * * *

§ 18a.2 [Amended]

17. Section 18a.2 is amended by changing the words "him and his" to "the Chief Benefits Director and" and by changing the last words of the section from "under his jurisdiction." to "under jurisdiction of the Chief Benefits Director."

§ 18a.3 [Amended]

18. Section 18a.3 is amended by changing the last words of the section from "under his jurisdiction." to "under jurisdiction of the Chief Medical Director."

§ 18a.4 [Amended]

19. Section 18a.4 is amended by removing the word "his" in the two places it appears in the paragraph following (c).

PART 18b—[AMENDED]

38 CFR Part 18b, Practice and Procedure Under Title VI of the Civil Rights Act of 1964 and Part 18 of this chapter, is amended as follows:

§ 18b.2 [Amended]

20. Section 18b.2 is amended by changing the word "him" to "the Administrator" and by removing the words "by him" in the last sentence.

21. Section 18b.11 is revised to read as follows:

§ 18b.11 Use of number.

As used in this part, words importing the singular number may extend and be applied to several persons or things, and vice versa.

§ 18b.14 [Amended]

22. Section 18b.14 is amended by removing the word "his".

§ 18b.16 [Amended]

23. Section 18b.16 is amended by changing the word "him" to "that person".

§ 18b.17 [Amended]

24. In § 18b.17, paragraph (a) is amended by changing the word "he" to "the officer"; paragraph (b) is amended by changing the words "His brief" to "The brief", by changing the word "he" to "the amicus curiae" both places it appears, and by removing the word "himself" both places it appears; and paragraph (c) is amended by changing the word "his" to "the officer's" and changing the word "he" to "the officer".

§ 18b.21 [Amended]

25. Section 18b.21 is amended by changing the word "he" to "one of them" and by changing the word "his" to "that person's".

§ 18b.25 [Amended]

26. Section 18b.25 is amended by changing the word "his" to "the party's".

§ 18b.27 [Amended]

27. Section 18b.27 is amended by changing the word "his" to "a" and by changing the word "him" to "the presiding officer".

§§ 18b.31 and 18b.32 [Amended]

28. Sections 18b.31 and 18b.32 are amended by changing the word "his" to "the" wherever it appears.

§ 18b.33 [Amended]

29. Section 18b.33 is amended by changing the first "his" to "the" and by deleting the second occurrence of "his".

§ 18b.35 [Amended]

30. Section 18b.35 is amended by changing the word "him." to "the officer."

§ 18b.37 [Amended]

31. Section 18b.37 is amended by changing the word "his" to "the officer's".

§ 18b.40 [Amended]

32. Section 18b.40 is amended by changing the words "A hearing examiner" to "An administrative law judge".

33. Section 18b.41 is revised to read as follows:

§ 18b.41 Designation of an administrative law judge.

The designation of the administrative law judge as presiding officer shall be in writing, and shall specify whether the administrative law judge is to make an initial decision or to certify the entire record including recommended findings and proposed decision to the reviewing authority, and may also fix the time and place of hearing. A copy of such order shall be served on all parties. After service of an order designating an administrative law judge to preside, and until such administrative law judge makes a decision, motions and petitions shall be submitted to the administrative law judge. In the case of the death, illness, disqualification or unavailability of the designated administrative law judge, another administrative law judge may be designated to take that person's place.

§ 18b.42 [Amended]

34. In § 18b.42, the introductory text is amended by changing "He" to "The presiding officer"; and paragraphs (e) and (i) are amended by changing "him." to "the presiding officer."

§ 18b.51 [Amended]

35. In § 18b.51, paragraph (a) is amended by changing "he" to "the party"; and paragraph (b) is amended by removing the word "his" both times it appears.

§ 18b.52 [Amended]

36. Section 18b.52 is amended by changing the word "his" to "the officer's".

§ 18b.54 [Amended]

37. Section 18b.54 is amended by changing the words "he believes it" to "it is believed".

§ 18b.56 [Amended]

38. Section 18b.56 is amended by changing the word "he" and the words "him" to "the party".

§ 18b.61 [Amended]

39. Section 18b.61 is amended by changing the word "he" to "the party" and by changing the word "his" to "the party's" both places it appears.

§ 18b.65 [Amended]

40. Section 18b.65 is amended by removing the word "his" and by changing the words "he" and "him" to "the reviewing authority".

§ 18b.71 [Amended]

41. Section 18b.71 is amended by removing the words "his" and "he".

§ 18b.72 [Amended]

42. Section 18b.72 is amended by removing the word "his".

43. In § 18b.73, paragraph (b) is revised to read as follows:

§ 18b.73 Final decisions.

* * * * *

(b) Where the hearing is conducted by an administrative law judge who makes a recommended decision or upon the filing of exceptions to an administrative law judge's initial decision, the reviewing authority shall review the recommended or initial decision and shall issue a decision thereon, which shall become the final decision of the VA, and shall constitute "final agency action" within the meaning of 5 U.S.C. 704 (formerly sec. 10(c) of the Administrative Procedures Act), subject to the provisions of § 18b.75.

* * * * *

§ 18b.74 [Amended]

44. Section 18b.74 is amended by changing "he shall make" to "the party shall make"; by changing "his" to "his or her"; and by changing "he will serve" to "the reviewing authority will serve".

§ 18b.75 [Amended]

45. Section 18b.75 is amended by removing the first "his"; by removing "his own" twice and by changing "or if he serves" to "or serves".

§ 18b.77 [Amended]

46. Section 18b.77 is amended by changing the words "hearing examiner" to "administrative law judge"; and changing the words "Senate Committee on Labor and Public Welfare" to "Senate Veterans Affairs Committee".

§ 18b.90 [Amended]

47. Section 18b.90 is amended by removing "his" and by changing "his principal" to "the principal represented".

§ 18b.91 [Amended]

48. Section 18b.91 is amended by changing "him" to "the reviewing authority"; by removing "his" wherever it appears.

§ 18b.95 [Amended]

49. In § 18b.95 the last line is amended by changing the words "he considers the memorandum" to "the memorandum is considered".

[FR Doc. 86-6569 Filed 3-25-86; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2990-3]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: The USEPA announces final rulemaking disapproving the 1982 carbon monoxide (CO) SIP attainment demonstration and rescission of the attainment date extension. The revision pertains to Cleveland CO SIP revision. USEPA's action is based upon a revision which was submitted by the State to satisfy the requirements of Part D of the Clean Air Act (Act).

EFFECTIVE DATE: This final rulemaking becomes effective on April 25, 1986.

ADDRESSES: Copies of the SIP revision, public comments on the notice of proposed rulemaking and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Anne E. Tenner at (312) 886-6036, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216

FOR FURTHER INFORMATION CONTACT: Anne. E. Tenner, (312) 886-6036.

SUPPLEMENTARY INFORMATION: Under Section 107 of the Act, USEPA has designated certain areas in each State as not attaining National Ambient Air Quality Standards (NAAQS) for total suspended particulates (TSP), sulfur dioxide (SO_2), carbon monoxide (CO), ozone (O_3), and nitrogen dioxide (NO_2). See 43 FR 8982 (March 3, 1978) and 43 FR 45993 (October 5, 1978). For these areas, Part D of the Act requires that the State revise its SIP to provide for attaining the primary NAAQS by December 31, 1982 (in certain cases, by December 31, 1987 for O_3 and/or CO). These SIP revisions must also provide for attaining the secondary NAAQS as soon as practicable. The requirements for an approvable SIP are described in a "General Preamble" for Part D rulemakings published at 44 FR 20372 (April 4, 1979), 44 FR 38583 (July 2, 1979) 44 FR 50371 (August 28, 1979), 44 FR 53761 (September 17, 1979) and, 44 FR 67182 (November 23, 1979).

In a February 3, 1983, **Federal Register** notice (48 FR 5118), the USEPA proposed to approve the CO SIP for the Cleveland urban area. This plan appeared to demonstrate attainment of the CO National Ambient Air Quality Standards (NAAQS) by December 31, 1982, at all monitoring sites in Cuyahoga County. After the publication of the February 3, 1983, notice of proposed rulemaking, USEPA noted that three exceedances of the right hour CO standard had occurred in March 1983, at the 8907 Carnegie Avenue monitoring site. The NAAQS for CO allows only one eight hour standard exceedance of the 10 milligrams per cubic meter (mg/m^3) standard in a year. Therefore, it was apparent that a violation of the CO NAAQS had occurred in 1983 after the plan's demonstrated attainment deadline.

In telephone conversations with the State of Ohio in November 1983, USEPA discussed the issue of the observed CO standard violation. On December 5, 1983, the State forwarded a letter from the City of Cleveland explaining that the observed CO standard exceedances were probably due to a tire-fire near North Bloomfield, Ohio.

All three of the eight-hour CO standard exceedances [14.2 mg/m^3, 11.8 mg/m^3, and 11.3 mg/m^3] observed in March 1983, occurred over a three day span (from approximately March 2nd through March 4th). This period coincides with the period of intermittent tire-fires in North Bloomfield. The City of Cleveland recommended that the 1983 exceedances not be considered in future control analyses or as a justification for calling the Cleveland area nonattainment for CO because the tire-fire could be regarded as an unusual occurrence.

During telephone conservations between the State of Ohio and USEPA in December 1983, USEPA recommended that the State conduct dispersion modeling analyses to demonstrate that the tire-fire was the probable cause of the observed CO standard exceedances. USEPA observed that the distance (North Bloomfield is approximately 61 kilometers from the Carnegie Avenue monitoring site) between the tire-fire and the CO monitor was so great that one would not expect a significant impact on the monitored CO concentrations, even from a large fire.

In an effort to support a connection between the tire-fire and the monitored CO exceedances, the City of Cleveland performed two analyses as an alternative to the requested dispersion modeling analysis. First, complaints of odors on the days of the tire-fire were investigated and the location of odor complaints were plotted as an area map. The complaints appeared to fall in an area that one could describe as a large, wide plume pattern. The Carnegie Avenue monitoring site was located within, and near the edge of the plotted complaint/plume area. It was also noted that North Bloomfield fell near the center of the "upwind" (source) end of the plotted plume area.

The second analysis was of wind directions during the times of high CO concentrations. It was noted that the highest CO concentrations (in excess of 10 mg/m^3) occurred when the wind directions recorded at the Cleveland Hopkins International Airport were from the east. As a result, the City of Cleveland believes this places the Carnegie Avenue site downwind of the tire-fire during the high CO concentration hours. The City further assumed that a persistent low level temperature inversion restricted pollutant dispersion resulting in significant pollutant impacts far downwind from the tire-fire. The City of Cleveland believes that the above results provide the necessary evidence that the tire-fire was the cause of the observed CO standard exceedances.

Even if USEPA were to accept the City of Cleveland's assertion that odors

from the tire-fire were observed in the vicinity of the CO monitor, the odor study does not adequately support the City's assertion that significant quantities of CO were transported to the monitors to cause CO NAAQS exceedances. A person's sensitivity to odors is subjective and variable and the reporting of such odors may also vary. Moreover, the use of reported odors provides no quantitative connection between CO emissions from the fire and CO concentrations at the monitor. As a result, the detection of odors may not equate to high concentrations of other pollutants produced or released during the combustion of rubber. In addition, it is possible that the meteorological conditions which would have led to the detection of burning rubber odor from the fire far downwind in Cleveland could also have led to CO standard exceedances resulting primarily from local emissions rather than from the tire-fire.

Indeed, the 1979 Cleveland CO SIP and its 1982 revision (under consideration here) submitted by the State indicated that there is a significant connection between high CO concentrations in the Cleveland area and the mobile (local and areawide) source CO emissions. However, in its analysis of 1983 data, the State has failed to assess the potential impact of traffic based emissions, especially those occurring near (generally within one mile of) the Carnegie Avenue monitor.

USEPA believes that the best means to establish a quantitative connection between CO emissions from a source and monitored concentrations is the use of dispersion models. Despite USEPA's request for such modeling from the State, Ohio did not submit the requested analyses. The State, however, sent a letter from the City of Cleveland to USEPA giving additional data on the tire-fire, (such as the horizontal size of the tire pile.)

Because Ohio failed to submit the requested analysis, the Agency decided to conduct a screening analysis using the gaussian point source dispersion model, PTDIS. CO concentrations were computed for a source-to-receptor distance of 50 kilometers. This receptor distance was selected because USEPA does not recommend the use of gaussian dispersion models at receptor distances exceeding 50 kilometers. Because the actual source-to-receptor distance exceeds 50 kilometers, it can be assumed that the computed CO concentrations are conservative. Additional pollutant dispersion may be expected between the source-to-receptor distances of the modeled 50 kilometers and the actual 61 kilometers.

USEPA made a number of other conservative assumptions (leading to higher computed CO concentrations) in addition to choosing a conservative source-to-receptor distance. USEPA assumed constant wind speeds and wind direction for an eight hour period and a plume centerline position for the monitor/receptor. However, fluctuations in the wind direction and wind speed did occur as evidenced by data submitted by the City of Cleveland. Such fluctuations would result in reduced CO transport from the tire-fire. Furthermore, there is no concrete data demonstrating that tire-fire plume(s) reached the Carnegie Avenue monitor. Assuming odor complaint locations mark the average plume location, it may be concluded that the monitor was within the plume, but, on the average, the monitor was not located at the centerline of the plume. On the average, CO concentrations will decrease with increasing distance from the plume centerline. In all possible and reasonable ways, USEPA has attempted to compute conservative CO concentrations in this analysis.

The tire-fire's maximum CO concentration computed from the PTDIS model for the Carnegie Avenue vicinity was .64 mg/m^3. The maximum computed CO concentrations which are due to the tire-fire are significantly smaller than the difference (1.8 mg/m^3) between the second high eight hour 1983 CO concentration (11.8 mg/m^3) and the standard (10.0 mg/m^3). The peak possible concentration from the tire-fire was not of sufficient magnitude to have caused the observed CO standard violation. As a result, USEPA concluded that the CO attainment demonstration submitted by the State of Ohio on June 9, 1982, (and amended on March 8, 1983; March 18, 1983 and November 9, 1983), does not support the State's contention that the Cleveland area attained the CO standard by December 31, 1982. USEPA proposed to disapprove the State's CO attainment demonstration for the Cleveland nonattainment area (Cuyahoga County) on March 13, 1985 (50 FR 10076). In addition, USEPA proposed to disapprove the State's request to rescind the five year extension for meeting the CO NAAQS in the area. During the 30 day public comment period of the March 13, 1985, notice, USEPA received four sets of comments.

The Agency's evaluation of public comments on the March 13, 1985, proposed disapproval is summarized below:

Comment: All four of the commentors note that the CO standard has not been violated in the past five to seven years. The State of Ohio and the City of Cleveland claim that the CO standard was not violated in 1978, 1979, 1980, 1981, 1982, and 1984. The commentors consider USEPA's action to be inappropriate considering the March 1983 violations were the only ones over such a long period.

Response: Review of CO data on file in USEPA's National Aerometric Data Bank show that the following frequencies of eight-hour standard exceedances have occurred at the 8907 Carnegie Avenue monitoring site: nine exceedances in 1978, one exceedance in 1979, three exceedances in 1980, three exceedances in 1981, one exceedance in 1982, and three exceedances in 1983. Therefore, violations of the eight-hour standard were recorded in 1978, 1981, and 1983; with single exceedances in 1979 and 1982. It can be seen from this that the 1983 standard violation was not a singular event as implied by the commentors. It is apparent that violations of the eight-hour standard continue to occur on a periodic basis in the Cleveland area.

Comment: The State of Ohio and the City of Cleveland believe that the Cleveland area has attained the CO NAAQS, based on the most recent eight quarters of CO data. These commentors believe that it is appropriate for USEPA to proceed with the approval of the SIP pursuant to the February 1983 proposed approval, while concurrently withdrawing the March 1985 proposed disapproval.

Response: The revision of the Cleveland 1979 CO plan currently before the USEPA was developed to demonstrate attainment by December 1982. USEPA's March 1985 proposed disapproval is based upon March 1983 exceedances, which occurred after USEPA's February 1983 proposed approval. The exceedances in 1983 themselves indicate that the plan was inadequate to assure the attainment and maintenance of the standard by December 1982. As discussed elsewhere in today's notice, the commentors have not demonstrated that the March 1983 exceedances were due to an exceptional event. Also, the commentors have presented no reasonable explanation (e.g., sources out of compliance) demonstrating that the plan itself was adequate to assure by the December 1982 deadline attainment and maintenance of the CO NAAQS in this area. Therefore, disapproval of the plan is appropriate because no demonstration has been provided that

the plan was adequate to assure attainment by the 1982 deadline.

The fact that recent monitoring data show no violation of the CO NAAQS does not require a different result. Even assuming that no violations are occurring that does not necessarily mean that the plan was adequate to produce attainment by the end of 1982.

Further, eight quarters of violation-free data have not been collected at the Carnegie Avenue site. In fact, monitoring at this site was terminated in early February 1984 due to concerns over ventilation of the monitoring room and vandalism of the monitor probe. Therefore, only three quarters of data with no CO standard exceedances were collected at this site. (5 additional quarters of data were collected at a site near, but not at the Carnegie Avenue site.) No demonstration has been made showing that no violations of the standard will again occur at the Carnegie Avenue site.

In a separate request for rulemaking action, the State of Ohio has requested the redesignation of Cuyahoga County to attainment for the CO NAAQS, based on these same most recent eight quarters of monitored data. USEPA will address in a separate, future rulemaking: (1) the Cuyahoga County CO nonattainment area redesignation request and (2) the eight quarters of quality assured data subsequent to the March 1983 exceedance.

Comment: The City of Cleveland objects to USEPA "waiting" more than two years to take final action on the CO SIP. The commentor believes USEPA's failure to act in a timely manner has placed the City of Cleveland in a precarious position.

Response: USEPA first became aware of a possible 1983 violation of the CO NAAQS in Cleveland during the public comment period for the February 3, 1983, notice of proposed rulemaking. Because, the revised SIP attempted to demonstrate attainment of the CO NAAQS by the end of 1982, USEPA did not consider it to be appropriate to give final approval to the SIP until the quality of the verbally reported, draft March 1983 data could be confirmed. This did not occur until the third quarter of 1983. USEPA requested the State of Ohio to study the nature and possible causes of the observed standard violations. The State was given every opportunity to conduct modeling analyses of these violations. USEPA conducted its own modeling analysis when it became apparent that the State would not provide the modeling analyses requested by USEPA. USEPA believes that it acted in a timely manner given the facts on this issue.

USEPA altered its course of action to address the standard violation reported to have occurred in early 1983. Even if USEPA's supposed delay to take final action was considered to be unreasonable, there is no authority in the Clean Air Act for USEPA to remedy the delay by approving a plan it knows or believes is technically unapprovable.

Comment: All of the commentors contend that a tire-fire in North Bloomfield is well documented and is the probable cause of the CO NAAQS violation observed at the Carnegie Avenue site. Therefore, the 1983 violations should be dismissed as an unusual event.

Response: USEPA remains unconvinced that a tire-fire in North Bloomfield, approximately 61 kilometers from the monitors, could cause exceedances of the NAAQS at the Carnegie Avenue site. USEPA's model analysis which used conservative input assumptions showed that the maximum CO contribution from the tire-fire at the monitor was negligible.

Responses to specific comments on USEPA's analysis are given below:

Comment: The City of Cleveland argues that USEPA's sole justification for proposing to disapprove the Cleveland CO SIP was the result of its modeling analysis of the March 1983 CO standard violation. The commentor argues that (1) USEPA based its conclusions on the use of a model, PTDIS, that was not designed to produce absolute values and (2) that the data entered into the model were simply assumptions and not verifiable facts. The commentor argued that it is no wonder that the model failed to predict the monitored concentrations.

Response: The City of Cleveland and the State have attempted to convince the USEPA that the March 1983 CO standard violations were due to an unusual source and, therefore, excludable. The burden of proof is upon these agencies themselves to demonstrate that the tire-fire was responsible for the monitored standard exceedances, or a significant portion thereof. As an alternative, it could be demonstrated that all other sources did not contribute significantly to the monitored exceedances. USEPA asked on several occasions for the State to conduct such analyses. None were conducted by the State.

Therefore, USEPA decided to utilize a screening model to obtain an upper estimate of the possible impact of the tire-fire on CO concentrations at the Carnegie Avenue site. There was no intention to predict the monitored concentrations themselves, but simply to determine the impact of a single source.

PTDIS was selected because the amount and type of input data did not warrant the use of a more sophisticated model and because PTDIS is believed to give conservatively high concentration estimates. Critics of USEPA's recommended screening models, which include PTDIS, argue that these models do tend to give concentrations which are relatively high. USEPA made every effort to assume conservative values. These inputs are based on best engineering judgment. Despite the use of a conservative approach, the modeling predicted low and relatively negligible CO contribution from the tire-fire at the monitoring site

It should be noted that the commentor did not specifically address USEPA's model input assumptions. If the commentor believed the inputs were incorrect, the commentor should have provided better input values or should have provided technical evidence demonstrating USEPA's assumptions to be significantly incorrect. No such attempt on the part of the commentor was made. USEPA sees no evidence, at this time, to make it believe that its modeling analysis gave unrealistically low results. Due to the conservative assumptions made, it is more probable that the model overpredicted the concentrations at the monitoring site resulting from the tire-fire.

Comment: The City of Cleveland states that all modeling must be calibrated using monitoring data. Therefore, monitoring data must take precedence over modeling data. The commentor, in this case, believes that the monitoring data and meteorological data presented to support the tire-fire hypothesis must be given more weight than USEPA's modeling results.

Response: It should be noted that USEPA has not approved any calibration of short-term modeling results using monitoring data. As stated on page 42 of the "Guideline on Air Quality Models" (EPA-450/2-78-027), calibration of modeling results is severely limited by uncertainties in source and meteorological data and thus one's ability to precisely estimate the concentration of an exact location for a specific increment of time. These uncertainties make attempts to calibrate a short-term model questionable. This, however, does not mean that short-term models should not be used to calculate conservatively impacts from various sources.

Comment: The City of Cleveland disputes whether the March 1983 CO standard exceedances are due to traffic related emissions. The City indicates that the exceedances occurred on a

weekend, a period not associated with peak traffic conditions. In addition, the City contends that the two monitors in use in 1983 in the Cleveland area were located in areas with different land use, leading one to expect different concentration patterns at the two due to difference in traffic patterns if traffic related emissions were the cause of the violations. However, the City continues, the two monitors do show a similar concentrations pattern, thus casting doubt on the hypothesis that traffic related emissions were responsible. Because, the two monitors are both within the boundary of the complaints of smoke and odor from the tire-fire, one would expect similar concentration patterns if the tire-fire were the cause of the observed exceedances and elevated concentrations monitored at both sites. Finally, it is stated that the residential site (147th Street site) has several hourly concentrations over 9 ppm in an area where there is no significant traffic.

Response: There are a number of responses to this comment:

1. USEPA does not claim that traffic related emissions are the sole cause of the March 1983 exceedances, but that they, rather than the tire fire, are far more likely to have caused the exceedances. CO concentrations are a combined effect of local and area emissions under the influence of meterological factors. Under conditions of low mixing heights and/or wind speeds, areawide sources, as well as local emission sources, can contribute significantly to CO concentrations monitored at microscale sites. It is only through modeling that a more precise conclusion can be drawn concerning the relative contributions from various sources. The State of Ohio and the City of Cleveland have provided insufficient data to allow a thorough modeling analysis and total isolation of relative source impacts.

Although traffic related emissions in the Cleveland area may not be the sole cause of the high observed CO concentrations, USEPA continues to believe that they are the major contributing source. In most urban areas, mobile sources emit in excess of 50 percent of the entire area's CO emissions. *See* e.g., Chicago, Milwaukee, Detroit, Cleveland, and Cincinnati, 1979 and 1982 CO SIPS. The 1979 Cleveland CO SIP and its 1982 revision submitted by the State, themselves, indicate that mobile source CO emissions were the dominant cause of high CO concentrations at the Cleveland CO monitoring sites.

The late timing of some of the observed CO standard exceedances should not rule out mobile sources as the most significant contributor to these exceedances. Late night CO standard exceedances have been observed in a number of urban areas, such as Miami, Memphis, and Milwaukee where the most likely source category remains mobile sources. Low mixing heights can lead to an areawide CO buildup from CO emissions from relatively low traffic levels.

2. USEPA's review of a calendar shows that March 2–4, 1983, was a weekday period, Wednesday through Friday.

3. The commentor has provided no data to prove the traffic patterns are different near the two monitoring sites.

4. A third monitoring site at Willoughby, Ohio (Lake County) is also located within the boundary of the odor complaint as mapped by the City of Cleveland. Consequently, this site would be expected to observe a similar impact from the tire-fire as the other two sites. However, the concentrations at this site often differs substantially from concentrations at the other two sites.

5. Comparison of the Carnegie Avenue data with the 147th Street data during a period of elevated concentrations when the North Bloomfield tire-fire was not burning, November 14–17, 1981, shows that the tire-fire need not be present to produce similar CO concentration patterns at both sites. Therefore, other sources or factors may be present which causes a similarity in CO concentrations at these two sites.

6. High hourly CO concentrations exceeding approximately 10.4 mg/m ^{3} have been monitored during several periods at the 147th Street monitoring sites. The data show that eight hours with concentrations exceeding 10 mg/m ^{3} were monitored at this site during the period of November 14–17, 1981. Data on file in the National Aerometric Data Bank show that hourly concentrations above 10 mg/m ^{3} were recorded at this site in 1981, 1982, and 1984 as well as in 1983. In addition, it should be noted that the peak 1981 hourly CO concentration at this site exceeds that in 1983. This directly contradicts the comments made by the commentor.

Comment: The City of Cleveland has incorporated a previous submittal as part of the public comment. This submittal notes a high correlation between easterly winds and high CO concentrations at the Carnegie Avenue site. Since, the tire-fire was east of the monitor, it was concluded that the tire-fire must have caused the monitored standard exceedances.

Response: The distance between the tire-fire and the monitor is such that a number of hours of transport would be required to transport an air parcel between the fire and the monitor. This time would allow substantial dispersion of a tire-fire plume which would minimize the impact a change in wind directions would have on concentrations. However, as noted during the period of 1400–2100 on March 4, 1983, a shift in winds from the south/southwest to the east caused a rapid change in concentrations. Furthermore, the Willoughby monitor should have received a greater contribution from the tire-fire than the Carnegie Avenue monitor during this period. The Carnegie Avenue monitor, however, as shown by the data, recorded significantly higher CO concentrations. These observations point to the probable insignificance of the impact of the tire-fire to the Carnegie Avenue monitoring site.

Conclusion: USEPA's review of available data and public comments indicates that its position at the time of proposed rulemaking remains valid. That is, that violations of the CO standard occured after December 31, 1982, and that, therefore, the demonstration of attainment contained in the November 9, 1982, proposed revision to the Cleveland CO SIP is not supportable. Therefore, USEPA is taking final action to disapprove the State's November 9, 1982, submittal, which was submitted as a replacement to its earlier "1979" SIP and which purported to demonstrate that the CO NAAQS were attained in Cleveland by 1982.

Additionally, USEPA is disapproving the State's request to rescind USEPA's approval of a final attainment date for the Cleveland area of 1987. As a result of today's disapprovals, the part D CO SID which was approved by USEPA on October 31, 1980 (45 FR 72122) remains in effect. For this reason, the State must continue to meet the requirements of the Clean Air Act for areas where an extension beyond 1982 was requested to achieve the standard for CO. USEPA's policy on implementing these requirements is contained in the January 22, 1981 (46 FR 7182) **Federal Register.** As required by this policy, a "1982" revised plan [1] which meets these requirements and uses the most recent three years of data must be expeditiously prepared and submitted by the State.

Under Executive Order 12291, today's action is "Major". It has been submitted

[1] Section 172(c) requires that a "1982" plan must be submitted for all ozone and carbon monoxide nonattainment areas where an extension of the final attainment date to beyond 1982 has been requested and granted.

to the Office of Management and Budget (OMB) for review.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from date of publication). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations.

Dated: March 15, 1986.

Lee M. Thomas,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart KK—Ohio

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

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

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

2. Section 52.1887 is amended by adding new paragraph (d) as follows:

§ 52.1887 Control Strategy: Carbon Monoxide.

* * * * *

(d) Disapproval—On June 9, 1982, (draft) and November 9, 1982, (final), The State of Ohio submitted a revised demonstration that attempts to show attainment by December 31, 1982, of the carbon monoxide (CO) National Ambient Air Quality Standards (NAAQS) for the Cleveland urban area. Supplemental information was submitted on March 8, 1983, March 16, 1983, December 5, 1983, and May 9, 1985. The June 9, 1982, and March 8, 1983, submittals also requested that the 5-year extension for meeting the NAAQS requested on July 29, 1979, and granted by USEPA on October 31, 1980, and June 18, 1981, be rescinded for this area. The attainment demonstration and rescission request are disapproved by USEPA because they do not meet the requirements of § 51.10(b).

[FR Doc. 86-6503 Filed 3-25-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 154

[OPP-30083C; PH FRL-2989-6]

Special Review of Pesticides; Criteria and Procedures; Clarification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Clarification of rule.

SUMMARY: This notice clarifies the Environmental Protection Agency's interpretation of provisions pertaining to establishment of public dockets and meetings with Agency officials in the rule concerning Special Review of pesticides which was published in the **Federal Register** of November 27, 1985 (50 FR 49003), codified at 40 CFR Part 154.

DATE: This clarification is effective March 26, 1986.

FOR FURTHER INFORMATION CONTACT: By mail; Joan Warshawsky, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number; Rm. 711, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-5778).

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency recently issued new regulations establishing revised criteria and procedures for Special Reviews of pesticides which may not satisfy the standard for registration under the Federal Insecticide, Fungicide, and Rodenticide Act. Those regulations were published in the **Federal Register** of Novmeber 27, 1985 (50 FR 49003) and are codified at 40 CFR Part 154. Among other things, the regulations include provisions concerning public access to and participation in the Special Review process which implement a September 19, 1984 settlement agreement between the parties in *NRDC and AFL-CIO* v. *EPA, et al.*, Civil No. 83-1509, U.S. District Court for the District of Columbia. The plaintiffs in that action have suggested that certain provisions of the rule could be interpreted in a manner inconsistent with the corresponding provisions of the September 19, 1984 settlement agreement. Accordingly, the Agency is publishing this notice to eliminate any potential ambiguity and to assure the plaintiffs that the Agency will interpret and implement the provisions in question in a manner consistent with the settlement agreement.

Under § 154.15(a) of the new regulations, the Agency must establish a Special Review docket for a particular pesticide when it " first notifies registrants privately that it is considering issuance of a Notice of Special Review" for that pesticide. Before initiating a Special Review, § 154.21 requires the Agency to send written notice to affected registrants and to afford such registrants a private opportunity to submit information in response to the notification. Although communications between the Agency and affected registrants during this pre-Special Review period will be confidential, the Agency will incorporate all written pre-Special Review submissions, as well as memoranda summarizing any meetings with registrants during this period, in the docket established pursuant to § 154.15(a). The Agency will then make the contents of the docket available to the public when it decides either to initiate a Special Review or to publish a proposed decision not to initiate a Special Review.

If the Agency determines that a pesticide may satisfy one or more of the criteria for initiation of Special Review set forth in § 154.7, the Agency expects that it will generally notify affected registrants of that determination by issuance of a preliminary notification pursuant to § 154.21(a). In that event, the creation of a docket pursuant to § 154.15(a) will be coincident with issuance of the preliminary notification. However, the Agency will not exclude communications with registrants concerning a potential Special Review from the docket even if such communications occur prior to issuance of a preliminary notification under § 154.21(a). In the event that the Agency elects to communicate with registrants regarding its concern that a pesticide may satisfy one of the criteria for Special Review prior to issuance of a formal preliminary notification, the Agency interprets § 154.15(a) to require that the Agency establish a Special Review docket for that pesticide at the time of the first such communication.

The docketing requirements set forth in § 154.15 will enable interested members of the public to obtain prompt notice of the occurrence and substance of meetings between the Agency and interested persons or parties outside government. However, the Agency recognizes that disclosure of communications with outside parties is not sufficient by itself to assure meaningful public participation in the Special Review process. If the Agency meets with one interested person or party to discuss a pending Special Review decision, the Agency must also afford responsible individuals or groups with divergent views a reasonable opportunity to respond.

Section 154.27(c) explicitly states that "any interested person" may request a meeting with Agency officials "to respond to presentations by other persons" and § 154.7(a) provides that "no person or party outside of government will be afforded special or

preferential access to Agency Special Review decisionmakers or to the Agency's Special Review process." Taken together, these provisions mean that, when the Agency meets with one interested person or party outside of government to discuss a Special Review, the Agency will also meet with other responsible individuals or groups upon reasonable request and will otherwise afford such parties equivalent access to Agency decisionmakers. Although § 154.27(c) states that the Agency will schedule meetings with interested persons "at its discretion, " the Agency will exercise that discretion in a manner consistent with the general principles set forth in § 154.27 (a) and (b).

The rule also includes a separate provision designed to afford all interested persons an opportunity to respond to presentations by other outside parties during meetings which occur late in the Agency's decisional process. Section 154.27(e) provides that, if the Agency meets with any person or party outside of government concerning a pending Special Review decision, the Agency may not take final action unless it either has invited other parties with potentially opposing viewpoints to attend the meeting in question or affords other parties at least 30 days to submit a written response following incorporation of a memorandum summarizing the meeting in the docket.

Dated: March 17, 1986.

John A. Moore,

Assistant Administrator, Office of Pesticides and Toxic Substances:

[FR Doc. 86-6366 Filed 3-25-86; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 201-8

[FIRMR Amdt. 6]

Implementation of Federal Information Processing Standards (FIPS), Federal Telecommunications Standards (FED-STDS), and Joint FIPS/FED-STDS in the FIRMR

Correction

In FR Doc. 86-5210 beginning on page 8317 in the issue of Tuesday, March 11, 1986, make the following corrections:

1. On page 8319, in the first column, in § 201-8.101-2, in the fourth line, "FIP" should read "FIPS"; in the eighth line, "Exceptions" should read "Exemptions".

2. On page 8319, in the first column, in § 201-8.102, in the eighth line, "201.8.1" should read "201-8.1"; in the second column, in the first line, "STUDS" should read "STDS".

3. On page 8322, in the second column, in § 201-8.112-12(b), in the first line, "specifics" should read "specifies".

BILLING CODE 1505-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[Docket No. 51299-6043]

Fishery Conservation and Management; Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of 1986 quotas.

SUMMARY: NOAA issues this notice of final annual quotas for the surf clam and ocean quahog fisheries for 1986. These quotas have been selected from a range defined as the optimum yield for each fishery. The intended effect of this action is to establish allowable harvests of surf clams and ocean quahogs from the fishery conservation zone in 1986.

EFFECTIVE DATE: March 26, 1986.

FOR FURTHER INFORMATION CONTACT: Bruce Nicholls, 617-281-3600, extension 263.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) directs the Secretary of Commerce (Secretary), in consultation with the Mid-Atlantic Fishery Management Council (Council), to specify quotas for surf clams and ocean quahogs on an annual basis from within ranges which have been identified as optimum yield for each fishery.

To implement this regulatory provision for establishing quotas, the Regional Director has considered stock assessments, catch records, and other relevant information concerning exploitable biomass and spawning biomass, fishing mortality rates, stock recruitment, projected effort and catches, and areas likely to be reopened to fishing during 1986.

The Secretary published a notice of proposed quotas based on the Regional Director's recommendation on December 17, 1985 (50 FR 51435). Public comment was accepted for a 30-day period. Two comments were received, suggesting that the ocean quahog quota should not be increased above 5.5 million bushels in 1986. The Council found, and the Regional Director concurs, that information concerning the status of the ocean quahog stocks and demand for ocean quahog products supports the full proposed increase.

The Mid-Atlantic Area surf clam fishery was closed for the final week of 1985. As a result, harvest of surf clams in the area fell short of the quota by approximately 75,000 bushels. Section 652.21(a)(3) of the regulations provides that a shortfall of more than 5,000 bushels in one quarter will be added to the next quarter's quota and the last quarterly period would be carried over to the first quarterly period of the next year. Since the shortfall was not anticipated at the time proposed quotas were developed and issued, a carryover adjustment is appropriate. The last quarterly quota shortfall has therefore been added to the first quarterly quota for 1986, increasing that quota from 662,500 bushels to 737,500 bushels, with a corresponding increase in the annual quota for 1986 from 2,650,000 bushels to 2,725,000 bushels.

Based on the Regional Director's recommendation and consultation with the Council, the Secretary issues the following 1986 fishing year quotas.

1986 ANNUAL AND QUARTERLY FISHING QUOTAS

	Surf clams			Ocean quahogs
	Mid-Atlantic area	Georges banks area	Nantucket shoals area	
Annual quota	[1] 2,725,000	300,000	200,000	6,000,000
Quarterly quotas:				
1st quarter	[2] 737,500	30,000		
2nd quarter	662,500	120,000		
3rd quarter	662,500	120,000		
4th quarter	662,500	30,000		

[1] 1986 annual quota of 2,650,000 bushels plus 1985 4th quarter carry over of 75,000 bushels.

[2] Includes 1985 4th quarter carry over of 75,000 bushels.

Other Matters

This action is taken under authority of 50 CFR 652.21 and is taken in compliance with Executive Order 12291. The action is covered by the certification for Amendment 3 to the Fishery Management Plan for Atlantic Surf Clam and Ocean Quahog Fisheries, under the Regulatory Flexibility Act, that the authorizing regulations do not have a significant economic impact on a substantial number of small entities.

List of Subjects in 50 CFR Part 652

Fisheries, Reporting and recordkeeping requirements.

(16 U.S.C. 1801 *et seq.*)

Dated: March 21, 1986.

James E. Douglas, Jr.,

Acting Deputy Assistant Administrator for Fisheries.

[FR Doc. 86-6644 Filed 3-25-86; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 51, No. 58
Wednesday, March 26, 1986

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 Parts 0 and 2

Revision to Ex Parte and Separation of Functions Rules Applicable to Formal Adjudicatory Proceedings

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission proposes to amend its regulations dealing with ex parte communications and separation of adjudicatory and nonadjudicatory functions in formal adjudicatory proceedings to update these agency rules of practice and to incorporate requirements imposed by the Government in the Sunshine Act. Changes are proposed in both the form and the substance of the existing rules to clarify their meaning and to aid agency adjudicatory officials in maintaining effective communications with NRC staff personnel and persons outside the agency while at the same time ensuring that proceedings will be conducted fairly and impartially. This proposed rule supersedes a prior proposed rule entitled, "Ex Parte Communications and Separation of Adjudicatory and Non-Adjudicatory Functions," published March 7, 1979 (44 FR 12428), and this notice serves to withdraw the prior proposed rule.

DATE: Comment period expires May 27, 1986. Comments received after this date will be considered if it is practicable to do so, but assurance of consideration can be given only for comments filed or or before that date.

ADDRESSES: Submit written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington DC 20555, ATTN: Docketing and Service Branch. Hand deliver comments to: Room 1121, 1717 H Street, NW., Washington, DC, between 8:15 a.m. and 5:00 p.m.

Examine comments received at: The NRC Public Document Room, 1717 H St., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Paul Bollwerk, Attorney, Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone: (202) 634-3224.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 1, 1979, the Commission proposed certain amendments to its existing rules, 10 CFR 2.719 and 2.780, dealing with ex parte communications and the separation of adjudicatory and nonadjudicatory functions. These revisions were intended to incorporate the requirements imposed on all agencies by amendments to the Government in the Sunshine Act (5 U.S.C. 551(14), 556(d), 557(d)). They were not proposed to effect any other substantive changes in the Commission's existing rules. The revisions were offered for public comment in the **Federal Register** on March 7, 1979 (44 FR 12428), and all comments were due by April 23, 1979. Only one comment on the proposed rule was received. Since this proposed rule supersedes the March 1979 proposed rule, this notice addresses the comment received on the 1979 rule and also withdraws that proposed rule.

Developments occurring subsequent to the notice of proposed rulemaking raised considerable doubt about the efficacy of the proposed rule as it then was drawn. One of these was the accident at Three Mile Island, Unit 2, in March 1979. As a direct result of that incident, the Commission's operating procedures, including its ex parte and separation of functions requirements, were the subject of intense scrutiny. Several different reports issued after the accident concluded that the agency's separation of functions requirements generally were to stringent, impeding the agency's ability to protect the public health and safety by unnecessarily isolating the Commission from staff knowledge and expertise.[1] These reports suggested that a loosening of the existing prohibitions, whole basic restrictions were embodied in the 1979 proposed rule, was in order.

A second circumstance that indicated the need for further modifications to the proposed rule was the completion by the Office of the General Counsel (OGC) of its own study of the agency's separation of functions and ex parte rules Begun at the request of the Commission in February 1979, before the Three Mile Island accident, this study was designed to determine what, if any, substantive changes could be made in the NRC's existing rules to facilitate communications between the Commission and the NRC staff in order to afford the Commission greater access to staff expertise. In this study, NUREG-0670,[2] after reviewing the historical development of the Commission's ex parte and separation of functions rules and analyzing the applicable requirements of the Administrative Procedure Act (APA) and constitutional due process, OGC presented several rule change options for Commission consideration.

Additionally, in the course of its review of NRC licensing procedures, the agency's Regulatory Reform Task Force also considered the need to change the agency's existing ex parte and separation of functions rules. In its November 1982 Draft Report, the Task Force suggested revisions to the rules.[3]

In light of these various recommendations[4] and reports[5]

[1] Report of the President's Commission on the Accident at Three Mile Island 51 (October 1979); Report of the Office of the Chief Counsel of the President's Commission on the Nuclear Regulatory Commission 43 (October 1979); 1 Nuclear Regulatory Commission Special Inquiry Group, Three Mile Island: A Report to the Commissioners and to the Public 141 (January 1980)

[2] NRC Office of the General Counsel, A Study of the Separation of Functions and Ex Parte Rules in Nuclear Regulatory Commission Adjudications for Domestic Licensing, NUREG-0670 (March 1980). NUREG-series reports referenced in this document are available for inspection and copying for a fee in the NRC Public Document Room, 1717 H Street, NW., Washington, D.C. These reports may be purchased from the U.S. Government Printing Office by calling 202-275-2060 or by writing this office at P.O. Box 37082, Washington, D.C. 20013-7082. They also may be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

[3] Draft Report of the Regulatory Reform Task Force, SECY-84-447 (Nov. 3, 1982).

[4] In addition to the recommendations of the TMI-related reports, in June 1982, the American Bar Association's Section of Administrative Law adopted a resolution calling on the Commission to review its ex parte and separation of functions rules.

[5] Besides the OGC study, the following were considered in preparing this proposed rule: 2 K. Davis, *Administrative Law Treaties* §§ 13.01-.11

Continued

regarding separation of functions and ex parte contracts, further changes in the 1979 proposed rule are considered appropriate. Because these modifications can be deemed both substantial and substantive in relation to both the existing NRC regulations and the 1979 proposed rule, another proposed rule is being published to allow additional public comment.

II. Proposed Rule on Restricted Communications

In 10 CFR Part 2, Subpart G, the Commission has established procedures designed to be compatible with the APA requirements in 5 U.S.C. 554, 556, and 557 governing the conduct of formal, trial-type adjudicatory proceedings. The proposed rule on restricted communications would apply to all proceedings conducted under the formal hearing procedures set forth in Subpart G.

As classified by Congress in the APA, restrictions on communications relative to formal agency adjudicatory proceeding fall into two catgories: (1) Private, ex parte contacts between persons outside the agency and decisionmakers, 5 U.S.C. 557(b), and (2) private, interaagency contacts between those performing decisionmaking functions and other agency members who perform investigative or prosecuting functions relative to a proceedings, *id.* 553(d). While these two types of restricted communications have a different focus in terms of the persons involved, the aim of both is to preserve the integrity of formal adjudicatory proceedings by banning private contacts that would expose decisionmakers to biased viewpoints or off-the-record facts. Yet, in seeking to protect the probity of the agency's adjudicatory process, care must be taken not to construct unnecessary barriers to communication that ultimately will impede the adjudicator's ability to render effective, informed decisons. It is with these goals in mind that the ex parte and separation of functions rules have been revised.

While the major substantive changes in the rules are explained in a more detailed section-by-section analysis, we note initially the two major organizational changes that are under consideration. First, despite the APA's clear distinction between prohibited ex parte communications and those prohibited on separation of functions grounds, both the present rule and the 1979 proposed rule include private NRC staff communications with decisionmakers as within the "ex parte" restriction. To avoid any further uncertainty or confusion, all references to staff/decisionmaker communications as ex parte have been deleted from the currently proposed rule for ex parte communications, thereby relegating the regulation of such contacts to those prohibitions on intraagency communications found in the proposed rule of practice for separation of functions.

An additional major organizational change is the proposed consolidation of what are now two separate regulations—10 CFR 2.719 and 2.780—into consecutive sections—§§ 2.780 and 2.781—that share certain common terms defined in § 2.4. This association is wholly consistent with the nature of the restrictions sought to be imposed. Although each stricture involves a different communicator/recipient relationship, both have similar limitations—no private communications with decisionmakers—and similar remedies—public disclosure of prohibited communications. The proposed rules thus seek to make the restrictions involved more understandable by placing them together and using common terminology whenever possible.

A General Definitions Provision

Certain terms relevant to the revised ex parte and separation of functions restrictions have been added to § 2.4, which contains the definitions for words and phrases used in 10 CFR Part 2. Along with adding definitions to this section, it is further being revised by removing the alphabetical paragraph designators and alphabetizing all terms defined in that section, including the three additions. This revision should facilitate referencing definitions and revising the section in the future.

With regard to the particular provisions proposed to be added to § 2.4:

1. The ex parte and separation of functions provisions of the APA act to restrict communications both with those agency officers and employees who are responsible for deciding formal adjudicatory proceedings and with those who provide confidential advice and assistance to such decisionmakers to aid them in arriving at a determination. The proposed paragraph for § 2.4 that defines "Commission adjudicatory employees" is intended to specify those NRC officers and employees who are considered to act either as decisionmakers or as the private advisors to decisionmakers. This paragraph is in substance §§ 2.719(a) and 2.780(a) of the 1979 proposed rule. It has been expanded, however, to include several additional types of adjudicatory employees, including administrative law judges, their staff, and special assistants.

Also added as paragraph (9) for this definition is a provision to include as adjudicatory employees those NRC staff officers or employees who are appointed by the Commission to be involved in the Commission's decisional process in a particular proceeding. This addition is in conjunction with the major revision to the separation of functions rule whereby the separation of functions prohibition on communications with adjudicatory employees would apply only to those staff members performing investigative or litigating functions regarding the particular proceeding. As subsequently will be explained in more detail, unlike existing restrictions this would allow some agency staff personnel to become involved in the adjudicatory decisionmaking process as advisors to the Commission itself.

With regard to this paragraph (9), it should be noted that in the event an NRC staff employee is to be used as an adjudicatory advisor on a continuing basis, a public designation to that effect must be made by the Commission. This serves several purposes. The designation of a staff employee as an advisor may make him unavailable for use by the NRC staff in its litigation of a licensing proceeding. Thus, it is contemplated by the Commission that the use of staff employees in an advisory capacity would be subject to internal controls to ensure that NRC staff management has some administrative input into the process of designation of such employees. The designation by the Commission will be the culmination of this internal process. In addition, designation will put interested persons outside the agency on notice of the person's status as a Commission adjudicatory employee for the purpose of avoiding ex parte communications. A similar procedure is endorsed in the legislative history of the Sunshine Act. H.R. Rep. No. 880 pt. I, 94th Cong., 2d Sess. 20 (1976) (report of Committee on Government Operations); H.R. Rep. No. 880 pt. 2, 94th Cong., 2d Sess. 19 (1976) (report of Committee on the Judiciary); S. Rep. No. 354, 94th Cong., 1st Sess. 36 (1975).

This definition also indicates that designation as a Commission adjudicatory employee is necessary only

(1958); 3 *id.* §§ 17.8–.10, 18.1–8 (2d ed. 1980); Asimow, *When the Curtain Falls: Separation of Functions in Federal Administrative Agencies*, 81 Colum. L. Rev. 759 (1981); Pedersen, *The Decline of Separation of Functions in Regulatory Agencies*, 64 Va. L. Rev. 991 (1978); Shulman, *Separation of Functions in Formal Licensing Adjudications*, 56 Notre Dame Law. 351 (1981).

if the staff employees will be providing advice to the Commission on a "continuing basis." As is detailed in the II.C.5. *infra*, an otherwise uninvolved staff member's off-the-record communications with those members of the NRC staff performing investigative or litigating functions or interested persons outside the agency will not necessarily preclude him or her from acting at some other time as a private adjudicatory advisor. Likewise, an otherwise uninvolved staff member who provides private information or advice to an adjudicator is not locked into the role of an adjudicatory advisor until the proceeding ends. Accordingly, the Commission believes that so long as care is taken to ensure that the staff member to be contacted has not assumed the role of an investigator or litigator in a proceeding, it is unnecessary to go through the process of designating a staff employee as a Commission adjudicatory employee, which would place continuing restrictions upon the employee's ability to speak with persons outside the agency or investigators or litigators inside the agency, in instances when it is anticipated that contacts with the employee will be very limited in number, duration, and substantive content. This is especially so since staff advisors are precluded from acting as conduits for otherwise restricted communications under § 2.781(e) and since any contact with the staff employee that results in the communication of new information that becomes part of an initial or final decision will, under § 2.781(f) of the proposed rule, require that the parties be afforded some opportunity to respond.

Finally, the definition of Commission adjudicatory employee in paragraph (9) would allow nonpublic staff communications only to the Commission itself. The various reports that question the agency's present restrictions on communication with the NRC staff indicate that the Commission and its immediate advisors need greater access to staff expertise. The Commission has no evidence that such access is required by members of the Atomic Safety and Licensing Board Panel or the Atomic Safety and Licensing Appeal Panel in the performance of their adjudicatory functions. Accordingly, it is the Commission's intent that private staff communications should be permitted only with the Commissioners, their assistants, and those offices, such as the Office of Policy Evaluation of OGC, that act as the Commission's principal confidential advisors on adjudicatory matters.

2. The second proposed paragraph for § 2.4 defines the term "ex parte communication." With regard to that definition, mention should be made of the sole comment received concerning the rules as proposed in 1979. In that comment, the law firm of Isham, Lincoln and Beale argued among other things that the definition of "ex parte communication" then suggested in § 2.780(b) was "confusing and poorly drafted" because (1) it allegedly would require that all communications be made on the record, thus interfering with "conference calls and other informal conferences where the Licensing Board and all parties are represented but no public record of it is kept"; and (2) it referred to "all participants"—rather than "all parties" in a proceeding—thus leaving open the possibility that persons who make limited appearances under 10 CFR 2.715 would be included.

As to the commenter's example of conference calls and other informal conferences, the Commission believes that the proposed definition does not give cause of concern. The language used by the Commission comes from the Sunshine Act itself, 5 U.S.C. 551(14). The legislative history makes it clear that a "communication is *not* ex parte if *either*, (1) the person making it placed it on the public record at the same time it was made, *or* (2) all parties to the proceeding had reasonable advance notice. If a communication falls into *either one* of these two categories, it is not ex parte." H.R. Rep. No. 880 pt. I, *supra*, at 22 (emphasis added); H.R. Rep. No 880 pt. 2, *supra*, at 21 (same); S. Rep. No. 354, *supra*, at 38 (same). Obviously, the situations discussed in the comment would be perfectly proper under the rule proposed both in 1979 and presently.

As to the matter of the 1979 proposed rule's reference to "participants," the Commission has decided to substitute the term "parties," thereby conforming the rule to the language of the Sunshine Act and avoiding the possibility that persons making limited appearances under 10 CFR 2.715(a) would be included.

3. The third proposed paragraph for § 2.4 defines the term "investigative or litigation function." That term is used in the separation of functions rule to specify those functions performed by members of the NRC staff in a particular proceeding that will mandate which staff members will not be allowed to advise any adjudicatory employee about how to decide that case. Although the APA in section 554(d) refers to "investigative or prosecuting functions," the exact meaning of the term "prosecuting" has been the subject of some controversy. As was fully discussed in the OGC study, the original APA framework arguably was designed to impose a separation of functions prohibition only in accusatory proceedings, *i.e.*, those in which the primary concern is the lawfulness of past conduct, as opposed to those nonaccusatory proceedings, such as rulemakings or initial licensing, in which it can be asserted that the decision is reached typically on the basis of mostly legislative facts and general policy considerations. NUREG–0670, at 54–57. While the use of the term "prosecutor" is consistent with this construct, after careful consideration the Commission has decided that it will not adopt a narrow reading of the separation of functions requirement to limit it only to accusatory cases and those persons involved in "prosecuting" functions. Doing so would require the application of subtle and difficult distinctions between those licensing cases that are accusatory and those that are not. Instead, the somewhat broader term "litigating" is incorporated with the term "investigative" and is intended to denote those personnel involved in advocacy functions in both accusatory and nonaccusatory proceedings.

The term "investigative of litigating function; is defined under this proposed rule to include planning, conducting or supervision an investigation and planning, developing or presenting, or supervising the planning, development or presentation of, testimony, argument or strategy in a proceeding. This definition would continue to encompass NRC staff members involved in litigating a particular licensing proceeding, including staff attorneys involved in presenting the case, those staff members performing technical reviews of an application that is the subject of an adjudicatory proceeding, and staff employees who are witnesses or perform similar supportive functions at the proceeding. It does not, However, include all staff members as under the present NRC restriction on separation of functions. For instance, supervisors and subordinates of those involved in investigative or litigating functions who have not themselves assumed such a role or research personnel who are not involved in the particular proceeding would not be included under this definition. This will give the Commission and its adjudicatory advisors increased access to staff advice and expertise that is not now available without conducting public proceedings.

B. Ex Parte Communications Provision

1. Paragraph (a) of the revised § 2.780 is essentially paragraph (c) of § 2.780 of the 1979 proposed rule and incorporates into the rule the language of APA § 557(d)(1)(A). It has, however, been rephrased to delete the reference to NRC staff employees that was contained in the 1979 proposed rule, thereby implementing the distinction between the coverage of the ex parte and separation of functions restrictions, as was described earlier.

Several additional points concerning paragraph (a) should be made. With regard to the phrase "relevant to the merits of the proceeding," the legislative history of the Sunshine Act indicates that this term is "to be construed broadly and to include more than the phrase 'fact in issue' " used in the APA's separation of functions restriction. H.R. Rep. No. 880 pt. I, *supra*, at 20; H.R. Rep. No. 880 pt. 2, *supra*, at 20; S. Rep. No. 354, *supra*, at 231. As the legislative history also points out, this language is intended to exclude status report requests and communications regarding general background. *Id.* These exclusions are made explicit in this rule in paragraph (f) of § 2.780, as is explained in more detail subsequently.

An outstanding issue is whether this phrase can be interpreted to exempt certain issues relating to a proceeding that are not contested by the parties to the proceeding. For example, there are often uncontested issues in mandatory construction permit proceedings. Similarly, in operating license proceedings, the presiding officer or the Commission may be interested in certain matters that are relevant to public health and safety or the particular facility, but that have not been raised as issues in the proceeding by any party. The Commission believes that the phrase "relevant to the merits of the proceeding" should be read to include only issues contested by the parties to the proceeding. The Commission is interested in receiving comments on this interpretation. Commenters are asked to address not only the applicability of 5 U.S.C. 557(d), but also 5 U.S.C. 556(d) and any relevant case law. *See, e.g.*, Shulman, *Separation of Functions in Formal Licensing Adjudications*, 56 Notre Dame Law. 351, 379 n.120 (1981).

The legislative history of the Sunshine Act also makes clear that the term "interested person" used in the APA and paragraph (a) of § 2.780 is intended "to be a wide, inclusive term covering any individual or other person whose interest in the agency proceeding is greater than the general interest the public as a whole may have." H.R. Rep. No. 880 pt. I, *supra*, at 19, H.R. Rep. No. 880 pt. 2, *supra*, at 19–20; S. Rep. No. 354, *supra*, at 36. Thus, interested persons need not have a monetary interest in the proceeding or have the status of a party or intervenor. The term would include parties, participants under 10 CFR 2.715(a), other public officials, competitors, and nonprofit or public interest organizations and associations with a special interest in the proceeding. The term would not include a member of the public at large who makes a casual or general expression of opinion about a pending proceeding.

2. Paragraph (d) of § 2.780 of the 1979 proposed rule forms the basis for paragraph (b) of § 2.780 of this proposed rule. Besides being rephrased to delete the reference to NRC staff personnel, an addition to the rule admonishes Commission adjudicatory employees not to "request or entertain" ex parte communications. This language makes clear the affirmative duty of such employees both to refrain from instigating ex parte communications and to halt or avoid those that others puts before them.

3. Paragraph (c) of § 2.780 is essentially paragraph (f) of the 1979 proposed § 2.780 and is intended to incorporate the requirements of APA § 557(d)(1)(C) pertaining to disposition of ex parte communications received by adjudicatory officials. In this regard, it should be noted that the Commission has dropped the requirement found in § 2.780(e) of the 1979 proposed rule that all communications identified as ex parte be referred for action to the Executive Director for Operations. Upon further reflection, the Commission has decided that this process would unnecessarily complicate and delay appropriate corrective action regarding the communication. Instead, the official receiving the communication or a designee is given the responsibility for seeing that the communication and any responses are placed in the public record and in line with the legislative history of the Sunshine Act, H.R. Rep. No. 880 pt. I, *supra*, at 21; H.R. Rep. No. 880 pt. 2, *supra*, at 20; S. Rep. No. 354, *supra*, at 232, served upon the parties to the proceeding.[6]

4. Proposed paragraph (d) of § 2.780, which sets forth the additional sanctions that can be imposed for knowing violations of the ex parte prohibition, is derived from APA § 557(d)(1)(D) and essentially tracks § 2.780(h) of the 1979 proposed rule.

5. Paragraph (e) of the proposed § 2.780, which is similar to § 2.780(i) of the 1979 proposed rule, implements APA § 557(d)(1)(E)'s provision that dictates the ex parte prohibition will begin to apply "no 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 the acquisition of such knowledge." Paragraph (e) is somewhat less restrictive than the parallel provision of existing § 2.780(a), which provides for application of ex parte restrictions when a notice of hearing is published or when a hearing request is filed. In light of the language of APA section 557(d)(1)(E), which speaks only in terms of the issuance of a notice of hearing, the existing rule's application of ex parte prohibitions when a hearing request is received appears overbroad and is not retained. Further, in line with the statutory language, the proposed rule provides that the ex parte restrictions will become applicable upon the issuance of a notice of hearing rather than at the issuance of notice of opportunity for hearing that sometimes is published prior to the notice of hearing in NRC proceedings under 10 CFR Part 2, Subpart G.

Paragraph (e)(2)'s provision implementing the Sunshine Act's directive that the ex parte prohibition will apply when an interested person or Commission adjudicatory employee knows that hearing will be noticed also requires additional explanation. AEA section 189a, 42 U.S.C. 2239(a), requires that a hearing be noticed and held on any application for a permit to construct a nuclear reactor. Because this statutory hearing requirement puts everyone on notice that a hearing definitely will be held, a broad reading of the Sunshine Act's "knowledge" proviso could make ex parte prohibitions applicable, if not from the moment an applicant

[6] The APA requires that ex parte communications be placed "on the public record of the proceeding." 5 U.S.C. 557(d)(1)(C). The legislative history makes it clear that the term "public record" is not what is normally thought of as the record that forms the basis of the agency decisions. Instead, it means "the docket or other public file containing all the material relevant to the proceedings. It includes . . . material that has been accepted as evidence in the proceeding, and the public file of related matters not accepted as evidence in the proceeding." H.R. Rep. No. 880 pt. I, 94th Cong. 2d Sess. 22 (1976); H.R. Rep. No. 880 pt. 2, 94th Cong., 2d Sess. 21 (1976); S. Rep. No. 354, 94th Cong., 1st Sess. 38 (1975). Thus, while the particular communication and any responses to it may well be part of the "public record" of a proceeding, they may not be part of the "evidentiary record" absent some appropriate agency action, either sua sponte or at the request of the parties to the proceeding, to incorporate them as such.

considered filing for a construction permit, long before the filing of a formal hearing notice is even contemplated in a particular proceeding. Such a far-reaching application of the ex parte rule could damage severely the flexibility of the Commission's licensing process by precluding NRC adjudicatory employees from any private consultations with NRC staff members prior to the noticing of a hearing for fear of barring those same staff members from subsequently consulting informally with others outside the agency. The Commission believes such an expansive interpretation of the statute is not compelled by either its language or its legislative history. *See* NUREG-0670, at 75 n.142. Accordingly, this paragraph is intended to provide that knowledge that a statute or regulation that requires a formal hearing at an indeterminate time without some knowledge of when the hearing in the particular proceeding in question is to be noticed will not be considered knowledge that the matter will be noticed for a formal, on-the-record hearing so as to cause the ex parte prohibitions of § 2.780 to apply.

6. Exceptions to the ex parte prohibition are set forth in proposed paragraph (f) of § 2.780. The first three exemptions—status reports, communications permitted by statute or regulation (*e.g.*, 10 CFR § 2.720), and communications to members of the General Counsel's Office regarding litigation or matters before other agencies—are incorporated from § 2.780(b) of the 1979 proposed rule.

An additional exemption provision allows communications to adjudicatory employees regarding generic matters. Under existing § 2.780(d)(2), communications requested by the Commission regarding "general health and safety problems and responsibilities of the Commission" are not considered to be in violation of the ex parte prohibition. In the 1979 proposed, rule, this was broadened to include communications relating to the Commission's statutory responsibilities. This expansion is retained in this proposed rule, with the addition of several examples.

The Commission also proposes several revisions to this provision regarding generic matters. The 1979 proposed rule stated that the communications involved in the exemption were not to be "specifically related to any particular proceeding pending before the Commission." The 1979 notice of proposed rulemaking notes that this clause embodies the Commission's recognition that "this provision cannot be used as a means of circumventing the adjudicatory process" and that the Commission "will act to ensure that its use is limited to matters that are of generic rather than limited concern" (44 FR at 12429). The Commission believes, however, that it is helpful to adopt more explicit language to emphasize that such communications may not be "associated"—either by the interested person or the adjudicatory employee—"with the resolution of any on-the-record proceeding pending before the NRC"; such proceedings are to be resolved solely on the basis of the factual record and applicable law and policy.

This proposed rule also would broaden the scope of this exemption by allowing communications on generic matters with those outside the agency. As set out in the 1979 proposed rule, § 2.780(b)(5) limited the exemption to "communications between the Commission and staff regarding generic issues . . . ." The commenter on the 1979 proposed rule suggested that the exemption be extended to include communications from those outside the agency. Section 2.781(b)(1)(iii) of this proposed rule now provides for this exemption as it relates to staff contacts, while § 2.780(c)(1)(iv) establishes such an exemption for Commission contacts with interested persons outside the agency. Also, other adjudicatory employees who are advising the Commission on a particular proceeding, such as members of the Office of Policy Evaluation or perhaps the Director of the Office of Nuclear Reactor Regulation, *see* paragraphs (6) and (9) of the definition of "Commission adjudicatory employee" in proposed § 2.4, may need to contact the staff or outsiders concerning related generic issues. Accordingly, the scope of this provision and § 2.781(b)(1)(iii) relating to staff communications has been broadened to include other adjudicatory employees.

Finally, this proposed rule addresses a suggestion by the commenter on the 1979 proposed rule that there should be no restriction on outsiders' initiation of contacts with adjudicatory employees about those matters which, although related to a pending adjudication, also are of generic interest to the agency. This proposed rule does not have the restrictive language contained in the existing rule that allows only for "communications *requested by* the Commission concerning . . . [g]eneral health and safety problems and responsibilities of the Commission," 10 CFR 2.780(d)(2) (emphasis supplied). Thus, the rule as proposed would not preclude unsolicited contacts from falling within the exemption.

C. Separation of Functions Provision

One of the major questions facing the Commission in revising its separation of functions rule is whether the agency should invoke the APA's initial licensing exemption, 5 U.S.C. 554(d)(A), so as to make the separation of functions prohibition applicable only to accusatory proceedings. As was explained earlier, the APA's separation of functions provision can be interpreted as being based on the distinction between accusatory and nonaccusatory proceedings. The initial licensing exemption seemingly is based on this same distinction, Congress' determination being that initial licensing—*i.e.*, a proceeding involving a license application or a licensee-requested modification—usually is a nonaccusatory proceeding based on technical expertise and policy determinations rather than any extensive consideration of the applicant's past conduct as it relates to violations of statutory or regulatory requirements. NUREG-0670, at 57.

After careful consideration, the Commission has decided not to revise its separation of functions rule in a way that critically depends on the use of the initial licensing exemption because of the great legal uncertainty that surrounds the use of the exemption. *See* NUREG-0670, at 156-158 & n.233A; Asimow, *When the Curtain Falls: Separation of Functions in Federal Administrative Agencies*, 81 Colum. L. Rev. 759, 777-78 (1981); Shulman, *supra*, 56 Notre Dame Law. at 358-64, 380-404. Moreover, the use of the initial licensing exemption would require reintroduction of the unworkable distinction between accusatory and nonaccusatory proceedings because the legislative history of the APA indicates the exemption is not intended for use in accusatory proceedings. United States Dep't of Justice, *Attorney General's Manual on the Administrative Procedure Act* 50-52 (1947) [hereinafter cited as *Attorney General's Manual*]. Accordingly, the rule as proposed would apply separation of functions restrictions in all formal, on-the-record proceedings conducted by the agency without regard to whether such matters would otherwise be classified as initial licensing or as accusatory or nonaccusatory.

Another unsettled, controversial question in the area of separation of functions prohibitions is whether such restrictions should be imposed to bar higher-level adjudicators from

communicating privately with lower-level adjudicators. Present agency practice, embodied in § 2.719(c) and Part 2, App. A, § IX(c), precludes such consultations between Atomic Safety and Licensing Board members assigned to a proceeding and Atomic Safety and Licensing Appeal Panel members on any fact in issue in the proceeding. This proposed rule would not change this practice. The Commission, however, invites comments on whether this existing limitation is necessary or appropirate. *See* Shulman, *supra*, 56 Notre Dame Law. at 401–04, 490–11. *Compare* Legal Times of Wash., Dec. 15, 1980, at 4 (after debate, Administrative Conference of United States tables recommendations to allow consultation between lower-level adjudicators and agency heads) *with* Pederson, *The Decline of Separation of Functions in Regulatory Agencies*, 64 Va. L. Rev. 991, 1001 (1978) (lower-level adjudicators should be considered evidence-gatherers who prepare agency records and, a such, should be able to consult with agency heads).

Finally, § 554(d) of the APA, as well as the exising 10 CFR 2.719(a) and the 1979 proposed rule, § 2.719(b), all require that adjudicatory officials not be responsible to or subject to the supervision or direction of the prosecuting or investigative staff of the agency. Analytically, this requirement also implements the principle of separation of functions. Because the delegations of authority and the institutional arrangements embodied in the NRC's rules of practice and procedures are adequate to implement this requirement, it is not specifically set forth in this proposed rule.

Concerning the particular provisions of proposed § 2.781:

1. Paragraph (a) of this proposed rule is similar to § 2.719(c) of the 1979 proposed rule and serves as the basic statement of the scope of the separation of functions restriction. There have been several changes from the 1979 proposed rule, however. In place of the term "prosecuting" used in the 1979 proposed rule to describe one of the staff functions that will trigger a separation of functions question, the term "litigating" has been substituted. As was explained previously, this revison is in line with the rejection of the accusatory/nonaccusatory distinction. By using the more expansive term "litigating" the Commission seeks to include those staff employees who undertake an advocacy role. Also, by stating that the restriction applies only to "disputed issue[s]," the Commission gives this provision an interpretation that parallels that of the ex parte rule on the question of uncontested issues. *See* II.B.1. *supra*.

One additional change of note in § 2.781(a) is in paragraphs (a)(2) and (a)(3), which are intended to indicate, as is suggested in the APA's separation of functions provision, *see* 5 U.S.C. 554(d); *Attorney General's Manual* at 56, that proper public disclosure of the communications between adjudicatory employees and staff members will avoid or cure any separation of functions violations.

Finally, in describing those proceedings to which separation of functions should apply, the Commission has retained the term "factually related," which is derived from the APA, 5 U.S.C. 554(d)(2), and has been used in both the existing rule and the 1979 proposed regulation. To be "factually related," proceedings must arise out of the same or a connected set of facts that a "common nucleus of operative facts" exists rather than simply a similar pattern of facts. *See Giambanco* v. *INS*, 531 F.2d 141, 150 n.4 (3d Cir. 1976) (Gibbons, J., dissenting); Shulman, *supra*, 56 Notre Dame Law. at 365 n.59. Thus, while a license suspension proceeding and a civil penalty proceeding arising out of the same violation would be considered "factually related," generally a reactor construction permit proceeding and a proceeding for the issuance of a reactor operating license would not, unless there is the need to relitigate a factual issue specifically litigated and decided in the construction permit proceeding.

2. Paragraph (b) of § 2.781 sets forth certain communications that, either in and of themselves or when presented to certain adjudicatory employees, are not precluded by the rule. The communications set forth under paragraph (b)(1)—status reports, matters specifically permitted by statute or regulation, other litigation outside the agency, and generic matters—are the same as those set forth under proposed § 2.780(f) relating to ex parte communications and can be made to any adjudicatory employee. In contrast, paragraph (b)(2) lists communications that can be made to the Commissioners themselves and to certain Commission-level employees because of the status of such individuals as administrators and policymakers or the advisors to those administrators and policymakers.

The communications provided for in paragraphs (b)(2)(i) through (iii) of § 2.781 are based on the APA's "agency head" exemption to its separation of functions provision, 5 U.S.C. 554(d)(C), whereby the person or body that governs the agency, and any immediate advisors,[7] may communicate with staff investigators about various matters that might otherwise bring them into conflict with the APA's separation of functions restrictions on communications. In the case of investigations, which is covered under paragraph (i), it has been recognized that if agency heads are to fulfill their responsibility for the conduct of investigations or the initiation of enforcement proceedings, they may be involved in discussions of factual matters also at issue in ongoing adjudicatory proceedings. *Attorney General's Manual* at 58.[8] Similarly, as is indicated in paragraphs (ii) and (iii), of § 2.781(b), Although supervisory determinations about staff resources or about staff compliance with agency policies may require some discussion or consideration of matters at issue in a particular proceeding, Commissioner contacts with investigator or litigators to resolve resources and policy compliance questions should not be barred.

Paragraph (iv) of § 2.781(b)(2) recognizes that, apart from a staff member's expertise regarding circumstances of a particular case he or she may be investigating or litigating, he or she also may be an expert in one or more technical areas about which the Commission may need general, background information. In the event that the particular regulatory, scientific or engineering principles about which the Commission wishes to be informed are not somehow at issue in the

[7] It has been recognized that the "agency head" exemption should apply equally to communications to the agency head's personal advisors, at least so long as they remain advisory role. *Grolier, Inc.* v. *FTC*, 615 F.2d 1215, 1220, (9th Cir. 1982); Asinow, *supra*, 81 Colum. L. Rev. at 766. Given the NRC's organizational structure whereby the Office of the Secretary, the Office of General Counsel, and Office of Policy Evaluation are considered "Commission-level" offices that have a primary responsibility for advising the Commission itself on technical, legal, and policy matters, invocation of this exemption to cover such offices appears appropriate.

[8] Support for this particular exemption also may be found in *Pangburn* v. *CAB*, 311 F.2d 349 (1st Cir. 1962). After an airplane accident, the CAB members initiated and participated in an investigation of the accident for purposes of preparing a report to Congress. Concurrently, the CAB members adjudicated whether to suspend the license of the pilot involved in the accident. The factual issues in the investigation were identical to the issues in the adjudication. Nonetheless, the court rejected due process arguments that the CAB was precluded from pursuing concurrently its investigatory and adjudicatory activities. The court further commented that the APA, 5 U.S.C. 554(d), specifically provides for an agency to carry out its investigatory and adjudicatory mandates at the same time; the remedy for eliminating potential unfairness is simply to preclude agency staff members who engaged in investigations or prosecutions from advising Commission members in the same or a factually related adjudication. See also *FTC* v. *Cement Institute*, 333 U.S. 683 (1948).

proceeding, this paragraph will allow the Commission to obtain this information from a particular investigator or litigator.

Paragraph (v) of § 2.781(b)(2) is proposed to be added as a consequence of the United States Court of Appeals for the District of Columbia Circuit's decision in *Environmental Defense Fund, Inc.* v. *EPA*, 548 F.2d 998 (D.C. Cir. 1976), *cert. denied*, 431 U.S. 925 (1977). In *EDF, Inc.*, the court stated that agency prosecutors could consult privately with an agency head regarding broadening a suspension proceeding by adding changes. *Id.* at 1006 n.20. The addition of paragraph (v) would allow private consultations between the Commission and investigators or litigators after an initial decision concerning any request to broaden the adjudicatory proceeding by adding issues.

The Commission proposes to add paragraph (vi) of § 2.781(b)(2) on the basis of the District of Columbia Circuit's decision in *RSR Corp.* v. *FTC*, 656 F.2d 718 (D.C. Cir. 1981) (per curiam). In *RSR Corp.* the court declared that neither the APA nor due process imposed a separation of functions prohibition applicable to agency consideration of a motion to reopen a proceeding after a final agency decision in an administrative proceeding. *Id.* at 722–24.

The final paragraph, (b)(3) of § 2.781, is intended to incidate that none of the exemptions can be used to circumvent the protections provided by the adjudicatory process. No Commission adjudicatory employee or staff employee performing investigative or litigating functions is to associate any of these types of communications explicitly or implicitly with the resolution of any on-the-record proceeding; such proceedings should be resolved solely on the basis of the factual record and applicable law and policy. Further, as required by statute, no Commission employee who performs investigative or litigating functions subsequently will perform adjudicatory duties in the same or a factually related proceeding. 5 U.S.C. 554(d).

3. Paragraph (c) of § 2.781 is similar to § 2.780(c) of this proposed rule and describes the measures that are to be taken to ensure that if such a prohibited communication is received, it is properly disclosed to avoid any prejudice to the parties.

4. Paragraph (d) of § 2.781 is a new addition that specifies when the separation of functions probibition is to be applied. Like the proposed ex parte provisions in § 2.780(g), the separation of functions provisions are made effective only at the time the proceeding is first noticed for a hearing. This reflects the Commission's belief that prior to this time the staff's knowledge about and position on a given matter is too tentative and unsettled to cause concern about biased advice or off-the-record facts. This provision strikes the proper balance between the agency's need for efficient and effective communications and the public's interest in fair, unbiased proceedings. *See RSR Corp.*, 656 F.2d at 722–24 (neither APA nor due process requires imposition of separation of functions ban during agency consideration of motion to reopen proceeding because no adjudication yet involved).

5. Proposed paragraph (e) of § 2.781 advises all NRC personnel that communications with adjudicatory employees now permitted by § 2.781 are not to become the instrument for communications with persons outside the agency otherwise prohibited by § 2.780 or with investigators or litigators otherwise prohibited by § 2.781. The legislative history of the Sunshine Act notes that "ex parte contacts by staff acting as agents for interested persons outside the agency are clearly within the scope of the prohibitions." H.R. Rep. No. 880 pt. I, *supra*, at 20; H.R. Rep. No. 880 pt. 2, *supra*, at 19; S. Rep. No. 354, *supra*, at 30. A similar concern exists with regard to communications between staff members not involved in a proceeding and investigators or litigators, Given the increased possibility for staff input into the decisional process that is allowed under this proposed rule, the explicit warning in section 2.781(e) appears appropriate.

This is not to say, however, that the mere exposure of a staff employee to communications that arguably would be prohibited prior to that person's involvement in the decisionmaking process will automatically disqualify that person from later acting as an adjudicatory employee. In fact, if the employee has not otherwise performed an investigative or litigating function, then such exposure to off-the-record information does not make him or her an advocate. Asimow, *supra*, 81 Colum.L.Rev. at 762, 771–72; *see* Shulman, *supra*, 56 Notre Dame Law. at 337–80. *But see Grolier, Inc.* v. *FTC*, 615 F.2d 1215 (9th Cir. 1980). Thus, communications by a staff employee with outsiders or staff investigators or litigators prior to communicating with the Commission or other adjudicatory employees as a decisionmaking advisor will not, in and of itself, disqualify the staff employee. Of course, any off-the-record information about any matter in controversy that is imparted to a decisionmaker by such a staff advisor must be made public and subjected to comments by the parties if it is to be used as the basis for any initial or final decision.

A related question, and one that is not directly addressed in the provisions of this proposed rule, is whether a staff employee, once becoming an advisor to a decisionmaker in a particular proceeding, can ever again assume a role as an agency investigator or litigator in that proceeding. Arguably, the separation of functions restriction only applies to preclude investigators or litigators from being involved as adjudicators or their advisors, and not the converse. If an individual advising an adjudicatory employee has developed a bias against one of the parties in a proceeding, then allowing that advisor to become a litigator seemingly does not hurt the party since it will have a full opportunity to defend itself and its positions. On the other hand, if an advisor develops a bias in favor of a particular party, that party seemingly is not harmed in any way by the advisor assuming a role as a litigator. The Commission requests comments on the propriety of including a provision allowing such contacts.

6. The possibility for increased consultation by NRC adjudicators with the NRC staff that would result under this proposed rule may cause concern among some participants in NRC adjudicatory proceedings, particularly given the almost complete separation of NRC staff from adjudicators that has existed previously. As Professor Davis has noted, however, for those agencies such as NRC that regulate in areas involving complex technical questions, the choice between consulting and not consulting staff experts is "a choice between knowledge and ignorance." 3 K. Davis, *Administrative Law Treaties* § 17.10, at 310 (2d ed. 1980). As such, Professor Davis has expressed his support of such consultations, with the caveat that the agencies should seek to minimize any harmful effects by striving to ensure, among other things, "that the parties have an opportunity to meet in appropriate fashion whatever extrarecord facts are introduced through consultation" and "that the parties have a chance to respond to new ideas that may be decisive." *Id.* at 312. Paragraph (f) of proposed § 2.781 has been added to make clear that the increased possibility of consultation does not in any way change the agency's legal duty or commitment to ensure that the decisive elements of its determinations are based upon a public record that the parties have had an opportunity to address.

III. Conforming Changes in Parts 0 and 2

In addition to the revision of the ex parte and separation of functions rules of practice themselves, the Commission also proposes conforming changes to several other regulatory provisions. One of these is a change in § 0.735–48 of 10 CFR Part 0, Conduct of Employees. This regulation warns employees of the existence of restrictions on communications resulting from the ex parte and separation of functions rules in 10 CFR Part 2. The proposed revision would update existing references to §§ 2.719 and 2.780 in light of the proposed changes in those provisions.

Similarily, revisions are made to §§ VII(c) and IX(c) of Appendix A to Part 2, the general statement of policy and procedure on the conduct of formal proceedings. Deleted from § VII(c) as unnecessarily restrictive are provisions limiting consultations between members of a particular Licensing Board and Licensing Board Panel members, other than the Chairman or the Vice Chairman. Finally, as previously was noted, the existing restriction on consultation between the Licensing Board members assigned to a particular proceeding and any Appeal Panel member is retained in Appendix A.

A separate but related issue raised by the need to conform other NRC regulations to any revised separation of functions and ex parte rules is the need to retain a reference to those rules in § 2.305. This section is a provision of Subpart C of Part 2, which sets forth the procedures for issuing temporary operating licenses under § 192 of the Atomic Energy Act of 1954, 42 U.S.C. 2242. Since the Commission's authority to issue temporary operating licenses expired on December 31, 1983, there is no reason to conform the section or, indeed, to retain Subpart C. Accordingly, that subpart would be removed under the proposed rule.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed regulation is the type of action described in categorial exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

Paperwork Reduction Review

The information collection requirements contained in this proposed rule are exempt from the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3518(c)(1)).

Regulatory Analysis

Under the APA, 5 U.S.C. 554(d), 557(d), in formal adjudicatory proceedings, restrictions apply to communications between adjudicators and agency employees performing investigative or litigating functions or interested persons outside the agency. The revisions in the proposed ex parte rule will conform the language of the agency's present regulations more closely to the Sunshine Act's provisions restricting communications with persons outside the agency. This rule change will not affect the substantive restrictions on outside communications applicable under present regulations. Under the revised separation of functions rule, however, there will be an increased possibility for adjudicator/staff communications because those staff members not involved in an investigative or litigating function in a particular proceeding can advise decisionmakers on matters at issue in that proceeding. The potential for increased information to adjudicators makes this rule change preferable to existing requirements. While other possible rule change options exist, notably invocation of the "initial licensing" exemption in the APA or reading the section 554(d) restriction to apply only to "prosecutors" rather than "litigators," serious questions about the legality of these particular revisions make them unacceptable both in terms of agency resources to defend such rules and the possibility of judicial reversal of licensing actions based on the application of such rules. The proposed rule thus is the preferred alternative and the cost involved in its promulgation and application is necesary and appropriate. The foregoing discussion constitutes the regulatory analysis for the proposed rule.

Backfit Analysis

This proposed rule does not modify or add to systems, structures, components or design of a facility; the design approvasl or manufacturing license for a facility; or the procedures or organization required to design, construct or operate a facility. Accordingly, no backfit analysis pursuant to 10 CFR 50.109(c) is required for this proposed rule.

Regulatory Flexibility Certification

The proposed rule will not have a significant economic impact upon a substantial number of small entities. Most entities seeking or holding construction permits on Commission licenses that would be subject to the revised ex parte provisions would not fall within the definition of small businesses found in § 34 of the Small Business Act, 15 U.S.C 632, in the Small business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121 or in the NRC's size standards published December 9, 1985 (50 FR 50241). Although intervenors subject to the provision on ex parte communications likely would fall within the pertinent Small Business Act definition, the proposed ex parte rule, if adopted, would not reduce or increase the litigation burden of intervenors because it is substantially the same as the restriction now in effect. Although the revised restrictions on intraagency communications found in the sparation of functions provision might result in some cost reduction in proceedings in that the increased availability to adjudicators of staff expertise may shorten the proceedings, that reduction probably will be negligible. Thus, in accordance with the Regulatory Flexiability Act, 5 U.S.C. 605(b), the NRC hereby certifies that this rule, if promulgated, will not have a significant economic impact upon a substantial number of small entities.

List of Subjects in 10 CFR Part 0

Conflict of interest, Penalty.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

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 parts 0 and 2:

PART 0—CONDUCT OF EMPLOYEES

1. The authority citation for Part 0 is revised to read as follows:

Authority: Secs. 25, 161, 68 Stat. 925, 948, as amended (42 U.S.C. 2035, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 11222, 30 FR 6469, 3 CFR 1964–1965 COMP., p. 306; 5 CFR 735.104.

Sections 0.735–21 and 0.735–29 also issued under 5 U.S.C. 552, 553. Section 0.735–26 also issued under secs. 501, 502, Pub. L. 95–521, 92 Stat. 1864, 1867, as amended by secs. 1, 2, Pub. L. 96–28, 93 Stat. 76, 77 (18 U.S.C. 207).

2. Section 0.735–48 is revised to read as follows:

§ 0.735-48 Restricted Communications.

Certain employ communications are prohibited in formal adjudicatory proceedings under §§ 2.780 and 2.781 of this chapter.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

3. The authority citation for Part 2 is revised to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub.L. 87.615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub.L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub.L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200-2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.300-2.309 also issued under Pub.L. 97-415, 96 Stat. 2071 (42 U.S.C. 2133). Sections 2.600-2.606 also issued under sec. 102, Pub.L. 91-190, 83 Stat. 853 as amended (42 U.S.C. 4332) Sections 2.700a, 2.781 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub.L. 85-256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K 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). Appendix A also issued under sec. 6, Pub.L. 91-580, 84 Stat. 1473 (42 U.S.C. 2135).

4. Section 2.4 is revised by removing the alphabetical paragraph designators, alphabetizing all words defined, and adding three new definitions to read as follows:

§ 2.4 Definitions.

* * * * *

"Commission adjudicatory employee" means—

(1) The Commissioners and members of their personal staffs;

(2) The members of the Atomic Safety and Licensing Appeal Panel and staff assistants to the Panel;

(3) The members of the Atomic Safety and Licensing Board Panel and staff assistants to the Panel;

(4) A presiding officer appointed under § 2.704, including an administrative law judge, and staff assistants to a presiding officer;

(5) Special assistants (as defined in § 2.772);

(6) The General Counsel and employees of the Office of the General Counsel;

(7) The Director of the Office of Policy Evaluation and employees of that office;

(8) The Secretary and employees of the Office of the Secretary; and

(9) Any other Commission officer or employee who is appointed by the Commission to participate or advise in the Commission's consideration of an initial or final decision. Any such other Commission officer or employee who, as permitted by § 2.781, participates or advises in the Commission's consideration of an initial or final decision on a continuing basis must be appointed as a Commission adjudicatory employee under this paragraph and the parties to the proceeding must be given written notice of such appointment.

* * * * *

"Ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given.

* * * * *

"Investigative or litigating function" means—

(1) Personal participation in planning, conducting or supervising an investigation; or

(2) Personal participation in planning, developing or presenting, or supervising the planning, development or presentation of testimony, argument or strategy in a proceeding.

* * * * *

Subpart C—[Removed]

5. Part 2 is amended by removing Subpart C (§§ 2.300-2.309).

§ 2.719 [Removed]

6. Section 2.719 is removed.

7. Part 2 is amended by revising the undesignated centerhead immediately preceding § 2.780 to read as follows:

Restricted Communications

8. Section 2.780 is revised to read as follows:

§ 2.780 Ex parte communications.

In any proceeding under this subpart—

(a) Interested persons outside the agency may not make or knowingly cause to be made to any Commission adjudicatory employee, any ex parte communication relevant to the merits of the proceeding.

(b) Commission adjudicatory employees may not request or entertain from any interested person outside the agency or make or knowingly cause to be made to any interested person outside the agency, any ex parte communication relevant to the merits of the proceeding.

(c) Any Commission adjudicatory employee who receives, makes or knowingly causes to be made a communication prohibited by this section shall ensure that it and any responses thereto promptly are served on the parties and placed in the public record of the proceeding. In the case of oral communications, a written summary shall be served and placed in the public record of the proceeding.

(d) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this section, the Commission or other adjudicatory employee presiding in a proceeding may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why its claim or interest in the proceeding should not be dismissed, denied, disregarded or otherwise adversely affected on account of such violation.

(e) The prohibitions of this section are applicable (1) when a notice of hearing or other comparable order is issued in accordance with §§ 2.104(a), 2.105(e)(2), 2.202(c) or 2.703, or (2) whenever the interested person or Commission adjudicatory employee responsible for the communication has knowledge that a notice of hearing or other comparable order will be issued in accordance with §§ 2.104(a), 2.105(e)(2), 2.202(c), or 2.703.

(f) The prohibitions in this section do not apply to —

(1) Requests for and the provision of status reports;

(2) Communications specifically permitted by statute or regulation;

(3) Communications made to or by members of the Office of the General Counsel regarding matters pending before a court or another agency; and

(4) Communications regarding generic issues involving public health and safety or other statutory responsibilities of the agency (*e.g.*, rulemakings, congressional hearings on legislation, budgetary planning) not associated by the Commission adjudicatory employee or the interested person with the resolution of any proceeding under this subpart pending before the NRC.

9. New § 2.781 is added to read as follows:

§ 2.781 Separation of functions.

(a) In any proceeding under this subpart, any NRC officer or employee engaged in the performance of any investigative or litigating function in that proceeding or in a factually related proceeding may not participate in or

advise a Commission adjudicatory employee about the initial or final decision on any disputed issue in that proceeding, *except*—

(1) As witness or counsel in the proceeding;

(2) Through a written communication served on all parties and made on the record of the proceedings; or

(3) Through an oral communication made both with reasonable prior notice to all parties and with reasonable opportunity for all parties to respond.

(b) The prohibition in paragraph (a) of this section does not apply to—

(1) Communications to or from any Commission adjudicatory employee regarding—

(i) The status of a proceeding;

(ii) Matters with regard to which such communications specifically are permitted by statute or regulation;

(iii) Agency participation in matters pending before a court or another agency; or

(iv) Generic issues involving public health and safety or other statutory responsibilities of the agency (*e.g.*, rulemakings, congressional hearings on legislation, budgetary planning) not associated by the Commission adjudicatory employee or the NRC officer or employee preforming investigative or litigating functions with the resolution of any proceeding under this subpart pending before the NRC.

(2) Communications to or from Commissioners, members of their personal staffs, the General Counsel and employees of the Office of the General Counsel, the Director of the Office of Policy Evaluation and employees of that office, and the Secretary and employees of the Office of the Secretary, regarding—

(i) Initiation or direction of an investigation or initiation of an enforcement proceeding;

(ii) Supervision of agency staff to ensure compliance with the general policies and procedures of the agency;

(iii) Staff priorities and schedules or the allocation of agency resources;

(iv) General regulatory, scientific or engineering principles that are useful for an understanding of the issues in a proceeding and are not contested in the proceeding;

(v) The need to add issues to a proceeding after rendition of the initial decision; or

(vi) The need to reopen a proceeding after rendition of the initial or final decision.

(3) None of the communications permitted by paragraph (b)(2) of this section is to be associated by the Commission adjudicatory employee or the NRC officer or employee performing investigative or litigating functions with the resolution of any proceeding under this subpart pending before the NRC.

(c) Any Commission adjudicatory employee who receives a communication under paragraph (a) of this section shall ensure that it and any responses thereto are placed in the public record of the proceeding and served on the parties. In the case of oral communications, a written summary shall be served and placed in the public record of the proceeding.

(d) The prohibitions in this section are applicable (1) when a notice of hearing or other comparable order is issued in accordance with §§ 2.104(a), 2.105(e)(2), 2.202(c), or 2.703, or (2) whenever an NRC officer or employee who is or has reasonable cause to believe he or she will be engaged in the performance of an investigative or litigating function or a Commission adjudicatory employee has knowledge that a notice of hearing or other comparable order will be issued in accordance with § 2.104(a), 2.105(e)(2), 2.202(c) or 2.703.

(e) Communications to, from, and between Commission adjudicatory employees not prohibited by this section may not serve as a conduit for a communication that otherwise would be prohibited by this section or for an ex parte communication that otherwise would be prohibited by § 2.780.

(f) If an initial or final decision is stated to rest in whole or in part on fact or opinion as a result of a communication authorized by this section, the substance of the communication must be specified in the record of the proceeding and every party must be afforded an opportunity to controvert the fact or opinion. If the parties have not had an opportunity to controvert the fact or opinion prior to the filing of the decision, a party may controvert the fact or opinion by filing an appeal from an initial decision, or a petition for reconsideration of a final decision that clearly and concisely sets forth the information or argument relied on to show the contrary. If appropriate, a party may be afforded the opportunity for cross-examination or to present rebuttal evidence.

10. In § VIII of Appendix A to Part 2, paragraph (c) is revised to read as follows:

VII. General

* * * * *

(c) (1) Section 2.781 specifies when consultation between Commissioners or boards, on the one hand, and the staff, on the other hand, is permitted in licensing proceedings conducted under Subpart G. Section 2.781 also permits a board, in the same type of proceeding, to consult with members of the panel from which the members of the board are drawn.

(2) The provisions of § 2.781 restricting intraagency consultations and communications are not applicable to matters certified to the Commission or to the Atomic Safety and Licensing Appeal Panel under the Commission rules in §§ 2.720(h) and 2.744(e) since those matters are not deemed to involve substantive matters at issue in a proceeding on the record.

11. In § IX of Appendix A to Part 2, paragraph (c) is revised to read as follows:

IX. Licensing Proceedings Subject to Appellate Jurisdiction of Atomic Safety and Licensing Appeal Board.

* * * * *

(c) Consultation between members of the Atomic Safety and Licensing Appeal Board for a particular proceeding and the staff is permitted on the conditions specified in 10 CFR 2.781. However, members of the atomic safety and licensing boards for particular proceedings shall not consult on any fact in issue in those proceedings with members of the Appeal Panel.

* * * * *

Dated at Washington, DC, this 21st day of March 1986.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 86-6663 Filed 3-25-86; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. NM-19; Notice No. SC-86-1-NM]

Special Conditions; American Aviation Industries Reengined JetStar Model 1329 Series Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the American Aviation Industries (AAI) reengining of the Model 1329 series airplane. The airplane will have novel or unusual design features associated with an automatic takeoff thrust control system (ATTCS) for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. This notice contains the safety standards which the Administrator finds necessary, because of these design features, to establish a level of safety equivalent to that established in the regulations.

DATE: Comments must be received on or before May 12, 1986.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, Attention: Rules Docket (ANM-7), Docket No. NM-19, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; or delivered in duplicate to the Office of the Regional Counsel at the above address. Comments must be marked: Docket No. NM-19. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: James Walker, Transport Standards Staff, ANM-110, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; telephone (206) 431-2116.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposal. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available in the Rules Docket, both before and after the closing date, for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filled in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM-19." The postcard will be date/time stamped and returned to the commenter.

Background

On March 8, 1984, American Aviation Industries (AAI), 1670 Roscoe Boulevard, Van Nuys, California 91406, made an application to the Federal Aviation Administration (FAA), Northwest Mountain Region, for a Supplemental Type Certificate (STC) to reengine the JetStar Model 1329 series airplane, which currently have installed four Pratt and Whitney Model JT12A turbojet-engines or four Garrett AiResearch Model TFE-731 turbine engines, with two General Electric Model CF34-1A turbofan engines. The Model CF34-1A engine installation will include an ATTCS.

On March 9, 1984, Volpar, Inc., Van Nuys, California, dba American Aviation Industries, Inc., petitioned for an exemption from § 21.19(b)(1) of the Federal Aviation Regulations (FAR) to permit Volpar, Inc., dba American Aviation Industries, Inc., to apply for supplemental type certification of a design change from four engines to two engines on the Lockheed Model 1329 series JetStar airplane. Section 21.19(b)(1) requires a new application for type certificate if the proposed change to a product is a change in the number of engines or rotors. Exemption No. 4225 was granted on December 19, 1984. The exemption permitted the applicant to apply for an STC for a design change to the JetStar Model 1329 airplane from a four-engined to a two-engined airplane provided that compliance is shown with § 21.19(a) and with the applicable airworthiness regulations of Part 25 in effect on the date of application for the design change to all areas, systems, components, equipment, or appliances that are changed or significantly affected by the modification.

The AAI supplemental type certificated airplane, Model 1329 series, is a low wing, pressurized transport category airplane with certificated takeoff gross weights ranging from 40,921 pounds to 44,500 pounds. The airplane has a maximum permissible altitude of 43,000 feet and a total occupancy of 12 persons, including a crew of two. The modified airplane series will be equipped with two General Electric Model CF34-1A turbofan engines each rated at 8,650 pounds for normal takeoff thrust at sea level standard day and 9,140 pounds for maximum takeoff thrust at sea level standard day and will incorporate an ATTCS. The ATTCS is designed to automatically increase the thrust on the operating engine to the maximum installed thrust approved for the takeoff ambient conditions, in the event an engine fails during the takeoff.

The ATTCS proposed for this installation is similar to the currently approved system on the Canadair Challenger Model 601 equipped with the same CF34 engine (48 FR 12334; March 24, 1983) and incorporates the manual thrust increase/decrease capability. The application of maximum takeoff thrust, whether set by the ATTCS or manually, will not result in the operating limits of the engine to be exceeded.

The supplemental type design of the JetStar Model 1329 airplane equipped with the ATTCS contains a number of novel and unusual design features for an airplane type certificated under the airworthiness requirements incorporated by reference in Type Certificate No. 2A15 or under the applicable airworthiness requirements in effect on the date of the STC application for change to that type certificate. In either case, the applicable airworthiness requirements do not contain adequate or appropriate safety standards. Special conditions are necessary to provide a level of safety equal to that established by the regulations incorporated by reference in the type certificate and the certification basis for the reengining STC, and to support a finding by the Administrator that no feature or characteristic of the airplane with the ATTCS installed makes it unsafe for the category in which certification is requested. These special conditions specify limits on the maximum power increment which may be applied to the operating engine by the ATTCS, prescribe system reliability and status monitoring requirements, require provisions for manual selection of the maximum takeoff thrust approved for the airplane under existing conditions, prohibit approval of the system if the automatic or manual application of maximum takeoff thrust would result in an engine operating limit being exceeded, and require the installation of an independent engine failure warning system if the inherent characteristics of the airplane do not provide a clear warning to the crew.

Type Certification Basis

The supplemental type certification basis for the American Aviation Industries modified JetStar Model 1329 series airplanes equipped with two General Electric Model CF34-1A engines and an ATTCS is:

1. Part 4b of the Civil Air Regulations (CAR) (effective December 31, 1953), Amendments 4b-1 thru 4b-9 together with Special Civil Air Regulation SR-422B, SR-405A and the Special Conditions contained in FAA letter to Lockheed dated December 19, 1958, as revised by FAA letter to Lockheed dated January 10, 1961. Also the following Sections of Part 25 of the Federal Aviation Regulations (FAA) through Amendment 25-56 in lieu of the Sections of the CAR 4b shown in parenthesis are only for those items which have been established to be affected by the engine change as follows: Part 25 of the FAR,

Supart B, 25.21–25.237, 25–251*, 25–253, 25.255 (4b.100–4b.190 and SR–422B, 4T.110–4T.122), 25.361–25.363 (4b.216), 25.367–25.371 (4b.216), 25.571 (4b.270), 25.581, (for engine/nacelle), 25.601–25.629 (4b.300–4b.308) (for engine/nacelle support structure), 25–601–25.629 (4b.300–4b.308) (for engine/nacelle support structure), 25.671 (4b.320), 25.672, 25.681–25.685 (4b.327–4b.329) (for rudder bias system), 25.863–25.867 (4b.385, 4b.490), 25.901 (4b.400), 25.903 (4b.401), 25.933 (4b.407), 25–934, 25–939–25.943 (4b.409), 25.951–25.953 (4b.410–4b.411), 25.955 (4b.413, 4b.414), 25.959 (4b.416), 25.961 (4b.417), 25.991–25.999 (4b.430–4b.436), 25.1011–25.1025 (4b.440–4b.445), 25–1041–25.1045 (4b.450–4b.457), 25–1091 (4b.460), 25.1093 (4b.461), 25.1103 (4b.463), 25.1107 (4b.466), 25.1121 (4b.467), 25.1123 (4b.467), 25–1141–25.1145 (4b.470–4b.472), 25–1155 (4b.474), 25.1163–25.1165 (4b.477–4b.478), 25.1181–25.1191 (4b.480–4b.486), 25.1193–25.1207 (4b.487–4b.490), 25–1301 (4b.600, 4b.601), 25.1305–25.1309 (4b.604–4b.606), 25.1322, 25.1337 (4b.613), 25.1351 (4b.621–4b.622), 25.1353 (4b.625), 25–1355 (4b.623), 25.1357 (4b.624), 25.1359 (4b.626), 25.1363, 25.1461, 25.1505 (4b.711.4b.712), 25–1513 (4b.717), 25.1519 (4b.719), 25.1521 (4b.718), 25.1527 (4b.722), 25.1529, 25.1533–25.1543 (4b.730, 4b.731), 25.1549 (4b.734), 25.1551 (4b.735), 25.1581–25.1587 (4b.740–4b.743 and SR–422B, 4T.123 and 4T.743).

* Section 25.251, Amendment 22, with the Special Conditions contained in FAA letter to Lockheed Dated December 19, 1958 (CAR Ref. 4b.190(b) and 4b.711(b) "Operation V–N Envelope" and stipulation that the first paragraph of the Special Conditions must be interpreted to mean "A buffet onset boundary chart and investigation of inadvertent excursion beyond the boundaries of buffet onset."

—Part 36 of the FAR (Stage 2 noise level limits), Amendment current on the date of certification.
—Special Federal Aviation Regulations (SFAR) 27, Amendment current on the date of certification.
—Equivalent safety findings: CAR 4b.160 and 4b.161.
—Special Conditions contained herein for installation of an "Automatic Takeoff Thrust Control System (ATTCS)."

2. With the concurrence of the FAA, American Aviation Industries has elected to voluntarily comply with the following requirements:
—CAR 4b.361: Ditching provisions.
—CAR 4b.640: Ice protection.
—Part 36 of the FAR, Appendix C, Section C36.5(a)(3) (Stage 3 noise level limits).

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(b)(2) do not contain adequate or appropriate safety standards because of novel or unusual design features of the airplane. Special conditions, as appropriate, may be issued after public notice, in accordance with §§ 11.28 and 11.29(b), effective October 14, 1980, and may become part of the type certification basis in accordance with § 21.101.

Conclusion: This action affects only certain novel or unusual design features on one model series of airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 21

Air transportation, Aircraft, Aviation safety.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration proposes the following special conditions for the AAI modified JetStar Model 1329 series airplane equipped with an automatic takeoff thrust control system (ATTCS):

The authority citation for these special conditions is as follows:

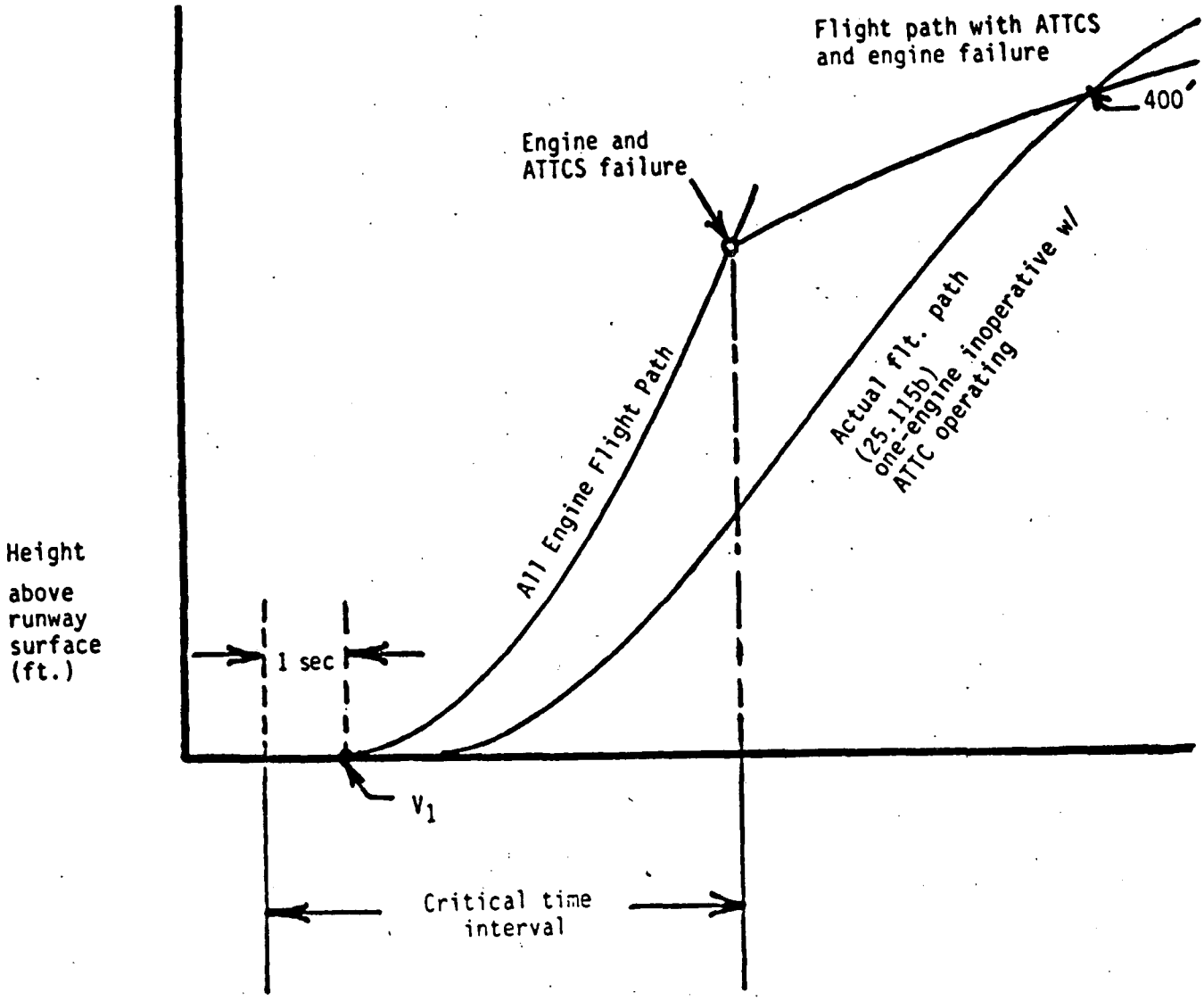
Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

A. *General.* With the ATTCS and associated systems functioning normally as designed, all applicable requirements of Part 25, except as provided in these special conditions, must be met without requiring any action by the crew to increase thrust.

B. *Definitions.*

1. ATTCS. An ATTCS is defined as the entire automatic system used on takeoff, including all devices, both mechanical and electrical, that sense engine failure, transmit signals, actuate fuel controls or power levers on operating engines to achieve scheduled thrust increase, and furnish cockpit information on system operation.

2. Critical Time Interval. When conducting an ATTCS takeoff, the critical interval is between V1 minus 1 second and a point on the minimum performance, all-engine flight path where, assuming a simultaneous engine and ATTCS failure, the resulting minimum flight path thereafter intersects the Part 25 required actual flight path at no less than 400 feet from the takeoff surface. This definition is shown in the following graph:



3. Takeoff Thrust. Notwithstanding the definition of "takeoff thrust" in Part 1 of the Federal Aviation Regulations (FAR), "takeoff thrust" means each thrust obtained from each initial thrust setting approved for takeoff under these special conditions.

C. *Performance Requirements.* The applicant must comply with the performance and reliability requirements as follows:

1. An ATTCS system failure during the critical time interval must be shown to be improbable.

2. The concurrent existence of an ATTCS failure and engine failure during the critical time interval must be shown to be extremely improbable.

3. All applicable performance requirements of Part 25 must be met with an engine failure occurring at the most critical point during takeoff with the ATTCS system functioning.

D. *Thrust Setting.* The initial takeoff thrust set on each engine at the beginning of the takeoff roll may not be less than:

1. Ninety (90) percent of the thrust level set by the ATTCS (the maximum takeoff thrust approved for the airplane under existing conditions);

2. That required to permit normal operation of all safety-related systems and equipment dependent upon engine thrust or power lever position; or

3. That shown to be free of hazardous engine response characteristics when thrust is advanced from the initial takeoff thrust level to the maximum approved takeoff thrust.

E. *Powerplant Controls.*

1. In addition to the requirements of § 25.1141, no single failure or malfunction, or probable combination thereof, of the ATTCS, including associated systems, may cause the failure of any powerplant function necessary for safety.

2. The ATTCS must be designed to:

a. Apply thrust on the operating engine, following an engine failure during takeoff, to achieve the maximum approved installed takeoff thrust without exceeding engine operating limits;

b. Permit manual decrease or increase in thrust up to the maximum installed takeoff thrust approved for the airplane under existing conditions through the use of the power lever, except that for aircraft equipped with limiters that automatically prevent engine operating limits from being exceeded under existing conditions, other means may be used to increase the maximum level of thrust controlled by the power levers in the event of an ATTCS failure, provided the means is located on or forward of the power levers, is easily identified and operated under all operating conditions by a single action of either pilot with the hand that is normally used to actuate the power levers, and meets the requirements of § 25.777, paragraphs (a), (b), and (c).

c. Provide a means to verify to the flightcrew prior to takeoff that the ATTCS is in a condition to operate; and

d. Provide a means for the flightcrew to deactivate the automatic function. This means must be designed to prevent inadvertent deactivation.

F. *Powerplant Instruments.* In addition to the requirements of § 25.1305:

1. A means must be provided to indicate when the ATTCS is in the armed or ready condition; and

2. If the inherent flight characteristics of the airplane do not provide adequate warning that an engine has failed, a warning system that is independent of the ATTCS must be provided to give the pilot a clear warning of any engine failure during takeoff.

Issued in Seattle, Washington, on March 10, 1986.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 86-6546 Filed 3-25-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-NM-24-AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require inspection for proper self-locking torque of certain self-locking nuts on certain Model 737 airplanes, and replacement, if necessary. This action is prompted by detection of several nuts that were found to have insufficient self-locking torque for proper self-locking. This situation, if not corrected, could result in the loss of an affected nut and the loss of proper retention of the associated airplane component.

DATES: Comments must be received on or before May 19, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 86-NM-24-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Carlton A. Holmes, Airframe Branch, ANM-120S; telephone (206) 431-2926. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Council, Attention: Airworthiness Rules Docket No. 86-NM-24-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

During the troubleshooting of a flight control problem on a Boeing Model 767 airplane in service, two self-locking nuts that attach the power control actuators to the elevator surface were found without the self-locking feature. After relieving the installation torque, these nuts could be removed with hand pressure. Boeing conducted checks at their manufacturing facilities for Model 737 airplanes and found additional nuts that had inadequate self-locking characteristics. There are several locations where this type of nut is used in production. The suspect nuts are installed on the nose gear jack fitting and tow fitting attachments, the vertical fin front spar to closure rib attachment, the thrust reverser secondary deactivation pin, and the wing-to-body splice plate. With the exception of the nose gear attachments, each of these installations are considered structurally significant. The loss of these self-locking nuts could result in the loss of proper retention of the associated component.

The Boeing Company issued Service Letter 737-SL-27-38 dated January 16, 1986, which identifies the locations of the suspect nuts and provides a procedure to verify if the nuts have the proper self-locking torque.

Since these conditions are likely to exist or develop on other airplanes of this type design, an AD is proposed that would require operators to inspect for the proper self-locking torque on certain self-locking nuts in accordance with the Boeing service letter previously mentioned. All nuts found to have insufficient self-locking torque must be replaced prior to flight.

It is estimated that 140 airplanes of U.S. registry would be affected by this AD. A total of 83 airplanes would require 4 manhours per airplane per inspection; the remaining 57 airplanes would require 14 manhours per airplane per inspection. Based on an average labor cost of $40 per manhour, the total cost impact of this AD to U.S. operators is estimated to be $45,200.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing

Model 737 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to all Model 737 series airplanes listed in Boeing Service Letter 737–SL–27–38, dated January 16, 1986, certificated in any category. To detect nuts installed at the Body Buttock Line (BBL) 70.85 wing-to-body splice plate, the thrust reverser secondary deactivation pin and the vertical fin front spar to closure rib attachments, that have insufficient self-locking torque characteristics, accomplish the following, unless already accomplished:

A. Within the next 180 days after the effective date of this AD, check the self-locking nuts, P/N BACN10JC12CM or BACN10JC12CD, for proper self-locking torque in accordance with Paragraph II of Boeing Service Letter 737–SL–27–38, dated January 16, 1986, or later FAA-approved revision. If any self-locking nut does not meet the torque criteria specified in the service letter, replace it prior to further flight with a nut which meets the torque criteria.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on March 18, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86–6614 Filed 3–25–86; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 85-AWP-38]

Proposed Alteration of San Diego, CA, Terminal Control Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to notice of proposed rulemaking.

This action publishes a drawing of the proposed modification to the San Diego Terminal Control Area which was inadvertently omitted from the proposal as published in the **Federal Register** on March 4, 1986 (51 FR 7448).

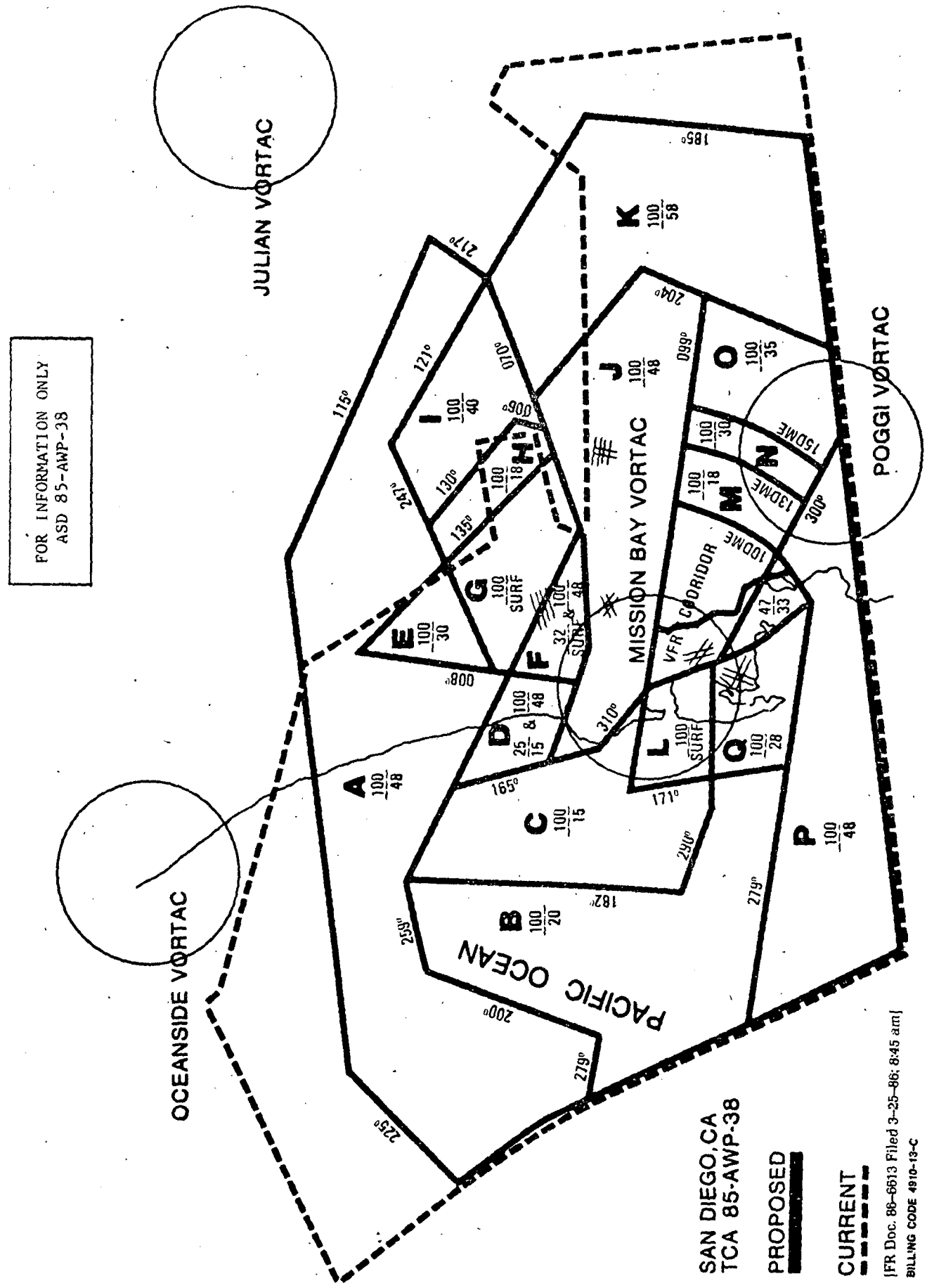
FOR FURTHER INFORMATION CONTACT: Gene Falsetti, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426–8783.

Issued in Washington, DC, on March 19, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

BILLING CODE 4910–13–M



[FR Doc. 86-6613 Filed 3-25-86; 8:45 am]

BILLING CODE 4910-13-C

14 CFR Part 71

[Airspace Docket No. 85-AWP-38]

Proposed Alteration of San Diego, CA, Terminal Control Area

Correction

In FR Doc. 86-4591, beginning on page 7448 in the issue of Tuesday, March 4, 1986, make the following correction: On page 7451, second column, second line, the figure "285" should read "28R".

BILLING CODE 1505-01-M

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14 CFR Part 71

[Airspace Docket No. 86-ASO-6]

Proposed Alteration of Transition Area, Orlando, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule.

SUMMARY: This notice proposes to increase the size of the Orlando, Florida, transition area to accommodate change in an instrument approach procedure which serves Orlando Executive Airport. This alteration will lower the floor of controlled airspace in an area northwest of the airport from 1,200 to 700 feet above the surface.

DATE: Comments must be received on or before: May 9, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Manager, Airspace and Procedures Branch, ASO-530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Supervisor, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

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, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-ASO-6." The postcard will be date/time stamped and returned to the commenter. All communications received 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, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) which will alter the Orlando, Florida, transition area by designating additional controlled airspace northwest of Orlando Executive Airport. This airspace is required to support Instrument Flight Rule (IFR) aeronautical activities in the Orlando area. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); [14 CFR 11.65]; 49 CFR 1.47.

2. By amending § 71.181 as follows:

§ 71.181 [Amended]

Orlando, FL—[Revised]

Following . . . long. 81°19'59" W.); . . . insert the following words: "within three miles each side of Orlando VORTAC 317° radial, extending from the 8.5-mile radius area to 14 miles northwest of the VORTAC.

Issued in East Point, Georgia, on March 12, 1986.

James L. Wright,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 86-6547 Filed 3-25-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 86-AWA-13]

Proposed Establishment of Jet Route J-212, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish new Jet Route J-212 located in

the vicinity of Buckeye, AZ. This proposal would reduce the traffic complexity in that area and enhance the flow of traffic in the Blythe, AZ, and Phoenix, AZ, areas. This action would also reduce departure/arrival delays and increase safety.

DATE: Comments must be received on or before April 28, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 86-AWA-13, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 426-8626.

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, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-AWA-13." The postcard will be date/time stamped and returned to the commenter. All communications received 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 Rules Docket before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 426-8058. 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. 11-2 which describes the application procedure.

The Proposal

the FAA is considering an amendment to Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to establish new Jet Route J-212 located in the vicinity of Blythe, AZ, and Phoenix, AZ. The traffic flow in those areas are complex and congested. The new jet route alignment would permit Phoenix departures to climb westbound over Palm Springs, CA, and the Blythe eastbound traffic to the south, thereby, reducing the number of crossing fixes during departure and arrivals. This action would improve traffic flows, reduce coordination and controller workload. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

The Proposed Amendment

Part 75—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as follows:

1. The authority citation for Part 75 continues to read as follows:

Authority. 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. § 75.100 is amended as follows:

J-212 [New]

From Stanfield, AZ; Buckeye, AZ; INT Buckeye 285 °T(271 °M) and Palm Springs, CA, 091 °(076 °M) radials; to Palm Springs.

Issued in Washington, DC, on March 19, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-6612 Filed 3-25-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 610

[Docket No. 80N-0208]

Biological Products; Bacterial Vaccines and Toxoids; Implementation of Efficacy Review; Correction

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration is correcting a proposed rule to amend the biologics regulations in response to the report and recommendations of the Panel on Review of Bacterial Vaccines and Toxoids (50 FR 51002; December 13, 1985). Two sentences were inadvertently omitted from the preamble. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Steven F. Falter, Center for Drugs and Biologics (HFN-364), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8046.

SUPPLEMENTARY INFORMATION: In FR Doc. 29206 appearing on page 51002 in the issue of Friday, December 13, 1985, the following correction is made: On

page 51003, in the second column, the following sentences are added at the end of the next to the last paragraph: "The Panel's report has not been updated since the last time the Panel convened. Accordingly, the last opportunity for the Panel to modify the report was at its meeting of February 1979."

Dated: March 20, 1986.

Adam J. Trujillo,

Acting Associate, Commissioner of Regulatory Affairs.

[FR Doc. 86-6553 Filed 3-21-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-157-84]

Income Taxes; $40 Million Limitation Upon Beneficiaries of Certain Tax-Exempt Bond Issues

Correction

In FR Doc. 86-3859 beginning on page 6270 in the issue of Friday, February 21, 1986, make the following correction:

1. On page 6271, in the third column, in § 1.103-10(i)(1)(ii)(*a*), in the second line, "(i)(2)(i)" should read "(i)(1)(i)"; in § 1.103-10(i)(1)(ii) concluding text, in the second line, "is" should read "in".

2. On page 6272, in the first column, in § 1.103-10(i)(3)(i), in the twenty-first line, "if" should read "of".

3. Also, on page 6272, in the second column, in § 1.103-10(i)(4)(v), in the fourth line, "bank-financed" should read "bond-financed".

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 4E3088/P389; FRL-2992-7]

Pesticide Tolerance for 1-(4-Chlorophenoxy)-3,3-Dimethyl-1-(1H-1,2,4-Triazol-1-yl-2-Butanone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for the combined residues of the fungicide 1-(4-chlorophenoxy)-3,3-dimethyl-1(1H-1,2,4-triazol-1-yl)-2-butanone and its metabolites in or on the raw agricultural commodity raspberries. The proposed regulation to establish a maximum permissible level for residues of the fungicide in or on raspberries was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATE: Comments, identified by the document control number [PP 4E3088/P389], must be received on or before April 10, 1986.

ADDRESS: By mail, submit written comments to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460

In person, bring comments to: Rm 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Donald Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protect Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 716B, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-1806).

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 4E3088 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project and the Agricultural Experiment Station of California.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the fungicide 1-(4-chlorophenoxy)-3,3-dimethyl-1-(1H-1,2,4-triazol-1-yl)-2-butanone and its metabolites containing chlorophenoxy and triazole moieties (expressed as the fungicide) in or on the raw agricultural commodity caneberries at 1.0 part per million. The petition was later amended to propose a tolerance on raspberries at 2.0 ppm. The petitioner proposed that use on raspberries be limited to California based on the geographical representation of the residue data submitted. Additional residue will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. A rat teratology study which indicates that cleft palates are treatment-related effects, with no-observed-effect levels (NOEL's) of 50 milligrams (mg) per kilogram (kg) per day for fetal development and teratology and 10 mg/kg/day for maternal toxicity.

2. An inhalation study in rat which was negative for teratogenicity and embryotoxicity at a dose level of 11.3 mg/m3.

3. A dominant lethal, a micronucleus, and an Ames test which were all negative for mutagenicity.

4. A 2-year rat feeding/oncogenicity study with no oncogenic potential observed under the conditions of the study and a systemic NOEL of 50 ppm (2.5 mg/kg/day).

5. A 2-year mouse feeding/oncogenicity study with no oncogenic potential observed under the conditions of the study and a systemic NOEL of 50 ppm (7.1 mg/kg/day).

6. A 2-year dog feeding study with a systemic NOEL of 100 ppm (2.5 mg/kg/day).

7. A multigeneration reproduction study in rats with a NOEL of 50 ppm (2.5 mg/day) for reproductive effects.

Based on the NOEL's from the rat teratology study (50 mg/kg/day for fetal development and teratogenicity and 10 mg/kg/day for material toxicity), the margins of safety from dietary exposure

to residues of 2.0 ppm in or on raspberries (using a worst case analysis of 100 grams of raspberries consumed in a single serving) would result in a margin of safety (MOS) of 15,151 for teratogenic effects and 3,030 for maternal toxicity.

The acceptable daily intake (ADI), based on the 2-year rat feeding study NOEL of 50 ppm (2.5 mg/kg/day) and using a 100-fold safety factor, is calculated to be 0.025 mg/kg of body weight (bw)/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 1.5 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.43536 mg/day; the current action will increase the TMRC by 0.00090 mg/day (0.21 percent). Published tolerances utilize 29.01 percent of the ADI; the current action will utilize an additional 0.06 percent.

The nature of the residues is adequately understood and an adequate analytical method, gas chromatography, is available for enforcement purposes. There are presently no actions pending against the continued registration of this chemical.

Based on the information and data considered, and the fact that raspberries are not considered an animal feed commodity, secondary residues are not expected in meat, milk, poultry or eggs, the Agency concludes that the proposed tolerance would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 15 days after publication of this notice in **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act. As provided for in the Administrative Procedure Act (5 U.S.C. 553(d)(3)), the comment period time is shortened to less than 30 days because of the necessity to expeditiously provide a means for control of mildew infesting raspberry bushes.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 4E3088/P389]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: March 20, 1986.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.410 is amended by designating the current paragraph and list of tolerances as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 180.410 1-(4-chlorophenoxy)-3,3-dimethyl-1-(1H-1,2,4-triazol-1-yl)-2-butanone; tolerances for residues.

* * * * *

(b) Tolerances with regional registration are established for the combined residues of the fungicide 1-(4-chlorophenoxy)-3,3-dimethyl-1-(1H-1,2,4-triazol-1-yl)-2-butanone and its metabolites containing chlorophenoxy and triazole moieties (expressed as the fungicide) in or on the following raw agricultural commodities:

Commodities	Parts per million
Raspberries	2.0

[FR Doc. 86-6645 Filed 3-25-86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine Eryngium Constancei (Loch Lomond Coyote-Thistle) To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine a plant, *Eryngium constancei* Sheikh (Loch Lomond coyote-thistle), to be an endangered species pursuant to the Endangered Species Act of 1973, as amended (Act). The species is restricted to the bed of a 7-acre vernal lake near the community of Loch Lomond in southern Lake County, California. Potential dredging and filling of this seasonal wetland threatens the species with extinction. To a lesser extent, off-road vehicle (ORV) use and trampling by hikers on the lake bottom also threaten the species. Determination of *Eryngium constancei* as an endangered species would implement the protection provided under the Act. The Service seeks relevant data and comments from interested parties on this proposal.

DATES: Comments from all interested parties must be received by May 27, 1986. Public hearing requests must be received by May 12, 1986.

ADDRESS: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, at the above address (503/231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

Eryngium constancei (Loch Lomond coyote-thistle), a perennial herb of the parsley family, annually produces slender, weak scapes (leafless, flowering stalks) up to 30 centimeters (12 inches) in height from its over-wintering rootstock (Sheikh 1978 and 1983). The basal leaves, divided by septa (internal partitions), range from 10 to 20 centimeters (4 to 8 inches) in length. Slender petioles, 8 to 12 centimeters (3 to 5 inches) in length and usually longer than the leaf blade, bear diminutive spines. A dense "down" of minute hairs, unique to *Eryngium*

constancei, covers the leaves and scapes. This character together with the species' sparse flowers distinguish *Eryngium constancei* from its closest relative, *Eryngium aristulatum* var. *aristulatum*, and all other species of western North American *Eryngium* (Sheikh 1978 and 1983).

This species was first collected by Robert Hoover in 1941. M. Yusuf Sheikh and Lincoln Constance recollected *Eryngium constancei* from the vernal lake near the community of Loch Lomond in southern Lake County, California in 1973. Later Sheikh (1983) described *Eryngium constancei* along with two other *Eryngium* taxa. Sheikh, as part of his doctoral study completed in 1978, intensively searched for and failed to discover additional populations of the plant at other localities. Subsequent searches made in 1981 by two botanists employed by the State of California did not reveal any new populations of the plant.

Eryngium constancei is abundant within the borders of the meadow-like bed of the Loch Lomond lake at an elevation of 2,800 feet (853 meters). Cabins and paved roads (State Route 175) encircles most of the southern and eastern sides of the lake bed. A forest of ponderosa pine (*Pinus ponderosa*) and California black oak (*Quercus kelloggii*) surrounds the periphery of the lake. Plants associated with the coyote-thistle on the vernal lake bed include *Eleocharis* (spikerush), *Downingia* (downingia), *Plagiobothrys* (allocarya) and two Federal candidate species, *Navarretia pauciflora* (few-flowered navarretia) and *Navarretia plieantha* (many-flowered navarretia). The latter species is listed as endangered by the State of California Department of Fish and Games. The soil of the lake bed consists of a fine, powdery, volcanic, silty clay. Terrain immediately to the south and west of the lake generally faces northeast and attains an elevation of 3,300 feet (990 meters). The unusual combination of edaphic topographic, and hydrologic features of this vernal lake and its basin may explain the unique presence of the species at Loch Lomond.

On December 15, 1980, the Service published a revised notice of review for plants in the **Federal Register** (45 FR 82508). *Eryngium constancei*, an unpublished new species (see Sheikh 1978), was included in this notice as a category 1-species. Category 1 includes taxa for which the Service now has sufficient biological information to support proposing to list as endangered or threatened. After Sheikh (1983) published the description of this plant, the Service reevaluated the biological information supporting the listing of *Eryngium constancei*. The species was moved into category 2 (includes species for which information indicates that listing is possibly appropriate, but for which further information is required to support a proposal) in 1983 (48 FR 53650) due to the absence of any perceived threat to the species at the time, and because data from outside sources had not yet been fully analyzed. In the **Federal Register** of August 1, 1985 (50 FR 31187), the Service published an emegency rule listing *Eryngium constancei* as endangered species because: (1) Significant portions (15%) of this species' only known habitat had been modified, (2) protection provided under laws and regulations did not preclude modification of the remainder of the vernal lake, and (3) field searches in 1984 confirmed no new populations of this plant at other sites within the area. This emergency rule expires on March 29, 1986.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Eryngium constancei* Sheikh (Loch Lomond coyote-thistle) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The predominant threat facing *Eryngium constancei* is the imminent action planned by the owner of the species' habitat to dredge and fill the Loch Lomond lake, the only know habitat for this species. The portion of the lake bed dredged and filled in 1984 contained only a few individuals of *Eryngium constancei* when it was inspected in the summer of 1985. This inspection occurred prior to the landowner's attempt to restore the lake bed to its pre-disturbance condition at the request of the State of California. Prior to 1984, the species was probably abundant in the area that was disturbed by the dredge-and-fill action. Similar activity planned for the remainder of the vernal lake basin likely would result in the extinction of the species. Although in the emergency rule the Service noted that approximately 85 percent of the lake bed remains suitable habitat for the plant, and inspection of the vernal lake on September 16, 1985, revealed that off-road vehicle (ORV) use had impacted nearly all of this portion of the lake bed. Moreover, trash has been dumped on the lake bed, further impacting the species' habitat.

A shallow manmade ditch dug from the approximate center of the lake empties through the outflow of the lake, Cole Creek, to the north. This ditch may reduce the potential storage of the Loch Lomond lake, resulting in a more ephemeral, shallow body of water, which would otherwise flood the cabins and road surrounding the lake in the winter and spring. Although it is unknown whether the construction of this ditch directly impacted *Eryngium constancei* in the past, the presence of this ditch may reduce the size and quality of the habitat for the species.

Prior to the purchase of this site by the current owner, the Loch Lomond lake was used as a baseball field (Crane and Malloch 1985). The Service is uncertain what impacts baseball activities might have had on this plant or its habitat.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not applicable to this species.

C. *Disease or predation.* Although it is unknown whether grazing by livestock occurs within the lake bed, the Service believes the effects of such grazing would be negligible.

D. *The inadequacy of existing regulatory mechanisms.* Although *Eryngium constancei* was listed as an endangered species on August 1, 1985, this status expires on March 29, 1986. The species is not listed as endangered by the State of California at this time. Moreover, because the species is restricted to privately-owned land, existing laws provide only limited protection for it.

E. *Other natural or manmade factors affecting its continued existence. None known at this time.*

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Eryngium constancei* as endangered. Endangered, as opposed to threatened, status is appropriate because of the imminent threat of physical alteration of the lake bed, the only known habitat for the plant, which would likely result in the extinction of *Erynguim constancei*. In addition, ORVs continue to use the lake bed and trash dumping remains a problem. Critical habitat is not being designated at this time for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Eryngium constancei* at this time. Because this plant is highly vulnerable (see Factor A in "Summary of Factors Affecting the Species"), lacks Federal protection from taking on non-Federal lands, and is easily accessible, this finding is appropriate. Listing of the species as endangered publicizes its rarity and can make the plant attractive to collectors of rare plants, researchers, and vandals. Publication of precise maps and descriptions of critical habitat in the **Federal Register** would make this plant even more vulnerable, may increase law enforcement problems, and could contribute to the decline of the species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. the Endngered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990: June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The only Federal involvement anticipated with respect to the listing of *Eryngium constancei* is the issuance of dredge and/or fill permits (33 CFR 330.8(b)) by the U.S Army Corps of Engineers.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. With respect to *Eryngium constancei*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell, or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. International and interstate trade in *Eryngium constancei* is not known to exist. The Service anticipates few trade permits will ever be sought or issued because the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1903).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments are particularly sought concerning the following:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Crane, N.L. and B.S. Malloch. 1985. A study of rare plants for the Geysers-Calistoga Known Geothermal Resources Area. Pacific Gas and Electric Report. 129 pp.

Sheikh, M.Y. 1978. A systematic study of west North American *Eryngium* (Umbelliferae-Apiaceae). Ph.D. dissertation, Univ. California, Berkeley.

Sheikh, M.Y. 1983. New taxa of western North American *Eryngium* (Umbelliferae). Madrono 30:93-101.

Author

The primary author of this proposed rule is Mr. Jim A. Bartel, Sacramento Endangered Species Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E-1846, Sacramento, California 95825 (916/978-4866 or FTS 460-4866).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

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

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Apiaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species						
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
*	*	*	*	*	*	*
Apiaceae—Parsley family:						
Eryngium constancei	Loch Lomond coyote-thistle	U.S.A. (CA)	E	194E,	NA	NA
*	*	*	*	*	*	*

Dated: February 28, 1986.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-6556 Filed 3-25-86; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF INTERIOR

50 CFR Part 20

Migratory Bird Hunting: Public Input to Decisions on Use of Nontoxic Shot for Hunting Migratory Birds

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Comment period extension.

SUMMARY: This notice extends the comment period on 3 nontoxic/toxic shot related federal actions currently in progress to provide an opportunity to obtain additional public comments.

DATE: The comment period for this extension closes on Friday, March 28, 1986.

ADDRESS: Send comments to Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Room 536 Matomic Building, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, Fish and Wildlife Service, Department of the Interior, Washington, DC 20240 (202/254-3207).

SUPPLEMENTARY INFORMATION: This extension of comment periods relates to: (1) The draft supplemental environmental impact statement on the use of lead shot for hunting migratory birds dated December 1985, 50 FR 51752; (2) the proposed rule regarding zones in which lead shot will be prohibited for waterfowl and coot hunting in the 1986-87 season, dated January 6, 1986 (51 FR 409); and (3) the notification of petition regarding the National Wildlife Federation request to have lead shot banned in the 48 conterminous States beginning with the 1987-88 hunting season, dated February 19, 1986 (51 FR 6012). The comment periods for items (1) and (2), above, closed on February 19, 1986, and March 6, 1986, for item (3).

Dated: March 21, 1985.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-6577 Filed 3-25-86; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 51, No. 58
Wednesday, March 26, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

March 21, 1986.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Office, USDA, OIRM, Room 404-W, Admin. Bldg., Washington, DC, 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Animal and Plant Health Inspection Service

Field Investigation (READI)
FS 12-27 & A, B, C
On occasion
Farms; Businesses or other for-profit; Small businesses or organizations; 1800 responses; 180 hours; not applicable under 3504(h)
Dr. Arthur E. Hall (301) 436-8073

New

- Agricultural Stabilization and Conservation Service

Monthly Report of Remittances of Amount Due for all Milk Marketed Commercially by Producers
CCC-310
Monthly
Individuals or households; Farms; Businesses or other for-profti; Small businesses or organization; 18,000 responses; 4,500 hours; not applicable under 3504(h)
Henry A. Blicharz (202) 447-6674

Reinstatement

- Farmers Home Administration

7 CFR 1951-K, Predetermined Amortization Schedule System (PASS) Policies
On occasion
Individuals or households; Non-profit institutions; Small businesses or organizations; 300 responses; 75 hours; not applicable under 3504(h)
Jeannine Johnson (202) 382-9729

Revision

- Agricultural Marketing Service

7 CFR Part 59, Regulations Governing the Inspection of Eggs and Egg Products
FY-38, PY-76, PY-155, PY-156, PY-214, PY-222, PY-240 and PY-518-1
Recordkeeping; On occasion; Monthly; Quarterly; Semi-Annually; Annually; Daily
State or local governments; Businesses or other for-profit; Small businesses or organizations; 52,915 responses; 29,524 hours; not applicable under 3504(h)
Merlin L. Nichols, Jr. (202) 447-3506

- Agricultural Stabilization and Conservation Service

Farm Operating Plan for Payment Limitation Review
ASCS-561; ASCS-561-A; ASCS-561-B
Annually
Farms; 5,000 responses; 2,085 hours; not applicable under 3504(h)
Linda Whatley (202) 447-6688

- Food and Nutrition Service

National Commodity Processing Program for Processing USDA-donated Food
FNS 513, -516, and -519
Recordkeeping; Quarterly; Annually
Businesses or other for-profit; 114,250 responses; 37,425 hours; not applicable under 3504(h)
Alberta C. Frost (703) 756-3585

Jane A. Benoit,
Departmental Clearance Officer.
[FR Doc 86-6627 Filed 3-25-86; 8:45 am]
BILLING CODE 3410-01-M

Forest Service

Intermountain Region Noxious Weed and Poisonous Plant Control Program; Availability of the Draft Environmental Impact Statement

The U.S. Department of Agriculture, Forest Service, has prepared a Draft Environmental Impact Statement (EIS) on the Intermountain Region Noxious Weed and Poisonous Plant Control Program.

The Forest Service published a notice in the **Federal Register** on October 31, 1985 (50 CFR 45445) that an Environmental Impact Statement of the Intermountain Region Noxious Weed and Poisonous Plant Control Program would be prepared.

The Draft EIS will be made available for public review for 45 days. The public review period will conclude on May 12, 1986.

Each National Forest in the Intermountain Region will advertise public meetings in local newspapers which will be held between April 14 and April 28, 1986. The meetings will provide the opportunity to ask questions and comment on the proposed program.

Written comments and suggestions concerning the Draft EIS should be sent to J.S. Tixier, Regional Forester, Intermountain Region, 324 25th Street, Ogden, Utah 84401. Comments must be submitted on or before May 12, 1986 in order to be considered in the preparation of the Final EIS for this action.

Questions about the Draft EIS should be directed to Jeff Foss, EIS Team Leader, Intermountain Region, 324 25th

Street, Ogden, Utah 84401, phone (801) 625-5561.

Edwin R. Browning,

Director, Minerals Area Management.

[FR Doc. 86-6607 Filed 3-25-86; 8:45 am]

BILLING CODE 3410-11-M

Tahoe National Forest Land and Resource Management Plan; Hearings

AGENCY: Forest Service, USDA.

ACTION: Notice of public hearings.

SUMMARY: This notice sets the schedule for two public hearings on the Tahoe National Forest Proposed Forest Plan and Draft Environmental Impact Statement.

DATES: Written comments will be accepted through June 2, 1986. The hearings will be from 2:00 p.m. to 5:00 p.m. and 6:30 p.m. to 8:30 p.m. on April 21 and 23, 1986.

ADDRESSES: The hearings will be held at the following locations:

1. Monday, April 21, 1986: Northwoods Clubhouse, 11509 Northwoods Boulevard, Truckee, California
2. Wednesday, April 23, 1986: Love Building, Condon Park, Grass Valley, California.

FOR FURTHER INFORMATION CONTACT: Ann Westling, Public Affairs Officer, Tahoe National Forest, Highway 49 and Coyote Street, Nevada City, California 95959; telephone (916) 265-4531.

Dated March 14, 1984.

Geri B. Larson,

Forest Supervisor.

[FR Doc. 86-6602 Filed 3-25-86; 8:45 am]

BILLING CODE 3410-11-M

Land and Resource Management Plan; Tahoe National Forest, Nevada, Placer, Plumas, Sierra, and Yuba Counties, CA; Environmental Impact Statement; Extension of Comment Period

The public comment period for the Tahoe National Forest proposed Land and Resource Management Plan and Draft Environmental Impact Statement is being extended. Comments must now be received by June 2, 1986.

This amends the Notice of Availability published in the **Federal Register** of January 17, 1986 (51 FR 2566).

The former due date was April 18, 1986.

FOR FURTHER INFORMATION CONTACT: George Cadzow, Resource Planning Officer, Tahoe National Forest, Highway 49 and Coyote Street, Nevada City, California 95959; telephone (916) 265-4531.

Dated: March 14, 1986.

Geri B. Larson,

Forest Supervisor.

[FR Doc. 86-6601 Filed 3-25-86; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Illinois Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Illinois Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 3:00 p.m., on April 11, 1986, at the U.S. Commission on Civil Rights, 230 S. Dearborn Street, Room 3280, Chicago, Illinois. The purpose of the meeting is discuss Committee projects on the employment of Hispanics in municipal government, hate group violence and government response, and the rights of hearing-impaired people. In addition, the Committee will discuss conditions at Marion U.S. Penitentiary.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Hugh Schwartzburg, or Clark Roberts, Director of the Midwestern Regional Office at (312)353-7371, (TDD 312/886-2188). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 21, 1986.

Yvonne E. Schumacher,

Program Specialist for Regional Programs.

[FR Doc. 86-6564 Filed 3-25-86; 8:45 am]

BILLING CODE 6335-01-M

New York Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New York Advisory Committee to the Commission will convene at 4:00 p.m. and adjourn at 6:00 p.m. on April 17, 1986, at the Conference Room 3012, 26 Federal Plaza, New York, New York. The purpose of the meeting is to discuss plans for a community forum to be held on public awareness of civil rights recourse relative to police misconduct.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Arch Puddington or Ruth Cubero, Director of the Eastern Regional Office at (212) 264-0400 (TDD 212/264-0400). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 21, 1986.

Ann Goode,

Program Specialist for Regional Programs.

[FR Doc. 86-6565 Filed 3-25-86; 8:45 am]

BILLING CODE 6335-01-M

Wisconsin Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Wisconsin Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 12:00 noon, on April 10, 1986, at the Wausau City Hall, Council Chambers, 407 Grant Street, Wausau, Wisconsin. The purpose of the meeting is release a statement on Indian Rights in Northern Wisconsin.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Kwame Salter or Clark Roberts, Director of the Midwestern Regional Office at (312) 353-7371, (TDD 312/886-2188). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 17, 1986.

Yvonne E. Schumacher,

Program Specialist for Regional Programs.

[FR Doc. 86-6566 Filed 3-25-86; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Estimates of the Voting Age Population for 1985

Under the requirements of the 1976 amendment to the Federal Election Campaign Act, 2 U.S.C. 441a(e), I hereby give notice that the estimates of the voting age population for July 1, 1985, for each state, the District of Columbia, the Commonwealth of Puerto Rico, and the Territories of American Samoa, Guam, and the Virgin Islands are as shown in the following table.

I have certified these estimates to the Federal Election Commission.

Malcolm Baldrige,

Secretary of Commerce.

ESTIMATES OF THE POPULATION OF VOTING AGE FOR STATES AND SELECTED OUTLYING AREAS: JULY 1, 1985

[In thousands]

Area	Population 18 and over
United States	175,727
Alabama	2,904
Alaska	351
Arizona	2,312
Arkansas	1,713
California	19,525
Colorado	2,367
Connecticut	2,418
Delaware	465
District of Columbia	494
Florida	8,830
Georgia	4,318
Hawaii	764
Idaho	681
Illinois	8,436
Indiana	3,993
Iowa	2,111
Kansas	1,785
Kentucky	2,703
Louisiana	3,126
Maine	860
Maryland	3,295
Massachusetts	4,458
Michigan	6,605
Minnesota	3,054
Mississippi	1,824
Missouri	3,702
Montana	592
Nebraska	1,158
Nevada	716
New Hampshire	745
New Jersey	5,700
New Mexico	1,002
New York	13,414
North Carolina	4,666
North Dakota	488
Ohio	7,871
Oklahoma	2,377
Oregon	1,976
Pennsylvania	8,976
Rhode Island	743
South Carolina	2,425
South Dakota	502
Tennessee	3,531
Texas	11,572
Utah	1,031
Vermont	395
Virginia	4,262
Washington	3,229
West Virginia	1,420
Wisconsin	3,491
Wyoming	349

ESTIMATES OF THE POPULATION OF VOTING AGE FOR STATES AND SELECTED OUTLYING AREAS: JULY 1, 1985—Continued

[In thousands]

Area	Population 18 and over
Outlying Areas	
Puerto Rico	2,034
Guam	72
Virgin Islands	62
American Samoa	19

[FR Doc. 86-6573 Filed 3-25-86; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

[Docket Nos. 4653-02; 4653-04]

Brian A. Moller-Butcher et al.; Export Privileges

On February 19, 1986, the Administrative Law Judge entered a Default Order in the above matter, which was referred to me pursuant to section 13(c) of the Export Administration Act of 1979, 50 U.S.C. app. 2401-2420 (1982), as amended by the Export Administration Act Amendments of 1985, Pub. L. 99-64, 99 Stat. 120 (July 12, 1985) and 15 CFR 388.8 (a) for final action.

Having examined the record and based on facts adduced in this case, I affirm the Order of the Administrative Law Judge, which constitutes final agency action in this matter.

Dated: March 21, 1986.

Paul J. Freedenberg,

Assistant Secretary for Trade Administration.

DEPARTMENT OF COMMERCE

Office of Administrative Law Judge

Decision and Order

[Docket Numbers 4653-02; 4653-04]

In the matter of Brian A. Moller-Butcher a/k/a Brian A. Butcher c/o Contel Equipment, 5 Bear Court, Danshill East Industrial Estate, Basingstoke, Hampshire England, and M.E.S. Equipment, Inc., c/o Brian A. Moller-Butcher Contel Equipment, 5 Bear Court, Danshill East Industries Estate, Basingstoke, Hampshire, England respondents.

Appearance for Respondents: Brian A. Moller-Butcher, c/o Contel Equipment, 5 Bear Court, Danshill East Industrial Estate, Basingstoke, Hampshire, England.

Appearance for Government: Margo E. Jackson, Esq., Attorney-Advisor, Office of the Assistant General Counsel for Export Administration, U.S. Department of Commerce, Washington, DC 20230.

Preliminary Statement

A proceeding was initiated on April 19, 1984, against Brian A. Moller-Butcher and M.E.S. Equipment, Inc. (hereinafter jointly referred to as Respondents), 5 Bear Court, Danshill East Industrial Estate, Basingstoke, Hampshire, England, by the Director, Office of Export Enforcement (OEE), International Trade Administration, United States Department of Commerce (the Agency).[1] The Agency received confirmation that the charging letters were delivered to Respondents by certified mail. Moreover, Respondent Moller-Butcher's accountant contacted the Agency on October 3, 1984, to discuss the charges. The Respondents were charged with violating the Export Administration Act of 1979, 50 U.S.C. app. 2401-2420 (1982), as amended by the Export Administration Act Amendments of 1985, Pub. L. 99-64, 99 Stat. 120 (July 12, 1985) (the Act), and the Export Administration Regulations (currently codified at 15 CFR Parts 368-399 (1985)) (the Regulations).

In the charging letters, OEE alleged that Respondents exported, reexported, and attempted to export U.S.-origin electronic testing and semiconductor manufacturing equipment without obtaining validated export licenses and reexport authorizations as required by 15 CFR 372.1(b) and 372.4, in violation of 15 CFR 387.2, 387.3, and 387.6, as well as falsifying and concealing material facts from United States Government officials in connection with the preparation and use of export control documents, in violation of 15 CFR 387.5.

Respondents failed to answer the charging letters as required by 15 CFR 388.7(a). Under the Regulations, failure to answer the charging letter constitutes an admission of those charges by Respondents. 15 CFR 388.8.

In accordance with 15 CFR 388.8, the Agency submitted evidence to support the allegations contained in the charging letter. The undersigned Administrative Law Judge considered the evidence and my findings are detailed below.

From May 1979 to January 1981, Respondents exported or causes to be exported from the United States to Sweden or the United Kingdom, seven shipments of U.S.-origin electronic testing equipment and semiconductor manufacturing equipment with

[1] Administrative proceedings had also been initiated on April 24, 1984, against Paul C. Carlson and C-O Manufacturing Co., Inc., parties related to Brian A. Moller-Butcher and M.E.S. Equipment, Inc., by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or related services. Pursuant to a consent agreement between the Agency and Paul C. Carlson and C-O Manufacturing Co., Inc., an Order issued denying Carlson and C-O Manfacturing export privileges for a period of 15 years from the date of the Order. 50 FR 9699 (Mar. 11, 1985).

knowledge that the equipment would be reexported to Bulgaria, Poland, or Romania. The exports and reexports were made without the required export licenses and with knowledge that the required reexport authorizations had not been obtained. In addition, on or about August 18, 1981, Respondent Moller-Butcher attempted to export, unsuccessfully, one shipment of U.S.-origin electronics testing equipment to the United Kingdom without the required validated license. Further, the evidence proves that in connection with each export, attempted export, and reexport, Respondents falsified and concealed material facts on the export control documents relating to the shipments and caused, aided, abetted, counseled, commanded, induced, procured, or permitted the export, attempted export, or reexport of the equipment contrary to the Regulations. In addition, the Agency has submitted evidence to show that two companies, Contel Equipment and Scan-Furn are related to Respondents by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade related services.

Based on the foregoing, I find that Respondents engaged in export activities in violation of the Act and the Regulations, as alleged in the charging letters. I find that an Order denying export privileges to Respondents Moller-Butcher and M.E.S. Equipment, Inc., as well as Contel Equipment and Scan-Furn, for a period ending 20 years after the date of this Order becomes final is reasonably necessary to protect the public interest and achieve effective enforcement of the Act and the Regulations.[2]

Therefore, pursuant to the authority delegated to me by Part 388 of the Regulations, *It is ordered:*

I. All outstanding validated export licenses in which any Respondents appear or participate in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Administration for cancellation.

II. For a period of 20 years from the date of this Order becomes final, Respondents, their successors or assignees, officers, partners, representatives, agents and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations. Without limitation of the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to a validated export license application; (b) in preparing or filing any export license application or reexport authorization, or any document to be submitted therewith; (c) in obtaining or using any validated or general export license or other export control document; (d) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States or to be exported; and (e) in the financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities or technical data which are subject to the Act and the Regulations.

III. Such denial of export privileges shall extend not only to Respondents, but also to their agents and employees and to any successors. After notice and opportunity for comment, such denial may also be made applicable to any person, firm, corporation, or business organization with which any Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services. Those parties now known to be affiliated with at least one of the Respondents, and which are accordingly subject to the provisions of this Order are:

Contel Equipment, 5 Bear Court, Danshill East Industrial Estate, Basingstoke, Hampshire, England

Scan-Furn, Merrywood House, 23 Merrywood Park, Golf Drive, Camberley, Surrey.

IV. No person, firm corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Administration, shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, in any manner or capacity, on behalf of or in any association with any Respondent or related party, or whereby any Respondent or related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported, in whole or in part, or to be exported by, to, or for any Respondent or related party denied export privileges, or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

V. This Order shall become effective upon entry of the Secretary's action in this proceeding pursuant to section 13(c) of the 1985 Amendments to the Export Administration Act.

Dated: February 19, 1986.

Hugh J. Dolan,

Administrative Law Judge.

[FR Doc. 86-6609 Filed 3-25-86; 8:45 am]

BILLING CODE 3510-DS-M

[2] Although the Agency had initially requested that a monetary civil penalty also be assessed against Respondents, the Agency withdrew its request for a civil penalty in its Amended Motion for a Default Order on January 13, 1985.

National Oceanic and Atomspheric Administration

[Modification No. 1 to Permit No. 523]

Marine Mammals Permit Modification; Stephen W. Mitchell

Notice is hereby given that pursuant to the provisions of §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Permit No. 523 issued to Stephen W. Mitchell (aka Lee Sevens), 15 Amity Place, Staten Island, New York 10303, on September 17, 1985 (50 FR 39754), is modified as follows:

Special Condition B.6 is added as follows:

6. The animals taken under the authority of this Permit may be imported for the purposes described in the application.

This modification becomes effective upon publication in the **Federal Register.**

The Permit, as modified, and documentation pertaining to the modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115

Director, Northeast Region, National Marine Fisheries Service, 14 Elm

Street, Federal Building, Gloucester, Massachusetts, 01930
Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702, and
Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: March 19, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-6619 Filed 3-25-86; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals Permit Application; Dr. Jay C. Sweeney (P378)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name: Dr. Jay C. Sweeney, Aquatic and Exotic Animal Medicine.

b. Address: 4467 Saratoga Avenue, San Diego, California 92107.

2. Type of permit: Public display.

3. Name and number of marine mammals: Atlantic bottlenose dolphins (Tursiops truncatus), 8.

4. Type of take: Permanently maintain in captivity.

5. Location of activity: Animals will be captured off the west coast of Florida and maintained at South Seas Plantation Resort, Captiva Island, Florida.

6. Period of activity: 2 years.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Application and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:
Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.
Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702, and
Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: March 20, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

]FR Doc. 86-6620 Filed 3-25-86; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber, Textile Products Produced or Manufactured in Sri Lanka

March 20, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 27, 1986. For further information contact Nathaniel Cohen, Trade Reference Assistant, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

A CITA directive dated May, 24, 1985 (see 50 FR 21923), as amended, established restraint limits for specified categories of cotton, wool and man-made fiber textile products, including women's girls' and infants' cotton coats in Category 335, cotton dresses in Category 336, men's and boys' other coats of man-made fibers in Category 634, and men's and boys' non-knit shirts of man-made fibers in Category 640, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on June 1, 1985 and extends through May 31, 1986. In the CITA directive published below the limits for Categories 335 and 640 are being increased to 154,163 dozen and 108,203 dozen, respectively, by the application of swing and carry forward, according to the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 10, 1983 between the Governments of the United States and Sri Lanka. The limits for Categories 336 and 634 are being reduced to 62,820 dozen and 103,894 dozen, respectively, to account for the swing applied to Categories 335 and 640.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175) May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397, June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

March 20, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of May 24, 1985, as amended, from the Chairman of the Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Sri Lanka.

Effective on March 27, 1986, you are directed to adjust the restraint limits established for the following categories in the directive of May 24, 1985, as amended, to the limits indicated, according to the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 10, 1983 between the Governments of the United States and Sri Lanka:[1]

[1] The agreement provides, in part, that (1) specific limits may be exceeded by designated percentages, provided an equal amount in equivalent square yards is deducted from another specific limit; (2) specific limits may be increased by carryover and carryforward up to 11 percent of the applicable category limit; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

Category	Adjusted 12-month limit [1]
335	154,163 dozen.
336	62,620 dozen.
634	103,894 dozen.
640	108,203 dozen.

[1] The limits have not been adjusted to account for any imports exported after May 31, 1985.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-6574 Filed 3-25-86; 8:45 am]

BILLING CODE 3510-DR-M

Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Thailand; Correction

March 21, 1986.

On December 26, 1985 a notice was published in the **Federal Register** (50 FR 52825) which announced the import limits for certain cotton and man-made fiber textile products including sewing thread of man-made fibers in Category 605 pt., produced or manufactured in Thailand and exported to the United States during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986. The T.S.U.S.A. number identifying this product in both the notice document and the letter to the Commissioner of Customs which followed that notice should have been 310.9500, instead of 310.9140.

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-6596 Filed 3-25-86; 8:45 am]

BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Textile Consultations With Czechoslovakia Concerning Category 435

March 21, 1986.

On February 27, 1986, the United States government, under Article 3 of the Arrangement Regarding International Trade in Textiles and the Agreement Regarding Trade in Textiles and Consultations on Market Disruption of March 22 and March 28, 1977, requested consultations with the Government of the Czechoslovak Socialist Republic concerning exports to the United States of Category 435 (women's, girls' and infants' wool coats), produced or manufactured in Czechoslovakia.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations with Czechoslovakia, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of such products, produced or manufactured in Czechoslovakia and exported to the United States during the twelve-month period which began on February 27, 1986, and extends through February 26, 1987, at a level of 6,130 dozen.

A summary market statement concerning this category follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 435 or on domestic production or availability of textile products included in the category, is invited to submit such comments or information in ten copies to the Acting Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly.

Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect to the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Czechoslovakia—Market Statement

Category 435—Women's, Girls' and Infants Wool Coats

February 1986.

Summary and Conclusions

U.S. imports of Category 435 from Czechoslovakia were 6,487 dozens in 1985, a substantial increase from the 1984 level of 434 dozens.

The sharp and substantial increase of low valued imports of Category 435 from Czechoslovakia is disrupting the U S market for WGI wool coats.

U.S. Production and Market

U.S. production remained relatively flat throughout the last several years. However, in 1984 it dropped 13 percent to 1,103,000 dozens. Between 1982 and 1984, the U.S. market for domestically produced and imported WGI wood coats grew by 119,000 dozens. However, the domestic producers' share declined from 86 to 75 percent.

U.S. Imports and Import Penetration

U.S. imports of Category 435 grew from 186,000 dozens in 1982 to 367,000 dozens in 1984, a 97 percent increase. This upward trend continued in 1985 as imports rose an additional 13 percent to 415,000 dozens. The ratio of imports to domestic production increased from 16 percent in 1982 to 33 percent in 1984.

Duty-Paid Values and U.S. Producers' Price

Nearly all of Czechoslovakia's September through December 1985 imports of Category 435 entered under TSUSA No. 384.7205 (previously 383.7205)—WGI coats, mostly knit, not ornamented and not over 4 U.S. dollars per pound. These coats enter the U.S. at landed duty-paid values below the U.S. producers' price for comparable garments.

[FR Doc. 86-6597 Filed 3-25-86; 8:45 am]

BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Textile Consultations With Mauritius on Trade in Category 341

March 21, 1986.

On February 28, 1986 the Government of the United States, under Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), requested the Government of Mauritius to enter into consultation concerning exports to the United States of woven cotton blouses and shirts in Category 341, produced or manufactured in Mauritius.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of textile products in this category, produced or manufactured in Mauritius and exported to the United States during the twelve-month period which began on February 28, 1986 and extends through February 27, 1987, at a level of 118,584 dozen. A summary market disruption statement concerning this category follows this notice.

Anyone wishing to comment or povide data or information regarding the treatment of Category 341 is invited to

submit such commtents or information in ten copies to the Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation there of is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Mauritius—Market Statement

Category 341—WGI Cotton Woven Blouses

February 1986.

Summary and Conclusion

U.S. imports of Category 341 from Mauritius were 132,921 dozens in 1985, more than five times the number imported in 1984.

The sharp and substantial increase of low-valued Category 341 imports from Mauritius is disrupting the U.S. market for WGI cotton woven blouses. Category 341 imports from Mauritius must be controlled before further disruption is sustained in the U.S. market.

U.S. Production and Market Share

After rising in 1982 and 1983, U.S. production leveled off in 1984 at 7,050,000 dozens, only 2 percent above the 1983 level. Between 1982 and 1984, the market for WGI cotton blouses grew by 3,986,000 dozens; however, the U.S. producers' share of this market dropped from 46 percent to 42 percent as imports grew faster.

U.S. Cutting Data

Production data for 1985 are not currently available; however, Government cuttings data are reported. These data show cuttings of women's blouses [1] down 16 percent in 1985 compared to the previous year.

[1] Cuttings of data are for cotton, wool and man-made fiber blouses and include both wovens and knits, excluding knit tops.

Employment Data

Government sources report that, in 1985, total employment in the women's and misses' blouse and waist industries (SIC 2331) fell 2.6 percent. The decline in production worker employment was more severe with a 4.3 percent, decline. The average manhours worked fell 4.0 percent.

U.S. Imports and Import Penetration

U.S. imports of Category 341 increased 44 percent between 1982 and 1984, rising from 6,852,000 dozens to 9,628,000 dozens. This upward trend continued into 1985 as imports reached 11,234,000 dozens, a 17 percent increase over the 1984 level. The import to production ratio increased from 117 percent in 1982 to 137 percent in 1984.

Duty-Paid Value and U.S. Producer Price

Approximately 82 percent of Category 341 imports from Mauritius during 1985 entered under TSUSA No. 384.4609 (previously 383.4709)—women's other cotton woven blouses, not ornamented. These garments entered at landed, duty-paid values below U.S. producers' prices for comparable blouses.

[FR Doc. 86-6598 Filed 3-25-86; 8:45 am]
BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Textile Consultations With the Republic of South Africa on Trade in Category 331

March 20, 1986.

On March 5, 1986 the Government of the United States, under section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), requested the Government of the Republic of South Africa to enter into consultations concerning exports to the United States of cotton gloves in Category 331, produced or manufactured in South Africa.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of textile products in this category, produced or manufactured in South Africa and exported to the United States during the twelve-month period which began on March 5, 1986 and extends through March 4, 1987 at a level of 204,267 dozen.

Anyone wishing to comment or provide data or information regarding the treatment of Category 331 is invited to submit such comments or information in ten copies to the Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Market Statement

Category 331—Cotton Gloves

Republic of South Africa

February 1986.

Summary and Conclusions

U.S. imports of Category 331 from South Africa totalled 204,267 dozens in 1985. South Africa is a new supplier of cotton gloves and did not ship in this category prior to 1985.

The surge of low-valued cotton glove imports from South Africa is disrupting the U.S. cotton glove market. Category 331 imports from South Africa must be controlled before further injury is sustained.

U.S. Production and Market Share

Between 1981 and 1983 U.S. production of cotton gloves declined 31 percent. In 1982, U.S. production fell 26 percent to 15,436 dozens. This trend continued in 1983 as production declined an additional 7 percent. In 1984 U.S. production rose moderately, but remained 21 percent below the 1981 level of 20,861 dozens. During the four-year period ending with 1984, the market for cotton gloves declined 3 percent from 33,158 dozens to 32,007 dozens and the domestic producers' share of the market fell from 62.9 percent in 1981 to 51.5 percent in 1984.

U.S. Imports and Import Penetration

U.S. imports of Category 331 increased 26 percent between 1981 and 1984, rising from 12,297,000 dozens in 1981 to 15,529,000 dozens in 1984. Imports continued to rise in 1985 increasing 3.5 percent to 16,078,000 dozens. The import to production ratio correspondingly rose, increasing from 62.3 percent in 1981 to 94.2 percent in 1984.

Duty-Paid Value and U.S. Producers' Price

Approximately 79 percent of South Africa's 1985 imports of Category 331 entered under TSUSA Nos. 704.4010—cotton gloves, machine woven, no fourchettes or sidewalls

and 704.4025—cotton gloves and glove linings, machine woven, not ornamented. These items entered the U.S., at landed, duty-paid values below U.S. producers' price for comparable goods.

[FR Doc. 86-6575 Filed 3-25-86; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF EDUCATION

National Advisory Council on Women's Educational Programs, Executive Committee; Meeting

SUMMARY: This notice sets forth the schedule and proposed agenda of the Executive Committee of the National Advisory Council on Women's Educational Programs. The agenda will include review of the annual report, forum discussion, budget review, Council goals and objectives and cataloguing of Federal Education Programs. Part of the session will be closed to the public from 2:00 p.m. to 2:30 p.m. to discuss staff performance and other related personnel matters. This notice also describes the function of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE: April 10, 1986, 10:00 a.m. to 2:00 p.m., Open session,
2:00 p.m. to 2:30 p.m., Closed session;
2:30 p.m. to close of business, Open session.

ADDRESS: Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Patricia A. Weber, Deputy Director, National Advisory Council on Women's Educational Programs, 2000 "L" Street, NW., Suite 568, Washington, DC 20036 (202) 634-6105.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Women's Educational Programs is established pursuant to Public Law 95-561. The Council is mandated to (a) advise the Secretary on matters relating to equal education opportunities for women and policy matters relating to the administration of the Women's Educational Equity Act of 1978; (b) make recommendations to the Secretary with respect to the allocation of any funds pursuant to the Act, including criteria developed to insure an appropriate geographical distribution of approved programs and projects throughout the Nation; (c) recommend criteria for the establishment of program priorities; (d) make such reports as the Council determines appropriate to the President and Congress on the activities of the Council; and (e) disseminate information concerning the activities of the Council.

The Executive Committee will meet in open session on April 10, 1986 from 10:00 a.m. to 2:00 p.m. and from 2:30 p.m. until close of business. The agenda will include review of the annual report, forum discussion, budget review, Council goals and objectives and cataloguing of Federal Education Programs. From 2:00 p.m. until 2:30 p.m. the Committee will meet in closed session to discuss staff performance and other related personnel matters. These discussions will touch upon matters that would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) section 552b(c) of Title 5 U.S.C.

A summary of the acitvities of the partially closed meeting and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

Records will be kept of the proceedings and will be available for public inspection at the office of the National Advisory Council on Women's Educational Programs, 2000 L Street, NW., Suite 568, Washington, DC 20036.

Signed at Washington, DC on March 12, 1986.

Sallay A. Todd,

Executive Director.

[FR Doc. 86-6548 Filed 3-25-86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA-C&E-86-34; OFP Case No. 65038-9314-20-24]

Powerplant and Industrial Fuel Use; O.L.S. Energy-Camarillo

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of Acceptance of Petition for Exemption and Availability of Certification by O.L.S. Energy-Camarillo.

SUMMARY: aOn February 24, 1986, O.L.S. Energy-Camarillo (OLS) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for a proposed electric powerplant to be located at the Camarillo State Hospital (CSH), Camarillo, California, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

The proposed powerplant for which the petition was filed is an approximately 27.5 MW (net) combined cycle cogeneration facility consisting of (1) a gas turbine generator, (2) a waste heat recovery boiler, and (3) a steam extraction turbine generator. The plant will burn natural gas primarily and have oil firing capability as a back-up. It is expected that over 50 percent of the net annual electric power produced by the cogenerator will be sold to Southern California Edison (SCE), making the cogeneration facility an electric powerplant pursuant to the definitions contained in 10 CFR 500.2. The facility will produce approximately 10,650 lbs. of low pressure steam per hour which will supply CSH's heating and process steam needs. OLS will operate the facility.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Indepence Avenue, SW., Room 1E-190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless

ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register.**

DATES: Written comments are due on or before May 12, 1986. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-045, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket No. ERA-C&E-86-34 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

George Blackmore, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA-045, Washington, DC 20585, Phone (202) 252-1774;

Steven Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue SW., Washington, DC 20585, Phone (202) 252-6947.

SUPPLEMENTARY INFORMATION: Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.37(a)(1), OLS has certified to ERA that:

1. The oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the proposed powerplant, where the calculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in the cogeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

In accordance with the evidentiary requirements of § 503.37(c) (and in addition to the certifications discussed above), OLS has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR 1500 *et seq.;* and DOE's guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that OLS is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, D.C. on March 17, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-6656 Filed 3-25-86; 8:45 am]

BILLING CODE 6450-01-M

Proposed Remedial Order To Monsanto Oil Co.

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Monsanto Oil Company. This Proposed Remedial Order alleges pricing violations in the amount of $336,803.48, plus interest, in connection with the sale of crude oil at prices in excess of those permitted under 10 CFR Part 212 during the time period June 1, 1979 through December 31, 1980.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from: Office of Freedom of Information Reading Room, United States Department of Energy, Forrestal Building, Room 1E-190, 1000 Independence Avenue, SW., Washington, DC 10585.

Within fifteen (15) days of publication of this Notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, United States Department of Energy, Forrestal Building, Room 6F-078, 1000 Independence Avenue, SW., Washington, DC 20585, in accordance with 10 CFR 205.193. The Notice shall be filed in duplicate, shall briefly describe how the person would be aggrieved by issuance of the Proposed Remedial Order as a final order and shall state the person's intention to file a Statement of Objections.

Pursuant to 10 CFR 205.193(c), a person who files a Notice of Objection shall on the same day serve a copy of the Notice upon:

Sandra K. Webb, Director, Economic Regulatory Administration, U.S. Department of Energy, One Allen Center, Suite 610, 500 Dallas Street, Houston, Texas 77002

and upon:

Carl A. Corrallo, Solicitor, Economic Regulatory Administration, U.S. Department of Energy, Room 3H-017, RG-15, 1000 Independence Avenue, SW., Washington, DC 20585.

Issued in Houston, Texas on the 14th day of February, 1985.

Sandra K. Webb,

Director, Houston Office, Economic Regulatory Administration.

[FR Doc. 86-6655 Filed 3-25-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. TA86-7-20-003 and TA86-9-20-002]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

March 20, 1986

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on March 17, 1986 tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Substitute Eleventh Revised Sheet No. 201
Substitute Second Revised Sheet No. 205
Substitute Fifth Revised Sheet No. 241

Algonquin Gas states that such tariff sheets are being filed pursuant to the provisions of section 17 of the General Terms and Conditions of Algonquin Gas' FERC Gas Tariff, Second Revised Volume No. 1 and pursuant to Section 7 of Algonquin Gas' rate Schedule F-4 to reflect lower purchased gas cost to be charged by its pipeline supplier, Texas Eastern Transmission Corporation ("Texas Eastern"), as set forth in Texas Eastern's February 28, 1986 filing, proposed to be effective February 1, 1986.

Algonquin Gas requests that the Commission accept substitute Eleventh Revised Sheet No. 201 and Substitute Fifth Revised Sheet No. 241 to be effective March 1, 1986; and that the Commission accept Substitute Second

Revised Sheet No. 205 to be effective February 1, 1986.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 27, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 86-6582 Filed 3-25-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-8-20-003]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

March 20, 1986.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on March 17, 1986 tendered for filing Substitute Sixth Revised Sheet No. 204 and Second Revised Seventh Revised Sheet No. 204 to its FERC Gas Tariff, Second Revised Volume No. 1.

Algonquin Gas states that such tariff sheets are being filed to reflect in Algonquin Gas' Rate Schedule F-3 changes in the underlying rates of National Fuel Gas Supply Corporation ("National Fuel") as set forth in National Fuel's March 3, 1986 filing, proposed to be effective February 1, 1986.

Algonquin Gas requests that the Commission accept Substitute Sixth Revised Sheet No. 204 and Second Revised Seventh Revised Sheet No. 204 to be effective February 1, 1986 to coincide with the proposed effective date of National Fuel's rate change.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 27, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 86-6583 Filed 3-25-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86-51-001]

Anadarko Production Co.; Application

Application March 21, 1986.

Take notice that on March 10, 1986, Anadarko Production Company ("Anadarko Production or "Applicant"), P.O. Box 1330, Houston, Texas 77251 filed an Application requesting that the Commission extend the effective term from March 31, 1986 to March 31, 1987 for the limited term abandonment and blanket limited term certificate of public convenience and necessity authorized in Docket No. CI86-51-000 on December 5, 1985. In the alternative, Anadarko Production requests that the effective period for such authorizations be extended through, at minimum, June 30, 1986; such date coinciding with the date through which interstate pipelines may continue post-Order No. 436 self-implementing transportations without triggering the sales customers' rights to reduce firm sales entitlements as set forth under Order No. 436-B.

Anadarko Production states that the industry's general oversupply situation which necessitated Applicant's initial application for limited term abandonment and blanket limited term certificate authority continues; the need for spot sales as contemplated by the limited term abandonment extension sought in the Applications has been proven and is vital in providing an alternate marketing strategy for Anadarko Production in today's turbulent environment.

Because expiration of the current authorization without extension of same as sought in Anadarko Production's Application will impinge on Anadarko Production's ability to participate in the spot market beyond March 31, 1986, Anadarko Production requests expedited review of its Application.

Any person desiring to be heard or to make any protest with reference to said Application should on or before April 7, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 358.211) and Regulations under the Natural Gas Act (18 CFR 157.01). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 86-6592 Filed 3-25-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86-18-001]

ARCO Oil and Gas Co., Division of Atlantic Richfield Co.; Application for Modification of Order Permitting and Approving Limited-Term Abandonments and Granting Certificates

March 21, 1986.

Take notice that on March 17, 1986, ARCO Oil and Gas Company, Division of Atlantic Richfield Company (ARCO), filed an application pursuant to Sections 4 and 7 of the Natural Gas Act (NGA) (15 U.S.C. 717c and 717f), Parts 154 and 157 of the Federal Energy Regulatory Commission's (Commission) Regulations (18 CFR Parts 154 and 157), requesting the Commission to modify its Order Permitting and Approving Limited Term Abandonments and Granting Certificates, issued October 29, 1985, as follows: (1) Provide for an extension of authorization to at least March 31, 1987, and (2) include NGA gas with a ceiling price equal to or higher than the NGPA Section 109 price.

Any person desiring to be heard or to make any protests with reference to said application should on or before April 7, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it

in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 86-6593 Filed 3-25-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. EC86-16-000, et al.]

Otter Tail Power Co., et al.; Electric Rate and Corporate Regulation Filings

March 19, 1986.

Take notice that the following filings have been made with the Commission:

1. Otter Tail Power Company

[Docket No. EC86-16-000]

Take notice that on March 13, 1986, Otter Tail Power Company, 215 South Cascade Street, Fergus Falls, Minnesota, an electric utility providing generation, transmission and distribution services in wholesale and retail markets, made application for an Order of the Federal Energy Regulatory Commision, pursuant to 16 U.S.C. 824b (section 203 of the Federal Power Act) authorizing Otter Tail to exchange certain 115 KV transmission lines and associated easements, permits, licenses and property rights located in the Minnesota Counties of Becker, Otter Tail, Grant, Douglas, Stevens, Big Stone, and Swift for certain real and personal property of the Big Stone generation plant and transmission system, located in Grant and Deuel Counties, South Dakota, owned by Grant, Inc., a wholly owned subsidiary of Northwestern Public Service Company. It is contemplated that Grant, Inc. will sell the exchange transmission property to Western Minnesota Municipal Power Agency and Missouri Basin Municipal Power Agency, which agencies will operate, jointly with Otter Tail, an intergrated transmission system.

All interested persons are referred to the Application, which is on file at the FERC and at the corporate offices of Otter Tail, and which is herein summarized, for a complete statement of the proposed transactions.

The instant proposal is for the purpose of facilitating an Integrated Transmission System to be operated by Otter Tail and the Municipal power agencies jointly so as to provide more economical and efficient transmission services for the wholesale and retail customers of the parties, and to eliminate the need for wheeling services and charges to the Towns which are members of the Agencies and wholesale customers of Otter Tail.

On the closing date Otter Tail proposes to convey to Grant Inc., the transmission facilities described in Exhibit L-4 of the Application, and approximately $8,200,000.00 in exchange for 6.4% (28 MW) of the big Stone generating plant. The original cost net of depreciation of these transmission facilities is approximately $4,200,000.00. The fair market price of the transmission facilities is approximately $10,500,000.00.

Otter Tail expects to obtain from its First Mortgage Bond Trustee a release of such transmission facilities from the lien of Otter Tail's First Mortgage Indenture. It is stated that the Minnesota Public Utility Commission also has jurisdiction over the proposed transaction.

Comment date: April 1, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. The Connecticut Light and Power Company

[Docket No. ER86-345-000]

Take notice that on March 10, 1986, The Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule pertaining to a Purchase Agreement with Respect to Various Gas Turbine Units between CL&P and Vermont Electric Generation and Transmission Cooperative (VEG&T) dated as of November 1, 1985.

CL&P states that the Purchase Agreement provides for a sale to VEG&T of capacity and energy from four CL&P gas turbine units (the "Units"), located at South Meadow Generating Station, Hartford, Connecticut, together with related transmissions service, starting on November 1, 1985 and terminating on April 30, 1993.

CL&P requests that the Commission permit the rate schedule filed to become effective on November 1. 1985.

CL&P states that the capacity charge rate for the first twelve months for the proposed service is a negotiated rate, based on the market price for this capacity, and less than the cost-of-service rate. The capacity charge for the remainder of the term is determined on a cost-of-service basis at the time that the Purchase Agreement was executed. The monthly transmission charge rate is equal to one-twelfth of the annual average cost of transmission service on the transmission systems of CL&P and its affiliated Northeast Utilities companies at the time that the Purchase Agreement was executed and is determined in accordance with Section 13.9 of the New England Power Pool (NEPOOL) Agreement and the uniform rules adopted by the NEPOOL Executive Committee. The monthly Transmission Charge is determined by the product of (i) the appropriate monthly transmission charge rate ($/kW-month) and (ii) the number of kilowatts of winter capability which VEG&T's is entitled to receive during such month. CL&P will reduce the Transmission Charge to give due recognition of the payments made by Buyer to other utility systems providing transmission service over Pool Transmission Facilities ("PTF," as defined in Section 13.1 of the NEPOOL Agreement), for the delivery of the energy provided under the terms of the Agreement. This reduction will be limited to the smaller of (1) the actual transmission charges paid by Buyer to such other parties, or (2) fifty percent of the Transmission Charge. The Energy Variable, and Additional Maintenance Charges are based on VEG&T's portion of the applicable fuel expenses and hours of operation related to the Units and no special cost-of-service studies were made to derive these charges.

CL&P states that the services to be provided under the Purchase Agreement are the same as services provided by CL&P and WMECO pursuant to purchase agreements with City of Chicopee Municipal Lighting Plant (FERC Rate Schedule Nos. CL&P 331, WMECO 267), and with the Village of Hyde Park Electric Department (FERC Schedule No. WMECO 215).

CL&P states that a copy of the rate schedules have been mailed or delivered to CL&P, Hartford, Connecticut and to VEG&T, Johnson, Vermont.

CL&P further states that the filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: April 1, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Pacific Gas and Electric Company

[Docket No. ER 86-352-000]

Take notice that Pacific Gas and Electric Company (PGandE), on March 14, 1986 tendered for filing as a rate schedule change other than a rate increase Amendment No. 1 (the Amendment) to the December 31, 1982, Agreement (the Agreement) between PGandE and the State of California Department of Water Resources (DWR), dated April 1, 1985.

The Amendment clarifies the provisions of the Agreement relating to payments, late charges, and refunds,

including an interest charge provision applicable to late payments and refunds.

PGandE has respectfully requested a waiver of the notice requirements of § 35.3 of the Commission's Regulations so as to permit an effective date of August 12, 1983, for the proposed change.

Copies of this filing were served upon DWR and the California Public Utilities Commission.

Comment date: April 1, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-6588 Filed 3-25-86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7233-001, 8093-000, 5891-002]

Aero Construction, Inc, et al.; Availability of Environmental Assessment and Finding of no Significant Impact

March 21, 1986.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the applications for major and minor licenses (or exemptions) listed below and has assessed the environmental impacts of the proposed developments.

Project No.	Project name	State	Water body	Nearest town	Applicant
			Licenses		
7233-001	Aberdeen Lock and Dam.	MS	Tombigbee River	Aberdeen	Aero Construction Inc.
8093-000	Methuen Falls	MA	Spicket River	Methuen	Methuen Falls Hydro Electric Company
			Amendments		
5891-002	Opal Springs	OR	Crooked River	Culver	Deschutes Valley Water District.

Environmental assessments (EA's) were prepared for the above proposed projects. Based on independent analyses of the above actions as set forth in the EA's, the Commission's staff concludes that these projects would not have significant effects on the quality of the human environment. Therefore, environmental impact statements for these projects will not be prepared. Copies of the EA's are available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 86-6591 Filed 3-25-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF86-559-000 et al.]

Application for Commission Certification of Qualifying Status of Small Power Production Facilities; Long Lake Energy Corporation

March 20, 1986.

On March 6, 1986, Long Lake Energy Corporation (Applicant), of 420 Lexington Avenue, Suite 400, New York, New York 10170 submitted for filing twelve (12) applications for certification of facilities as qualifying small power production facilities pursuant to § 292.207 of the Commission's regulations. No determination has been made that these submittals constitute complete filings.

Each of the hydroelectric small power production facilities location, water resource, FERC project number and power production capacity are listed below.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Lois D. Cashell,

Acting Secretary.

Docket No.	Location	Resources	FERC project No.	Capacity (mega watt)
OF86-559-000	Clinton County, New York	Saranac River	P. 4114	8
OF86-562-000	Saratoga and Washington Counties, New York	Hudson River	P. 4244	10
OF86-565-000	Saratoga and Rensselaer Counties, New York	do	P. 4684	5.6
OF86-566-000	Albany and Rensselaer Counties, New York	do	P. 9507	1.5
OF86-569-000	Jefferson County, New York	Black River	P. 5923	9
OF86-571-000	Clinton and Essex Counties, New York	AuSable River	P. 8137	2.7
OF86-572-000	Oswego County, New York	Osewego River	P. (1)	6.9
OF86-573-000	do	do	P. (1)	14.5
OF86-576-000	do	do	P. 4688	15.7
OF86-577-000	do	do	P. 4682	13.2

Docket No.	Location	Resources	FERC project No.	Capacity (mega watt)
OF86-579-000	.....do	.....do	P. 4685	14.9
OF86-582-000	Franklin County, New York	Chateguay River	P. 4332	1.5

[FR Doc. 86-6585 Filed 3-25-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA86-2-47-000,001]

MIGC, Inc.; Proposed Purchased Gas Adjustment Rate Change

March 20, 1986.

Take notice that on March 14, 1986, MIGC, Inc. tendered for filing copies of Thirty-Sixth Revised Sheet No. 32 and Ninth Revised Sheet No. 32-A to its FERC Gas Tariff Original Volume No. 1, as required by the Commission's Rules and Regulations under the Natural Gas Act.

MIGC's Thirty-Sixth Revised Sheet No. 32 and Ninth Revised Sheet No. 32-A provide for a Purchased Gas Adjustment rate increase of 40.64 per MMBtu effective May 1, 1986 in order (1) to provide for a current gas cost adjustment to permit MIGC to reflect the lower cost of gas purchases which it is currently incurring (Table II); (2) to provide for an adjustment to MIGC's Unrecovered Purchased Gas Cost Account as of January 31, 1985 and January 31, 1986 (Table III); (3) to recover carrying charges as permitted under FERC Order No. 47 (Table IV) as set forth in MIGC's First Revised Sheet No. 31-A, and (4) to set forth projected incremental pricing surcharges to become effective May 1, 1986 (Ninth Revised Sheet No. 32-A).[1]

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before March 27, 1986. 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 the public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 86-6584 Filed 3-25-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CI86-252-000]

Application for Abandonment of Service; Mueller Engineering Corp.

March 20, 1986.

Take notice that the Applicant listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to abandon service as described herein.

The circumstances presented in the application meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order Nos. 436 and 436-A, issued October 9, and December 12, 1985, respectively in Docket No. RM85-1-000, all as more fully described in the application which is on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Lois D. Cashell,
Acting Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
CI86-252-000-B, Mar. 17, 1986	Mueller Engineering Corp.	Valley Gas Transmission Inc.	(1)	

[1] Applicant requests authorization to abandon its sale of gas to Valley from five wells which have a total (combined) production capability of 150 Mcf per day. Commission records show that three of the wells are NGPA section108 wells and Applicant states that one of the wells is an NGPA section 106. In addition, the fifth well is an NGPA section 102(c) well; as such, it is not subject to the Commission's Natural Gas Act jursdiction under NGPA section 601(a)(1)(B). Applicant states that, Valley is currently unable to take gas dedicated to the subject contract and is not paying for gas not taken. Applicant avers that it prefers to market its gas at the present time rather than shut-the wells. Applicant states it has an offer from Intrastate Gathering Company to purchase the gas and that Valley has stated it will concur with the proposed abandonment.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[1] None of MIGC's sale-for-resale customers has reported a MSAC for any prior month determined in the manner prescribed by §282.504(d)(2) of the Commission's Regulations.

[FR Doc. 86-6586 Filed 3-25-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CP86-350-000, et al.]

ANR Pipeline Co. et al.; Natural Gas Certificate Filings

March 21, 1986.

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Company

[Docket No. CP86-350-000]

Take notice that on February 26, 1986, ANR Pipeline Company (Applicant), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP86-350-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange service with Midwestern Gas Transmission Company (Midwestern) and Wisconsin Gas Company (Wisconsin Gas), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that Wisconsin Gas had originally arranged a gas sale and exchange agreement with Northern States Power Company-Wisconsin (NSP-Wisconsin). To effectuate this arrangement, reports Applicant, Wisconsin Gas concluded a separate gas exchange agreement with Applicant and Midwestern on August 30, 1973, as amended on June 1, 1978, and on March 31, 1983.

Applicant states that Wisconsin Gas and NSP-Wisconsin have recently concluded a new contract that does not require the intermediary gas exchange services of Applicant and Midwestern. In conformity with this new arrangement, Applicant says, Wisconsin Gas has arranged with Applicant and Midwestern to terminate their separate gas exchange agreement as of December 2, 1985.

Comment date: April 11, 1986, in accordance with Standard Paragraph F at the end of this notice.

2. Columbia Gas Transmission Corporation

[Docket No. CP86-374-000]

Take notice that on March 11, 1986, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP86-374-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to establish additional points of delivery to existing wholesale customers the certificate issued in Docket No. CP83-76-000 pursuant to under section 7(c) of the Natual Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia requests authorization to construct and operate certain facilities necessary to provide ten additional points of delivery to existing wholesale customers, Columbia Gas of Kentucky, Inc. (CKY) (1 point), Columbia Gas of Ohio, Inc. (COH) (4 points), Columbia Gas of Pennsylvania, Inc. (CPA) (4 points), and Montaineer Gas Company (MGC) (1 point). It is stated that said customers have received authorizations from their respective state regulatory agency to attach or provide service to new customers. Columbia indicates that the additional volumes to be provided through the proposed new points of delivery are within Columbia's currently authorized level of sales and such volumes would not affect the peak day and annual deliveries to which the existing wholesale customers are entitled.

Columbia states that the proposed points of deliver would be utilized by Columbia's wholesale customers to provide residential service of approximately 150 Mcf per year per delivery point except for one point of delivery which would supply approximately 20,000 Mcf of gas per year to an Industrial, Scipio Energy Associates, Inc., for the operation of an aluminum smelting furnace.

Comment date: May 5, 1986, in accordance with Standard Paragraph G a the end of this notice.

3. K N Energy, Inc.

[Docket No. CP86-355-000]

Take notice that on March 3, 1986, K N Energy, Inc. (K N), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP86-355-000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) for authorization to reassign the volumes of gas to be delivered among the various delivery points of one of its wholesale customers, under the certificate issued in Docket Nos. CP83-140-000 and CP83-140-001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

K N proposes a reassignment of contract and winter period service demand volumes of Minnegasco, Inc. among its various delivery points. K N states that no changes in Minnegasco's total demand volumes would result from the proposed reassignment. K N also states that the proposed reassignments would have no significant impact on K N's peak day and annual deliveries. The proposed reassignments are as follows:

All volumes are stated in Mcf.

	Current demand volume		Proposed change		Proposed demand volume	
	CD	WPS	CD	WPS	CD	WPS
Group 4A:						
Aurora	2,969	280	(284)	(15)	2,685	265
Bradshaw	276	25	(31)	(5)	245	20
Exeter	603	48	(118)	(8)	485	40
Fairmont	668	.....	(113)	20	555	20
Geneva	1,834	292	(234)	(42)	1,600	250
Grafton	169	24	(21)	(4)	148	20
Hampton	399	67	(54)	(22)	345	45
York	5,182	886	(382)	(86)	4,800	800
	12,100	1,622	(1,237)	(162)	10,863	1,460
Group 4B:						
Battle Creek	649	44	(38)	(10)	611	34
Humphrey	552	6	(7)	4	545	10
Lindsay	219	57	214	30	433	87
Madison	1,151	689	(140)	(180)	1,011	509
Meadow Grove	265	36	(30)	(6)	235	30
Newman Grove	806	40	(156)	10	650	50
Norfolk #1	5,621	2,948	(1,509)	(254)	7,130	3,202
Norfolk #2	4,800	.....	.....	.....	4,800	
Pierce	957	131	(42)	(21)	915	110
Pilger	341	.....	(41)	25	300	25
Stanton	1,039	163	148	.....	1,187	163
Tilden	731	54	(111)	6	620	60
Wisner	1,019	.....	(69)	50	950	50
	18,150	4,168	1,237	162	19,387	4,330
	30,250	5,790	.....	.....	30,250	5,790

Comment date: May 5, 1986, in accordance with Standard Paragraph G at the end of this notice.

4. K N Energy, Inc.

[Docket No. CP86-373-000]

Take notice that on March 11, 1986, K N Energy, Inc. (K N), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP86-373-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for authorization to remove four compressors from their present locations and relocate these same four compressors to various other compressor station locations and to abandon 15.1 miles of 4-inch pipeline and replace it with 6-inch pipeline, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

K N requests authorization to remove four existing compressor units from present locations and install these units into other compressor stations as follows:

(1) Remove one 3,500 horsepower (hp) gas turbine centrifugal compressor from the Scott City, Kansas, compressor station and install it in the North Platte, Nebraska, compressor station.

(2) Remove one 500 hp reciprocating compressor from the Baker, Oklahoma, compressor station and install the unit in the new Cozard, Nebraska, compressor station.

(3) Remove one 500 hp reciprocating compressor from the Ruby, Colorado, compressor station and install the unit in the new Cozard, Nebraska, compressor station.[1]

(4) Remove one 240 hp reciprocating compressor from the Ingalls, Kansas, field gathering compressor station and install the unit in the Ruby, Colorado, compressor station.

(5) Remove approximately 15.1 miles of 4-inch pipeline west of Wray, Yuma County, Colorado, and replace with 6-inch pipeline.

K N estimates the total project cost will be $2,068,000.

K N states that the proposed relocation of the various compressor units and the removal and replacement of the pipeline will increase pipeline capacity, improve the reliability of its transmission system and offset the decline of peak day deliverability of gas producing sources on K N's southern system.

Comment date: April 11, 1986, in accordance with Standard Paragraph F at the end of this notice.

[1] Installation of the compressor units in 2 and 3 above will comprise a new Cozard South Compressor Station.

5. Mountain Fuel Resources, Inc.

[Docket No. CP86-347-000]

Take notice that on February 26, 1986, Mountain Fuel Resources, Inc. (Mountain Fuel), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP86-347-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for permission and approval to abandon a ten-inch meter run in Uinta County, Wyoming, and to replace it with a four-inch meter run, also in Uinta County, under the authorization issued in Docket No. CP82-491-000 pursuant to section 7 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.

Mountain Fuel proposes to abandon the ten-inch meter run located at the Phillips Bridger Lake delivery point, where gas was delivered to Mountain Fuel Supply Company (Supply) for resale to Phillips Petroleum Company (Phillips), the owner of the Phillips Bridger Lake storage field. It is stated that Mountain Fuel also used this meter run for measuring deliveries to Phillips for storage.

Mountain Fuel proposes to replace the abandoned meter run with a four-inch meter run at the Phillips Bridger Lake delivery point to be used for deliveries to Supply and to Phillips. It is estimated that the cost of installing the four-inch meter run would be $12,000, and that the cost of removing the ten-inch meter run would be $1,700. It is stated that the reason for the replacement is that the four-inch meter run would provide more accurate measurement of gas volumes delivered by Mountain Fuel to Supply at low flow rates.

Comment date: May 5, 1986, in accordance with Standard Paragraph G at the end of this notice.

6. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP86-356-000]

Take notice that on March 3, 1986, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP86-356-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon and remove four 1,600 horsepower compressor units located at the Liberal compression station in Seward County, Kansas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that due to the declining volumes compressed at the Liberal compressor station, it was determined that the Sublette compressor station in capable of compressing all of the Liberal volumes. It is explained that in 1971, 103,000 Mcf of natural gas per day were available to flow through the Liberal to Sublette line, as compared to only 53,000 Mcf per day in 1985, and that such decline in volume allows Northern to reduce the cost of operating its system by consolidating operations.

Northern proposes to utilize said compressor units elsewhere on Northern's system or sell them to a potential buyer.

Comment date: April 11, 1986, in accordance with Standard Paragraph F at the end of this notice.

7. Southern Natural Gas Company

[Docket No. CP86-342-000]

Take notice that on February 24, 1986, Southern Natural Gas Company (Southern), First National-Southern Natural Building, Birmingham, Alabama 35203, filed in Docket No. CP86-342-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to modify its operation to reflect the merger and corporate reorganization of two of its customers and to consolidate the two presently existing delivery points in Aiken, South Carolina, for South Carolina Pipeline Corporation (South Carolina) under the authorization issued in Docket No. CP82-406-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern states that South Carolina Electric & Gas Company (South Carolina Electric) has sold its gas transmission properties to South Carolina in a corporate regorganization and that as part of said corporate reorganization South Carolina Electric assigned its service agreement with Southern to South Carolina. Southern proposes to sell to South Carolina an additional contract demand volume of 165,439 Mcf of gas per day (related to the assignment) and to abandon sales and deliveries of gas to South Carolina Electric. Southern also proposes to abandon the present meter station and to construct and operate a replacement station.

Southern notes that the contract demand quantity for the Aiken area delivery point as specified in the proposed Exhibit A to the service agreement between Southern and South Carolina dated September 9, 1969, is 198,100 Mcf. As stated in Southern's request, there would be no increase in South Carolina's contract demand at the

new meter station. To reflect the consolidation and replacement of the South Carolina meter stations, Southern states that it would file a revised Exhibit A to its service agreement with South Carolina once the proposed consolidation is authorized under the Commission's Regulations. Upon receipt of the authorization requested, Southern states it would file revised tariff sheets to its index of requirements reflecting the new contract demand of South Carolina resulting from the assignment and transfer of South Carolina Electric's service agreement to South Carolina and the transfer from South Carolina Electric to South Carolina of the former's requirement in Southern's index of requirements.

Comment date: May 5, 1986, in accordance with Standard Paragraph G at the end of this notice.

8. Texas Gas Transmission Company

[Docket No. CP86-349-000]

Take notice that on February 26, 1986, Texas Gas Transmission Corporation (Applicant), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP86-349-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas on an interruptible service basis for certain customers (Customers), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant states that these Customers would include two interstate pipeline customers of Applicant, Columbia Gas Transmission Corporation and Consolidated Gas Transmission Corporation, which desire to have natural gas transported for general system supply or as agent for various end-users which are served indirectly. Applicant states that it does not currently have authorization to transport for these two interstate pipeline customers for system supply and authority to transport for the end-users behind the two customers expires July 1, 1986.

The remaining Customers, it is stated, include local distribution companies, intrastate pipelines, and interstate pipelines for whom Applicant has or is currently transporting gas under Section 311 of the Natural Gas Policy Act of 1978 or its Order 60 blanket certificate issued in Docket No. CP80-186. All volumes transported would be for the general system supply of the receiving Customer, it is stated. The authority to transport for the listed Customers has expired or would expire in the near future, it is stated, and such Customers have requested that Applicant file in the instant docket for authority to initiate or continue transportation of gas on an interruptible basis.

The following is a list of proposed customers and requested maximum daily delivery volumes:

Customers	Volume (million Btu/d)	Rate schedule
Columbia Gas Transmission Corp	295,856	TSC
Consolidated Gas Transmission Corp.	311,427	TSC
Cincinnati Gas & Electric Co	190,000	T
IMC Pipeline Company, Inc	2,000	T
LGS Intrastate, Inc	40,000	T
Panhandle Eastern Pipe Line Co	20,000	T
Texas Eastern Transmission Corp	15,000	T
Transcontinental Gas Pipe Line Corp.	400,000	T
Washington Gas Light Co	30,000	T
Yankee Pipeline Co	2,000	T

The term of the subject transportation services is proposed to be, for TSC service Customers, a term beginning on the date of initial deliveries and continuing until the expiration of Applicant's TSC program or any extensions thereof. For all other Customers the term would begin on the date of initial deliveries and continue for a primary term of one year and from year to year thereafter, it is stated.

Applicant would charge the appropriate rate for the type of service involved, as it may exist from time to time, and as specified in Applicant's rate schedule filed with the Commission. Applicant would also collect the applicable GRI funding unit where appropriate.

Applicant also requests automatic authorization to add and/or delete receipt points under all transportation agreements for which authority for service is requested, since such Customers have indicated that they may be purchasing gas from a variety of sources during the term of the agreement.

Applicant states that no new facilities are necessary for the transportation of gas to and from the delivery and receipt points presently contained in the transportation agreements, except for the facilities described below needed to transport increased volumes for Transcontinental Gas Pipe Line Corporation (Transco). However, Applicant requests authority to construct and report any new facilities necessary during the term of service under its blanket certificate issued in Docket No. CP82-407 and pursuant to Section 157.208 of the Commission's regulations.

Applicant requests authority to construct, own and operate two measurements stations and related facilities to facilitate the transportation of gas for Transco. The cost of such facilities is estimated at $2,275,000, it is stated, and would be reimbursed by Transco.

Applicant states that on February 14, 1986, the Commission issued an order in Applicant's Docket No. CP86-142-000 which granted transportation authority for 52 customers of Applicant for whom authority to transport had expired on October 31, 1985. This certificate, it is stated, was issued largely due to the fact that Applicant stated it would file for Natural Gas Act section 7(c) authority for any customer so requesting, thus exhibiting a policy of non-discrimination. Consistent with that statement, Applicant states it is filing the instant application which would allow continued transportation service for those Customers listed and submits that in light of the statements made by the Commission in the order of February 14, the authorization requested is in the public convenience and necessity and should be granted expeditiously.

Comment date: April 11, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority containd in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public

convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the 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 § 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 86-6589 Filed 3-25-86; 8:45 am]

BILLING CODE: 6717-01-M

[Docket Nos. CP86-340-000, et al.]

Gas Gathering Corp., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Gas Gathering Company

[Docket No. CP86-340-000] March 19, 1986.

Take notice that on February 20, 1986, Gas Gathering Corporation (Applicant), Post Office Box 519, Hammond, Louisiana 70404, filed in Docket No. CP86-340-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon natural gas transportation for Southern Natural Gas Company (Southern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it presently renders natural gas transportation for Southern pursuant to Commission order issued July 12, 1983, in Docket No. CP82-421-000 which provides for the transportation of up to 6,500 Mcf of gas per day on an interruptible basis. Applicant states that it charged Southern a rate of 5.75 cents per Mcf for the term of the agreement which expired by its own terms on February 1, 1986. It is explained that the volumes transported were delivered to Applicant in the Bayou Henry field in Iberville Parish and the Bayou Boullion field in St. Martin Parish, Louisiana, and that Applicant would then redeliver the gas to Transcontinental Gas Pipe Line Corporation (Transco) at Transco's Sherburne meter station in Pointe Coupee Parish, Louisiana, for further delivery to Southern.

Applicant states that both parties have agreed in principal that the subject transportation service should continue but that such transportation be undertaken under Applicant's blanket certificate issued in Docket No. CP86-129-000. Thus, Applicant asserts there would no longer be a need for the service and proposes to abandon it.

Comment date: April 9, 1986, in accordance with Standard Paragraph F at the end of this notice.

2. Consolidated Gas Transmission Corporation

[Docket No. CP86-344-000]

March 19, 1986.

Take notice that on February 25, 1986, Consolidated Gas Transmission Corporation (Applicant), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP86-344-000 an application pursuant to section 7 of the Natural Gas Act, for a cerificate of public convenience and necessity authorizing it to construct and operate 33.5 miles of 24-inch transmission pipeline in Onondaga and Oswego Counties, New York, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant seeks authorization to construct and operate 33.5 miles of 24-inch transmission pipeline from its existing Therm City measuring station in Onondaga County, New York, to Biddlecum Road in Oswego County, New York. At the northern terminus of the pipeline Applicant proposes to construct and operate a measuring and regulating station to serve as a new delivery point to Niagara Mohawk Power Corporation (Niagara Mohawk), one of Applicant's existing customers. Applicant estimates the cost of constructing the pipeline and measuring station at $24,595,000 and $1,090,000, respectfully. Applicant states that it would finance these costs from funds on hand or obtain them from its parent, Consolidated Natural Gas Company.

Applicant proposes to utilize the Biddlecum Road measuring station as a new delviery point for jurisdictional sales for resale to Niagara Mohawk on a requirements-type basis under Rate Schedule RQ of Applicant's FERC Gas Tariff.

Applicant states that the Biddlecum Road delivery point would enable it to rearrange its current deliveries to Niagara Mohawk and to deliver additional quantities to accommodate anticipated increases in Niagara Mohawk's annual and peak day requirements.

Applicant explains that Niagara Mohawk has requested increased annual service of 18 to 20 million dt equivalent of gas due to increased requirements of existing markets along with industrial load growth.

Applicant avers that it requires the proposed facilities to accommodate Niagara Mohawk's increased requirements, that the natural gas to serve these increased requirements would come from Applicant's general system supply, and that Applicant would not be required to contract for the purchase of gas supplies from any new sources to meet the increased requirements.

Comment date: April 9, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. Texas Eastern Transmission Corporation

[Docket No CP84-429-015]

March 20, 1986.

Take notice that on March 18, 1986, Texas Eastern Transmission Corporation (Petitioner), Post Office Box 2521, Houston, Texas 77252, Filed in Docket No. CP84-429-015 a petition to amend and partially vacate the Commission's order, issued August 15, 1985, in Docket No. CP84-429-001 pursuant to section 7(c) of the Natural Gas Act so as to authorize certain revisions of Petitioner's DCQ contract adjustment program (DCQ program) and the construction and operation of related facilities, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that on May 2, 1985, Petitioner and Columbia Gas Transmission Corporation (Columbia) filed in Docket No. CP84-429-001 a joint offer a settlement with the Commission, under Sections 4 and 7 of the Natural Gas Act, to implement a DCQ program, proposing to reduce Petitioner's Rate Schedule DCQ contract obligation to Columbia by 180,000 dt equivalent of natural gas per day, and permitting Petitioner to resell this gas to twelve existing Rate Schedule DCQ resale customers. In addition, Petitioner proposed to increase its sales to nine

Rate Schedule GS and SGS customers by a total of 2,893 dt equivalent of gas per day. Further, Petitioner states that the settlement also provided that Petitioner would provide Columbia with firm transportation service of up to 80,000 dt equivalent of gas per day from Petitioner's Rate Zone C to Rate Zone D, and a firm gas-for-gas exchange, up to 80,000 dt equivalent per day, in Petitioner's Rate Zone C.

Petitioner states that the Commission, by its August 15, 1985 order, approved with slight modification Petitioner's DCQ program, and that upon issuance of the August 15 order Petitioner commenced construction and placed in service on December 15, 1985, facilities to implement the initial 100,000 dt per day of the DCQ program, and that pre-construction activities are now in progress for summer 1986 construction of the remaining facilities for service commencing November 1, 1986. It is explained that DCQ program maximum daily quantities now in effect and authorized are:

	12/31/85 (dt/day)	11/1/86 (dt/day)
Algonquin Gas Transmission Company	30,000	69,084
Brooklyn Union Gas Company	6,139	11,125
Elizabethtown Gas Company	1,290	2,337
Long Island Lighting Company	2,193	3,974
National Fuel Gas Supply Corporation	4,799	8,695
National Gas & Oil Corporation	1,367	2,477
New Jersey Natural Gas Company	9,397	17,028
Penn Fuel Gas, Inc.	1,486	1,486
Philadelphia Electric Company	7,582	13,740
Philadelphia Gas Works	10,797	19,565
T.W. Phillips Gas and Oil Company	438	794
Public Service Electric & Gas Company	21,512	29,695
Total	100,000	180,000

By its petition, Petitioner requests the following modifications to the August 15 order:

1. DCQ Quantity Revisions

a. Petitioner requests that the August 15 order be amended to authorize effective November 1, 1986, or upon completion of related facilities, the following revised firm DCQ Program MDQ and annual contract (ACQ) of natural gas:

	November 1, 1986 DCQ increase	
	MDQ dt/day	Annual dt/year
Algonquin Gas Transmission Company	73,696	26,899,040
Brooklyn Union Gas Company	11,868	4,331,820
Elizabethtown Gas Company	2,493	909,945
Long Island Lightibg Company	4,239	1,547,235
National Fuel Gas Supply Corporation	0	0
National Gas & Oil Corporation	0	0
New Jersey Natural Gas Company	18,165	6,630,225
Penn Fuel Gas, Inc.	1,486	542,390
Philadelphia Electric Company	14,657	5,349,000
Philadelphia Gas Works	20,871	7,617,915
T.W. Phillips Gas and Oil Company	847	309,155
Public Service Electric & Gas Company	31,678	11,562,470
Total	180,000	65,700,000

b. Authorize the construction and operation of approximately 3.66 miles of additional 36-inch pipeline looping on Petitioner's existing system located in Berks, Blair, Lebanon, Perry, and Westmoreland Counties, Pennsylvania, which are required to effectuate the above revisions at an estimated cost of $3,919,000.

c. Further, to the extent necessary, grant such abandonment authorizations of the DCQ program increases to National Fuel Gas Supply Corporation of 8,695 dt per day and National Gas & Oil Corporation of 2,477 dt per day as are necessary to effectuate Petitioner's proposed reallocation of the DCQ program MDQ's proposed in (a) above.

Petitioner states that subsequent to the Commission's issuance of the August 15 order and commencement of construction by Petitioner, National Fuel Gas Supply Corporation and National Gas & Oil Corporation informed Petitioner that they did not wish to participate and receive their share of the increased DCQ quantities which total 11,172 dt equivalent of gas per day at the full DCQ program level, and that the remaining DCQ program customers (excluding Penn Fuel) requested that Petitioner reallocate the 180,000 dt equivalent per day DCQ program quantities and seek requisite Commission authorization in order that they may purchase the available 11,172 dt per day.

2. Penn Fuel Delivery Facilities

Petitioner requests authorization to modify and expand the capacity of its existing measuring and regulation station No. 1189 located in Blair County, Pennsylvania, at an estimated cost of $439,000 to effect deliveries of Penn Fuel Gas, Inc.'s DCQ increase.

3. T.W. Phillips Gas and Oil Company's Zone C Delivery Revision

Petitioner requests that the August 15 order be amended to provide for deliveries of T.W. Phillips Oil and Gas Company's Zone C, in lieu of Zone D as provided the the Stipulation and Agreement.

4. SGS Customers

Petitioner further requests the Commission to vacate that portion of the August 15 order authorizing increased Rate Schedule SGS sales quantities to the cities of Hartsville, Tennessee, of 136 dt equivalent of gas per day and Weir, Mississippi, of 17 dt equivalent per day.

Petitioner states that it would initially finance the cost of constructing the facilities through revolving credit arrangements, short-term loans and from funds on hand, and that permanent financing would be undertaken as part of Petitioner's overall long-term financing program at a later date. Petitioner further states that the incremental cost of service attributable to the additional facilities required for the 11,172 dt equivalent of gas per day increase would be combined with the cost of service attributable to facilities authorized by the August 15 order and would be recovered through incremental demand surcharges to Petitioner's DCQ, GS and SGS customer's participating in the DCQ program and, accordingly, Petitioner contemplates the same rate conditions of the August 15 order would apply.

Petitioner alleges that a showing of the market for the 11,172 dt equivalent of gas per day increase has been established by the prior record in this proceeding.

Comment date: April 10, 1986, in accordance with the first subparagraph in Standard Paragraph F at the end of this notice.

4. K N Energy, Inc.

[Docket No. CP86-352-000]

March 19, 1986

Take notice that on February 27, 1986, K N Energy, Inc. (Applicant), P.O. Box 15265, Lakewood Colorado 80215, filed in Docket No. CP86-352-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR § 157.205) for authorization to construct and operate sales taps for the delivery of gas to end-users under the certificate issued in Docket Nos. CP83-140-000, CP83-140-001, and CP83-140-002 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant states that the intended end-users are located in various counties within Kansas and Nebraska. Applicant advises that the gas would be used to fuel irrigation equipment and to provide space he ting for certain small commercial and residential buildings. It is indicated that the peak day and

annual deliveries are estimated to be 910 Mcf and 31,940 Mcf, respectively (see attachment).

Applicant states that the proposed sales taps would have no significant impact on its total peak day and annual deliveries and that such taps are not prohibited by any of its existing tariffs. Applicant further states that the gas would be priced in accordance with its currently filed rate schedules authorized by the applicable state or local regulatory body having jurisdiction.

EXHIBIT A

Customer	Location of tap	Approximate quantity to be sold (Mcf)		End use of gas	Est. of cost facilities [1]
		Peak Day	Annual		
Resident/Occupant 86-40, Elliot Jagels.	NE/4 Sec. 12-T3N-R5W, Nuckolls Co., NE.	26	880	Irrigation	$850
Resident/Occupant 86-41, Lorene Gilkeson and Wilma Faye Sawyer.	NE/4 Sec. 5-T1S-R3W, Republic Co., KS.	26	880	do	850
Resident/Occupant 86-42, Lorene Gilkeson and Wilma Faye Sawyer.	NW/4 Sec. 5-T1S-R3W, Republic Co., KS.	26	880	do	850
Resident/Occupant 86-43, Bureau of Reclamation.	SW/4 Sec. 5-T17N-R12W, Greeley Co., NE.	10	600	Small Commercial	850
Resident/Occupant 86-44, Gale Thomsen.	SW/4 Sec. 24-T9N-R1W, York Co., NE.	24	800	Irrigation	850
Resident/Occupant 86-45, Merna Pelleymounter.	SW/4 Sec. 23-T9N-R1W, York Co., NE.	24	800	do	850
Resident/Occupant 86-46, Mary Ann Stewart and Harry J. Lech.	SW/4 Sec. 9-T20N-R15W, Valley Co., NE.	35	1,100	do	1,150
Resident/Occupant 86-47, Lebsack Oil Production.	SW/4 Sec. 4-T20S-R33W, Scott Co., KS.	3	900	Small Commercial	850
Resident/Occupant 86-48, Kenneth H. Griess.	SW/4 Sec. 33-T9N-R4W, York Co., NE.	41	1,400	Irrigation	1,150
Resident/Occupant 86-49, Dwayne A. Elting.	NW/4 Sec. 18-T3N-R3W, Thayer Co., NE.	30	1,000	do	1,150
Resident/Occupant 86-50, Dwayne A. Elting.	SW4 Sec. 2-T3N-R4W, Thayer Co., NE.	30	1,000	do	1,150
Resident/Occupant 86-51, N.C. Pig Co..	NE/4 Sec. 32-T20N-R6W, Boone Co., NE.	10	600	Small Commercial	850
Resident/Occupant 86-52, Marion Pederson.	SW/4 Sec. 14-T6N-R11W, Adams Co., NE.	31	1,000	Irrigation	1,150
Resident/Occupant 86-53, G.W. Voight, Inc..	NW/4 Sec. 29-T4N-R3W, Thayer Co., NE.	17	600	do	850
Resident/Occupant 86-54, Loren E. Hunnicutt.	SW/4 Sec. 8-T10N-R6W, Hamilton Co., NE.	2	120	Domestic	850
Resident/Occupant 86-55, Orvill Meyer.	NW/4 Sec. 18-T2N-R4W, Thayer Co., NE.	26	880	Irrigation	850
Resident/Occupant 86-56, Henry Kapperman.	SE/4 Sec. 28-T1N-R3W, Thayer Co., NE.	26	880	do	850
Resident/Occupant 86-57, Laurella Duensing.	SE/4 Sec. 2-T2N-R4W, Thayer Co., NE.	52	1,800	Domestic and Irrigation	1,150
Resident/Occupant 86-58, Liela J. Krupicka.	NE/4 Sec. 31-T4N-R4W, Thayer Co., NE.	36	1,200	Irrigation	1,150
Resident/Occupant 86-59, Tony Kelly.	NE/4 Sec. 18-T33N-R42W, Sheridan Co., NE.	2	120	Domestic	850
Resident/Occupant 86-60, Martin & Ernest Eitzmann.	SE/4 Sec. 26-T1N-R5W, Nuckolls Co., NE.	26	880	Irrigation	850
Resident/Occupant 86-61, Leonard Elting.	SE/4 Sec. 12-T2N-R4W, Thayer Co., NE.	53	1,800	do	1,150
Resident/Occupant 86-62, Galen Kirchhoff.	NW/4 Sec. 35-T3N-R4W, Thayer Co., NE.	34	1,100	do	1,150
Resident/Occupant 86-63, Herman H. Wolf.	SW/4 Sec. 6-T2N-R4W, Thayer Co., NE.	26	880	do	850
Resident/Occupant 86-64, Wesley Schliep.	SW/4 Sec. 11-T6N-R6W, Clay Co., NE.	65	2,200	do	1,150
Resident/Occupant 86-65, Mike Lichty.	NW/4 Sec. 29-T5N-R4W, Fillmore Co., NE.	26	880	do	850
Resident/Occupant 86-66, Doris Whithorn.	NW/4 Sec. 31-T5N-R4W, Fillmore Co., NE.	26	880	do	850
Resident/Occupant 86-67, Maurice Hill.	NW/4 Sec. 14-T6N-R6W, Clay Co., NE.	31	1,000	do	1,150
Resident/Occupant 86-68, Richard Reinke.	NW/4 Sec. 11-T2N-R4W, Thayer Co., NE.	24	800	do	850
Resident/Occupant 86-69, Farmers National Acct..	NE/4 Sec. 30-T1N-R2W, Thayer Co., NE.	29	960	do	1,150
Resident/Occupant 86-70, Reinke Mfg..	SW/4 Sec. 25-T1N-R5W, Nuckolls Co., NE.	53	1,800	do	1,150
Resident/Occupant 86-71, Don Bratten.	SE/4 Sec. 3-T12N-R27W, Lincoln Co., NE.	24	800	do	850
Resident/Occupant 86-72, Marvin L. Fishler.	SE/4 Sec. 24-T13N-R7W, Merrick Co., NE.	16	520	do	850

[1] Customers reimburse to K N a portion of these costs through imposition of a connection charge which varies by state as follows: Kansas—$250, Nebraska—$275, Colorado—$400 and Wyoming—$400.

Comment date: May 5, 1986, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or to be represented at the hearing.

G. 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 § 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-6590 Filed 3-25-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF86-558-000, et al.]

Bakers Fall Corp., et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

March 20, 1986.

Take notice that the following filings have been made with the Commission.

1. Bakers Falls Corporation

[Docket No. QF86-558-000]

On March 5, 1986, Bakers Falls Corporation (Applicant), of 420 Lexington Avenue, Suite 440, New York, New York 10170 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 42 megawatt hydroelectric facility (FERC P. 4128) will be located on the Hudson River in Washington and Saratoga Counties, New York.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

2. Beardslee Corporation

[Docket No. QF86-583-000]

On March 6, 1986, Beardslee Corporation (Applicant), of 420 Lexington Avenue, Suite 440, New York, New York 10170 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 20 megawatt hydroelectric facility (FERC P. 9712) will be located on the East Canada Creek River in Herkimer and Montgomery Counties, New York.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

3. Black River Hydro Corporation

[Docket No. QF86-585-000]

On March 6, 1986, Black River Hydro Corporation (Applicant), of 420 Lexington Avenue, Suite 440, New York, New York 10170 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 5.6 megawatt hydroelectric facility (FERC P. 9557) will be located on the Black River in Jefferson County, New York.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

4. Carry Falls Corporation

[Docket No. QF86-570-000]

On March 6, 1986, Carry Falls Corporation (Applicant), of 420 Lexington Avenue, Suite 440, New York, New York 10170 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 4.5 megawatt hydroelectric facility (FERC P. 9558) will be located on the Raquetter River in St. Lawrence County, New York.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

5. Colton Hydro Corporation

[Docket No. QF86-567-000]

On March 6, 1986, Colton Hydro Corporation (Applicant), of 420 Lexington Avenue, Suite 440, New York, New York 10170 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 50.6 megawatt hydroelectric facility (FERC P. 9554) will be located on the Raquetter River in St. Lawrence County, New York.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

6. Deferiet Corporation

[Docket No. QF86-578-000]

On March 6, 1986, Deferiet Corporation (Applicant), of 420 Lexington Avenue, Suite 440, New York, New York 10170 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 4.7 megawatt hydroelectric facility (FERC P. 9552) will be located on the Black River in Jefferson County, New York.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of

any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

7. East Norfolk Hydro Corporation

[Docket No. QF86-575-000]

On March 6, 1986, East Norfolk Hydro Corporation (Applicant), of 420 Lexington Avenue, Suite 440, New York, New York 10170 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 3.5 megawatt hydroelectric facility (FERC P. 9566) will be located on the Raquette River in St. Lawrence County, New York.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

8. Hannawa Corporation

[Docket No. QF86-580-000]

On March 6, 1986, Hannawa Corporation (Applicant), of 420 Lexington Avenue, Suite 440, New York, New York 10170 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 3.6 megawatt hydroelectric facility (FERC P. 9567) will be located on the Raquette River in St. Lawrence County, New York.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

9. Herrings Hydro Corporation

[Docket No. QF86-584-000]

On March 6, 1986, Herrings Hydro Corporation (Applicant), of 420 Lexington Avenue, Suite 440, New York, New York 10170 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 9.7 megawatt hydroelectric facility (FERC P. 9563) will be located on the Black River in Jefferson County, New York.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

10. Higley Corporation

[Docket No. QF86-564-000]

On March 6, 1986, Higley Corporation (Applicant), of 420 Lexington Avenue, Suite 440, New York, New York 10170 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 9.9 megawatt hydroelectric facility (FERC P. 9555) will be located on the Raquette River in St. Lawrence County, New York.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

11. Inghams Corporation

[Docket No. QF86-587-000]

On March 6, 1986, Inghams Corporation (Applicant), of 420 Lexington Avenue, Suite 440, New York, New York 10170 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 9.6 megawatt hydroelectric facility (FERC P. 9711) will be located on the East Canada Creek River in Herkimer and Fulton Counties, New York.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

12. Kamargo Corporation

[Docket No. QF86-574-000]

On March 6, 1986, Kamargo Corporation (Applicant), of 420 Lexington Avenue, Suite 440, New York, New York 10170 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 11 megawatt hydroelectric facility (FERC P. 9556) will be located on the Black River in Jefferson County, New York.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

13. Mechanicville Corporation

[Docket No. QF86-560-000]

On March 5, 1986, Mechanicville Corporation (Applicant), of 420 Lexington Avenue, Suite 440, New York, New York 10170 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No

determination has been made that the submittal constitutes a complete filing.

The 12 megawatt hydroelectric facility (FERC P. 4687) will be located on the Hudson River in Saratoga and Rensselaer Counties, New York.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

14. Norwood Hydro Corporation

[Docket No. QF86-581-000]

On March 6, 1986, Norwood Hydro Corporation (Applicant), of 420 Lexington Avenue, Suite 440, New York, New York 10170 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 4.4 megawatt hydroelectric facility (FERC P. 9564) will be located on the Raquette River in St. Lawrence County, New York.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

15. School Street Hydro Corporation

[Docket No. QF86-568-000]

On March 6, 1986, School Street Hydro Corporation (Applicant), of 420 Lexington Avenue, Suite 440, New York, New York 10170 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 71.9 megawatt hydroelectric facility (FERC P. 9553) will be located on the Mohawk River in Saratoga County, New York.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

16. South Glens Falls Corporation

[Docket No. QF86-561-000]

On March 5, 1986, South Glens Falls Corporation (Applicant), of 420 Lexington Avenue, Suite 440, New York, New York 10170 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 12.6 megawatt hydroelectric facility (FERC P. 4331) will be located on the Hudson River in Saratoga and Warren Counties, New York.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

17. Raymondville Hydro Corporation

[Docket No. QF86-586-000]

On March 6, 1986, Raymondville Hydro Corporation (Applicant), of 420 Lexington Avenue, Suite 440, New York, New York 10170 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitues a complete filing.

The 4.5 megawatt hydroelectric facility (FERC P. 9565) will be located on the Raquette River in St. Lawrence County, New York.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-6594 Filed 3-25-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86-14-001]

Shell Offshore Inc. and Shell Western E&P Inc.; Application for Amendment of Order Permitting and Approving Limited-Term Abandonments and Granting Certificates

(March 21, 1986).

Take Notice that on March 17, 1986, Shell Offshore Inc. (SOI) and Shell Western E&P Inc. (SWEPI) (collectively Shell), One Shell Plaza, P.O. Box 2463, Houston, Texas 77001, filed an Application dated March 14, 1986, pursuant to sections 4 and 7 of the Natural Gas Act (NGA) and the Regulations promulgated thereunder by the Federal Energy Regulation Commission (Commission), for amendment of the Commission's order Permitting and Approving Limited-Term Abandonments and Granting Certificates issued October 29, 1985, effective November 1, 1985, for a period ending March 31, 1986, in Tenneco Oil Company, *et al.*, Docket Nos. CI85-633-000, *et al.*, and requesting the Commission to amend such Order by extending the ending date thereof from March 31, 1986, to and including March 31, 1987 (Extension Period), all as more

fully set forth in the Application which is on file with the Commission and open to public inspection.

Approval of the Application would continue the Commission's Order in effect, without change, for a one-year extension of time, for a period ending March 31, 1987. It will allow Shell to continue making sales of gas in the spot market as presently authorized by and in compliance with such Order during the Extension Period.

Any person desiring to be heard or to make any protest with reference to said applications should on or before April 7, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 86-6595 Filed 3-25-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. C185-701-001]

Application; Union Texas Petroleum Corp.

March 20, 1986.

Take notice that on March 14, 1986, Union Texas Petroleum Corporation of P.O. Box 2120, Houston, Texas 77252, filed a Request for Extension of the Blanket Certificate and Limited-Term Abandonment issued by the Commission on October 29, 1985. Applicant requests an order (1) authorizing the sale for resale in interstate commerce of certain natural gas produced by Union Texas, its affiliates, its joint working interest owners, and the producers from which Union Texas purchases natural gas; (2) authorizing the sale of resale of natural gas in interstate commerce by producers through Union Texas acting as their agent; and, (3) authorizing blanket temporary abandonment and pre-granted permanent abandonment of certain sales, all to be effective on or before April 1, 1986.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make protest with reference to said application should on or before March 27, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under this procedure herein provided for, unless Applicant is otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 86-6587 Filed 3-25-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

Solicitation for a Financial Assistance Award; Economic Opportunity Research Institute

AGENCY: Office of Conservation and Renewable Energy, Energy.

ACTION: Notice of Solicitation for a Financial Assistance Award.

SUMMARY: DOE announces that pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b) it is restricting eligibility for the award of Financial Assistance to analyze and develop field guidance materials to the Economic Opportunity Research Institute (EORI), Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: James Gardner, Jr., CE-232, U.S. Department of Energy, Division of Weatherization Assistance Programs, Conservation and Renewable Energy, Washington, D.C. 20585.

Solicitation Number: 01-86CE63438.001.

Authority: Title IV, Energy Conservation and Production Act, as amended, Pub. L. 94-385, 90 Stat. 1150 (42 U.S.C. 6851 *et seq.*), (DOE Financial Assistance Rule, 10 CFR Part 600 (47 FR 44076, October 5, 1982).

Project Scope: This Financial Assistance award will provide local weatherization agency managers with field tested information and techniques that can be used to prevent waste, fraud and abuse in weatherization programs. The Office of Family Assistance in the Department of Health and Human Services will make available from its FY 1986 Low-Income Home Energy Assistance Program (LIHEAP) funds in the sum of $77,979 for obligation prior to September 30, 1986. DOE in exchange will amend its grant (the Energy Equity and Efficiency Project) with the Economic Opportunity Research Institute (EORI), which funds studies of management systems of local weatherization agencies to improve their efficiency, to include the following: (1) A study which will assist LIHEAP and weatherization program operators in their design of management systems to prevent fraud and abuse in low-income conservation activities; and (2) a study which will provide information on strategies to use private market mechanisms to enable more low-income households to pay their energy bills through fuel and weatherization assistance.

This financial assistance award is being limited to EORI because of the unique position of its Board of Directors (primarily CAA directors) and the long involvement of EORI's principal staff with CAA energy programs. The project will operate for sixteen months and will be funded at $77,979.

Issued in Washington, DC on March 4, 1986.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 86-6664 Filed 3-25-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-00224; FRL-2992-8]

Nominations to the Scientific Advisory Panel; Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice provides the names, addresses, professional affiliations, and selected biographical data of persons nominated to serve on the Scientific Advisory Panel established under section 25(d) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, (86 Stat. 973 and 89 Stat. 751; 7 U.S.C 136 et seq.). Public comment on the nominations is invited. Comments will

be used to assist the Agency in selecting nominees to comprise the Panel and should be so oriented.

ADDRESS: By mail, submit comments to:

Information Services Branch, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, D.C. 20460.

In person, bring comments to: Rm. 236, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Alrington, VA 22202.

DATE: Comments should be postmarked not later than April 25, 1986.

FOR FURTHER INFORMATION CONTACT:

By mail: Stephen L. Johnson, Executive Secretary, FIFRA Scientific Advisory Panel (TS-769C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, D.C. 20460.

Office location and telephone number: Rm. 1121, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-7695).

SUPPLEMENTARY INFORMATION:

I. Background

FIFRA amendments enacted November 28, 1975, added, among other things, a requirement set forth in section 25(d) that notices of intent to cancel or reclassify pesticide registrations pursuant to section 6(b)(2), as well as proposed and final forms of rulemaking pursuant to section 25(a), be submitted to a Scientific Advisory Panel prior to being made public or issued to a registrant. In accordance with section 25(d), the Scientific Advisory Panel is to have an opportunity to comment on the health and evironmental impact of such actions.

II. Charter

A Charter for the FIFRA Scientific Advisory Panel has been issued in accordance with the requirements of section 9(c) of the Federal Advisory Committee Act, Pub. L. 92-463, 86 Stat. 770 (5 U.S.C. App I). The qualifications as provided by the Charter follow.

A. Qualifications of Members

Members are scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments as to the impact on health and the environment of regulatory actions under sectin 6(b) and 25(a) of FIFRA. No person shall be ineligible to serve on the Panel by reason of his membership on any other advisory committee to a Federal department or agency or his employment by a Federal department or agency (except the Environmental Protection Agency). The Administrator appoints individuals to serve on the Panel for staggered terms of 4 years. Panel members are subject to the provisions of 40 CFR, Part 3, Subpart F—Standards of Conduct for Special Government Employees—which include rules regarding conflicts of interest. An officer and/or employee of an organization producing, selling, or distributing pesticides and any other person having a substantial financial interest (as determined by the Administrator) in such an organization, as well as an officer or employee of an organization representing pesticide users shall be excluded from consideration as a nominee for membership on the Panel. Each nominee selected by the Administrator shall be required, before formally appointed, to submit a Confidential Statement of Employment and Financial Interests, which shall fully disclose the nominee's sources of research support, if any.

In accordance with section 25(d) of FIFRA, the Administrator shall require all nominees to the Panel to furnish information concerning their professional qualifications, including information on their educational background, employment history, and scientific publications. Section 25(d) of FIFRA requires the Administrator to issue for publication in the **Federal Register** the name, address, and professional affiliations of each nominee.

B. Applicability of Existing Regulations

With respect to the requirement of section 25(d) that the Administrator promulgate regulations regarding conflicts of interest, the Charter provides that EPA's existing regulations applicable to special governmental employees (which include advisory committee members) will apply to the members of the Scientific Advisory Panel. These regulations appear at 40 CFR Part 3, Subpart F. In addition, the Charter provides for open meetings with opportunities for public participation.

C. Process of Obtaining Nominees

In accordance with the provisions of section 25(d), EPA, in January 1986, requested the National Institutes of Health (NIH) and the National Science Foundation (NSF) to nominate scientists to fill two vacancies occurring on the SAP. NIH responded by letter dated January 24, 1986, enclosing a list of four nominees; NSF responded by letter dated January 16, 1986, with a list of nine nominees. Of these, three declined the nomination.

III. Nominees

The following are the names, addresses, professional affiliations, and selected biographical data on nominees being considered for membership on the FIFRA Scientific Advisory Panel to fill two vacancies occurring during calendar year 1986.

Harold R. Behrman, Professor, Obstetrics, Gynecology, and Pharmacology, School of Medicine, Yale University. Expertise: Physiology, Biochemistry. Born: November 26, 1939. Education University of Manitoba, BS 1962, MS 1965; North Carolina State University, PhD (physiology) 1967. Professional Experience: Research Assistant, Sensory and Digestive Physiology, North Carolina State University, 1964-1967; Cancer Medical Research Council Research Fellow, Reproductive Endocrinology, 1967-1970, associate professor 1970-1971, assistant professor, physiology, 1971-1972, Harvard Medical School; Director, Department of Reproductive Biology, Merck Institute of Therapeutic Research, 1972-1975; Associate Professor, 1976-1981, Professor, Obstetrics, Gynecology, and Pharmacology, 1981-present, Director, Reproductive Biology Section, 1976-present, School of Medicine, Yale University. Concurrent Position: Lalor fellow, Harvard Medical School, 1971-1973. Societies: Cancer Federation of Biological Science; Society of Experimental Biology and Medicine; Endocrine Society; Society of Endocrinology; Cancer Physiology Society. Research: Polypeptide and peptide hormone interrelationships in endocrine systems with prostaglandins and purines.

Gary Strobel, Professor, Plant Pathology, Montana State University. Expertise: Plant Pathology. Born: September 23, 1938. Education. Colorado State University, BS 1960; University of California at Davis, PhD (plant pathology) 1963. Professional Experience: from Assistant Professor to Professor, Botany, 1963-1977; Professor, Plant Pathology, Montana State University, 1977-present. Concurrent Position: Principal Investigator, National Science Foundation and U.S. Department of Agriculture research grants. Honors and Awards. National Institutes of Health Career Development Award, 1969-1974. Societies: American Association for the Advancement of Science; American Phytopathology Society; American Society of Plant Physiologists; American Society of Biological Chemists. Research: Plant disease physiology; biochemistry of fungi and bacteria that cause plant

diseases; phytotoxic glycopeptides; metabolic regulation in diseased plants; nature and mechanism of action of host-specific toxins.

Martin Alexander, Professor, Soil Microbiology, Cornell University. Expertise: Microbiology, Microbial Ecology. Born: February 4, 1930. Education: Rutgers University, BS 1951; University of Wisconsin, MS 1953, PhD (bacteriology) 1955. Professional Experience: from Assistant Professor to Associate Professor, 1955–1964; Professor, Soil Microbiology, Cornell University, 1964–present; Liberty Hyde Bailey Professor, 1977–present. Concurrent Positions: Consultant to various private industries and national and international agencies. Honors and Awards: Fisher Award. Societies: American Association for the Advancement of Science Fellow; American Society of Agronomists Fellow; American Academy of Microbiology Fellow; American Society of Microbiologists. Research: Nitrogen transformations in soil and water; nitrogen fixation; metabolism of aromatic compounds; pesticide decomposition; biochemical ecology; environmental pollution.

Winston J. Brill, Professor, Bacteriology, University of Wisconsin at Madison. Expertise: Microbiology, Biochemical Genetics. Born: June 16, 1939. Education. Rutgers University, BS 1961; University of Illinois at Urbana, PhD (microbiology) 1965. Professional Experience: National Institutes of Health Fellow Biologist, Massachusetts Institute of Technology, 1965–1967; Professor, Bacteriology, University of Wisconsin at Madison, 1967–present. Concurrent Positions: Research grants, U.S. Public Health Service, 1969–present, National Institutes of Health 1969–present, and National Science Foundation 1969–present; Panel Member, National Science Foundation Metabolic Biology Program, 1974–1977; U.S. Department of Agriculture competitive grants program, 1978–present; Member, National Institutes of Health Recombinant DNA Advancement Panel, 1980–present. Honors and Awards. Eli Lilly Award of Microbiology and Immunology, 1979; Alexander von Humboldt Award, 1979. Societies: American Association for the Advancement of Science; American Society of Microbiologists. Research: Electron transport; ferredoxin; regulation of catabolism; microbial physiology; nitrogen fixation; catabolite repression; soil microbiology.

Deryee Ashton Crossley, Jr., Professor, Entomology, University of Georgia. Expertise: Radiation ecology. Born: November 6, 1927. Education: Texas Technological College, BA 1949, MS 1951; University of Kansas, PhD (entomology) 1957. Professional Experience: Instructor, Biology, Texas Technological College, 1949–1951; Assistant, University of Kansas, 1951–1956; Biologist, Oak Ridge National Laboratory, 1956–1967; Professor, Entomology, University of Georgia, 1967–present. Societies: Ecology Society of America; Entomology Society of America; American Society of Naturalists. Research: Radioisotope movement in food chains; mineral cycling in ecosystems; role of soil arthropods in ecosystems; taxonomy of soil mites.

George Holcombe Lacy, Assistant Professor, Plant Pathology, Virginia Polytechnic Institute and State University. Expertise: Phytopathology, Bacterial Genetics. Born: November 13, 1943. Education: California State University at Long Beach, BS 1966, MS 1971; University of California at Riverside, PhD (phytopathology) 1975. Professional Experience: Lab Technician of Quality Control, American Chemical and Plastics Company, Stauffer Chemical Company, 1964–1965; Biology Science Instructor, U.S. Peace Corps, British Honduras, 1966–1968; Scientist II Soil Microbiology, Jet Propulsion Laboratory, California Institute of Technology, 1969–1971; Research Associate, Plant Pathology, University of Wisconsin at Madison, 1975–1977; Assistant Professor of Plant Pathology, Virginia Polytechnic Institute and State University, 1980–present. Concurrent Positions: National Institutes of Health grant, 1975–1976; National Science Foundation grant, University of Wisconsin at Madison, 1976–1977. Societies: American Phytopathology Society; American Microbiology Society. Research: Development of genetic systems among phytopathogenic bacteria to locate and study genetic determinants for pathogenicity and epidemiology and control of diseases of plants caused by prokaryotes.

David Pramer, Professor, Microbiology, Rutgers University at New Brunswick and Director, Waksman Institute of Microbiology. Expertise: Microbial Ecology. Born: March 25, 1923. Education: Rutgers University, BSc 1948, PhD (microbiology) 1952. Professional Experience: Visiting Investigator, Imperial Chemical Industries, Ltd., England, 1952–1954; from Assistant Professor to Associate Professor, 1954–1961, Chairman, Department of Biochemistry and microbiology, 1965–1969, director of biological sciences, 1969–1973, Associate Vice President of Research, 1975–1981, Director of University Research, 1973–1975, professor, microbiology, Rutgers University at New Brunswick, 1961–present; Director, Waksman Institute of Microbiology 1981–present. Concurrent Position: Fulbright-Hays research scholar and lecturer. Societies: International Community of Microbial Ecologists.

James Michael Tiedje, Professor, Microbial Ecology, Michigan State University. Expertise: Microbial Ecology, Soil Microbiology. Born: February 9, 1942. Education: Iowa State University, BS 1964; Cornell University, MS 1966, PhD (soil microbiology) 1968. Professional Experience: from Assistant Professor to Associate Professor, 1968–1978, Professor, Microbial Ecology, Michigan State University, 1978–present. Concurrent Positions: Eli Lilly Career Development Grant, 1974; Visiting Associate Professor, University of Georgia, 1974–1975; Editor, *Applied Microbiology*, 1974–present; Consultant, National Science Foundation, 1974–1977. Societies: American Society of Microbiologists; American Society of Agronomists; Soil Science Society of America; American Association for the Advancement of Science. Research: Deiutrification; microbial metabolism of pesticides and other organic chemicals; microbial activities in eutrophic lakes.

Arthur Francis Haney, Associate Professor, Reproductive Endocrinology and Infertility, and Director of Reproductive Endocrinology and Infertility; Duke University School of Medicine. Experitise: Reproductive Endocrinology and Infertility. Born: January 12, 1947. Education: University of Pennsylvania Moore School of Electrical Engineering, BS 1968; University of Arizona College of Medicine, MD 1972. Professional Experience: Assistant Professor, Reproductive Endocrinology and Infertility, 1976–1977, Associate Professor, Reproductive Endocrinology and Infertility, 1977–present, and Director of Reproductive Endocrinology and Infertility, Duke University Medical Center, 1981–present. Concurrent Positions: President, Hexagon Society, The Moore School of Electrical Engineering, University of Arkansas, 1968; Research Associate, Division of Surgical Biology, University of Arizona College of Medicine, 1970–1972; Residency, Obstetrics and Gynecology, Duke University Medical Center, 1972–1976; Fellowship in Reproductive Endocrinology and Infertility, Duke University Medical Center, 1976–1978; Consultant, U.S. Environmental Protection Agency Reproductive Risk

Assessment Group, 1980; Consultant, National Toxicology Program, National Institute of Environmental Health Sciences and Reproductive Toxicology, 1980; Program Chairman, American Fertility Society, 1983; Visiting Scientist, Public Health and Health Services, Health Service Research, People's Republic of China, 1983; Consultant, National Toxicology Program, National Institute of Environmental Health Sciences, Comparative Ovarian Toxicology, 1985; Consultant, Subcommittee on Environmental Mutagenesis, Food and Drug Administration, 1985; Consultant, Fertility and Maternal Health Drugs Advisory Committee, 1985; Consultant, Committee on Anti-Viral Agents, Becton-Dickinson Company, 1985. Honors and Awards: Alpha Omega Alpha, University of Arizona College of Medicine, 1972; Upjohn Award for Academic Attainment, University of Arizona College of Medicine, Class of 1972. Societies: American College of Obstetricians and Gynecologists; F. Bayard Carter Society of Obstetrics and Gynecology; North Carolina Obstetrical and Gynecological Society; Society for the Study of Reproduction; American Fertility Society; Society of Reproductive Endocrinologists; Society of Gynecologic Investigation; American Association for the Advancement of Science; Society of Reproductive Surgeons; Reproductive Toxicology Center. Research: Genital tract effects of prenatal DES exposure; ovary as a target organ toxicity using granulosa cell cultures; peritoneal environment for fertilization, i.e., intraperitoneal cellular and soluble product characteristic.

Donald Mattison, Associate Professor, Obstetrics, Toxicology, and Director of Reproductive Toxicology, University of Arkansas Medical School. Expertise: Obstetrics, Reproductive Toxicology. Born: April 28, 1944. Education: Augburg College, BSc 1966; Massachusetts Institute of Technology, MS 1968; College of Physicians and Surgeons at Columbia University, MD 1973; Residency completed at Columbia Presbyterian Hospital 1973–1975 and 1977–1978; Professional Experience: National Institutes of Health Clinical Associate, 1975–1977; Senior Investigator and Reproductive Toxicology Branch Chief, Pregnancy Research Branch, National Institutes of Health, 1978–1984; Associate Professor, Obstetrics, Toxicology, and Director of Reproductive Toxicology, University of Arkansas Medical Center, 1984–present. Concurrent Positions: U.S. Public Health Service; Intermittent assignment at the National Center for Toxicologic Research; Member, Board of Scientific Counselors, National Toxicology Program, appointment begins this year; Consultant, Food and Drug Administration, 1985–1986. Societies: Society for Gynecologic Investigation; American Association for Cancer Research; American College of Toxicology; Little Rock Gynecologic Society. Research: Ovarian toxicology; pharmacokinetics in pregnancy; magnetic resonance imaging in pregnancy.

Dated: March 18, 1986.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 86–6650 Filed 3–25–86; 8:45 am]

BILLING CODE 6560-50-M

[OSW-FRL-2991-7]

Transfer of Data To Contractors; Request for Comments

AGENCY: Environmental Protection Agency.

ACTION: Notice of transfer of data and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) will transfer to its contractor, Midwest Research Institute (MRI), and their subcontractors: Versar, Inc.; Walk, Haydel & Associates; Radian Corporation; ICF, Inc.; Science Applications International Corporation (SAIC); and Franklin Associates, Ltd., information which has been, or will be, submitted to EPA under section 3007 of the Resource Conservation and Recovery Act (RCRA). Some of the information may have a claim of business confidentiality. These firms are working on the waste characterization efforts, in support of the Hazardous Waste Listing Program, for the organic chemicals, inorganic chemicals, petroleum refining, plastics, pesticides, dyes and pigments, coke by-products, wood preserving, rubber processing and chlorinated organics manufacturing industries.

DATE: The transfer of the confidential data submitted to EPA will occur no sooner than April 2, 1986.

ADDRESS: Comments should be sent to Dina Villari, Document Control Officer, Office of Solid Waste, Characterization and Assessment Division (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C., 20460. Comments should be identified as "Transfer of Confidential Data."

FOR FURTHER INFORMATION CONTACT: Dina Villari, Document Control Officer, Characterization and Assessment Division (WH-562B), Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C., 20460, (202) 475–8551. For technical information contact Mr. Ben Smith, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C., 20460, (202) 475–4791.

SUPPLEMENTARY INFORMATION:

I. Transfer of Data

The U.S. Environmental Protection Agency is conducting a program to characterize waste and assess waste management practices within the organic chemicals, inorganic chemicals, petroleum refining, plastics, pesticides, dyes & pigments, coke by-products, wood preserving, rubber processing, and chlorinated organics manufacturing industries. The Agency will use the results to identify and list hazardous waste under authority of section 3001 of the Resource Conservation and Recovery Act (RCRA), and to develop appropriate waste management standards under section 3004.

Under EPA Contract No. 68–01–7287, MRI, and their subcontractors Versar, Inc.; Walk, Haydel & Associates; Radian Corporation, ICF, Inc.; SAIC, Inc.; and Franklin Associates, Ltd., will assist the Waste Identification Branch of the Office of Solid Waste in conducting waste characterization studies within the organic chemicals, inorganic chemicals, petroleum refining, plastics, pesticides, dyes & pigments, coke by-products, wood preserving, rubber processing, and chlorinated organics manufacturing industries.

The information being transferred to MRI and their subcontractors was previously collected by other agency contractors and is specific to the above-noted industries. Some of the information being transferred may have been claimed as confidential business information.

In accordance with 40 CFR 2.305(h), EPA has determined that MRI and their subcontractor's employees require access to confidential business information (CBI) submitted to EPA under section 3007 of RCRA to perform work satisfactorily under the above-noted contract. EPA is issuing this notice to inform all submitters of information under section 3007 of RCRA that EPA may transfer to these firms, on a need-to-know basis, CBI specific to the organic chemicals, inorganic chemicals, petroleum refining, plastics, pesticides, dyes & pigments, coke by-products,

wood preserving, rubber processing, and chlorinated organics manufacturing industries. Upon completing their review of materials submitted for these industries, MRI and their subcontractors will return all such materials to EPA.

MRI and their subcontractors have been authorized to have access to RCRA CBI under the EPA "Contractors Requirements for the Control and Security of RCRA Confidential Business Information" security manual. EPA has approved the security plan of its contractors and will inspect the facility and approve it prior to RCRA CBI being transmitted to the contractors. Personnel from these firms will be required to sign non-disclosure agreements and be briefed on appropriate security procedures before they are permitted access to confidential information, in accordance with the "RCRA Confidential Business Information Security Manual".

List of Subjects in 40 CFR Part 2

Administration practice and procedure, Freedom of information, Confidential business information.

Dated: March 14, 1986.

J.W. McGraw,

Acting Assistant Administrator.

[FR Doc. 86-6649 Filed 3-25-86; 8:45 am]

BILLING CODE 6560-50-M

[PF-438; FRL-2992-2]

Pesticide Tolerance Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide petitions relating to the establishment, amendment, and/or withdrawal of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

ADDRESS: By mail, submit comments identified by the document control number [PF-438] and the petition number, attention Product Manager (PM) named in each petition, at the following address:

Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to:

Information Services Section (TS-757C), Environmental Protection Agency, Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given notice, from 8 a.m., to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail:

Registration Division (TS-767C), Attn: (Product Manager (PM) named in each petition), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, D.C. 20460.

In person: Contact the PM named in each petition at the following office location/telephone number:

Product manager	Office location/telephone number	Address
PM-23, Richard Mountfort	Rm. 247, CM#2 (703-557-1830)	EPA, 1921 Jefferson Davis Hwy, Arlington, VA.
PM-25, Robert Taylor	Rm. 251, CM#2 (703-557-1800)	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide (PP), and feed/food additive (FAP) petitions relating to the establishment, amendment, and/or withdrawal of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

I. Initial Filing

1. *PP 6F3363.* Stauffer Chemical Co., 1200 South 47th St., Richmond, CA 94804. Proposes amending 40 CFR Part 180 by establishing a tolerance for residues of the herbicide 3-chloro-4-(chloromethyl)-1-[3-(trifluoromethyl) phenyl]-2-pyrrolidinone in or on the commodity sunflower seeds at 0.10 part per million (ppm). The proposed analytical method for determining residues is thin layer chromatography; gas chromatography. (PM-25)

2. *FAP 6H5489.* Uniroyal Inc., Chemical Group, 74 Amity Rd., Bethany, Ct 06525. Proposes amending 21 CFR Part 193 by establishing a tolerance for the combined residues of the herbicide dichlobenil (2,6-dichlorobenzonitrile) and its metabolite 2,6-dichlorobenzamide in or on the commodities fish at 5.0 ppm, and potable water at 0.05 ppm. (PM-25)

3. *PP 6F3375.* Shell Oil Co., Suite 200, 1025 Connecticut Ave., NW., Washington, D.C. 20036. Proposes amending 40 CFR Part 180 by establishing tolerances for residues of the herbicide *exo*-1-methyl-4-(1-methylethyl)-2-[(2-methylphenyl) methoxy]-7-oxabicyclo [2.2.1] heptane in or on the commodities as follows:

Commodities	PPMs'
Cotton seed	0.1
Peanuts	0.1
Peanut, forage	0.1
Peanut, hay	0.1
Peanut, hulls	0.1
Soybeans	0.1
Soybean, fodder	0.1
Soybean, forage	0.1

The proposed analytical method for determining residues is gas chromatography/mass selective detector-selected ion detection. (PM-25)

II. Amended Petition

PP 4F3094. EPA issued a notice, published in the **Federal Register** of July 18, 1984 (49 FR 29134) which announced that Elanco Products Co., 740 South Alabama St., Indianapolis, IN 46285, proposed amending 40 CFR 180.416 by establishing tolerances for residues of the herbicide ethalfluralin [*N*-ethyl-*N*-(2-methyl-2-propenyl)-2,6-dinitro-4-(trifluoromethyl)benzenamine] in or on certain commodities.

Elanco Products Co., further amended the petition in the **Federal Register** of August 6, 1985 (50 FR 31772) by adding certain commodities.

Elanco Products Co., has now amended the petition by adding the commodities eggs at 0.05 ppm, and poultry, fat, meat, and meat by products at 0.05 ppm. The proposed analytical method for determing residues is gas chromatogaphy using an electron detector. (PM-23)

III. Petition Withdrawal

FAP 3H5408. EPA issued a notice published in the **Federal Register** of September 30, 1983 (48 FR 44903) which announced that Stauffer Chemical Co. had submitted food additive petition (FAP) 3H5408 to the Agency proposing to amend 21 CFR Part 193 by establishing a regulation permitting residues of the herbicide 1-(*m*-trifluoromethyl-phenyl-3-chloro-4-chloromethyl-2-pyrrolidone, in or on the commodity sunflower oil at 0.2 ppm.

Stauffer Chemical Co. has withdrawn this petition without prejudice to future filing in accordance with 40 CFR 180.8. (PM-25)

Authority: 21 U.S.C. 346a and 348.

Dated: March 17, 1986.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-6651 Filed 3-25-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-32500; FRL-2977-2]

Pesticide Programs; Conditional Registration of New Pesticides

Correction

In FR Doc. 86-4489 beginning on page 7628 in the issue of Wednesday, March 5, 1986, make the following correction:

On page 7630, second column, in the table for "Environmental Fate Data Requirements", first column, sixth line, insert "1" after "In air".

BILLING CODE 1505-01-M

[OPP-30265; FRL-2992-3]

Receipt of Applications To Register Pesticide Products; BF Goodrich Co. et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register certain pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATE: Comment by April 25, 1986.

ADDRESS: By mail submit comments identified by the document control number [OPP-30265] and the registration/file number, attention Product Manager (PM) named in each application at the following address:

Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Environmental Protection Agency, Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be dislcosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Registration Division (TS-767C), Attn: (Product Manager (PM) named in each registration), Office of Pesticide Programs, 401 M St., SW., Washington, D.C. 20460.

In person: Contact the PM named in each registration at the following office location/telephone number:

Product manager	Office location/ telephone number	Address
PM 31: John Lee...	Rm. 254, CM#2 (703-557-3675).	EPA, 1921 Jefferson Davis Hwy, Arlington, VA 22202.
PM 32: Arturo Castillo.	Rm. 244, CM#2 (703-557-3965).	Do.
PM 21: Henry Jacoby.	Rm. 229, CM#2 (703-557-1900).	Do.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

I. Products Containing Active Ingredients Not Included in Any Previously Registered Products

1. *File Symbol: 54115-R.* Applicant: BF Goodrich Co., Chemical Group, 6100 Oak Tree Blvd., Cleveland, OH 44131. Product name: Good-Rite AM-4018. Disinfectant. Active ingredient: (Z)-9-Octadecenyl oxychloromethyl trimethylammonium oxirane chloride 46%. Proposed classification/Use: General. For industrial use only to manufacture disinfectants and sanitizers. (PM 31)

2. *File Symbol: 3377-EN.* Applicant: Ethyl Corp., 451 Florida St., Baton Rouge, LA 70801. Product name: Bromine Chloride Technical. Disinfectant. Active ingredient: Bromine chloride 99.7%. Proposed classification/Use: General. For use as a disinfectant in waste water and cooling towers. (PM 32)

3. *File Symbol: 400-UGR.* Applicant: Uniroyal Chemical Co., Inc., 74 Amity Rd., Bethany, CT 06525. Product name: Procure 50W. Fungicide. Active ingredient: Trflumizole [1-[1-[[4-chloro-2-(trifluoromethyl) phenyl]imino]-2-propoxyethyl]-1*H*-imidazole 50%. Proposed classification/Use: General. For control of certain diseases of grapes and pome fruits. (PM 21)

4. *File Symbol: 876-ULT.* Applicant: Velsicol Chemical Corp., 341 East Ohio St., Chicago, IL 60611. Product name: Technical Tolclofos-methyl. Fungicide. Active ingredient: Tolclofos-methyl (*0*-2,6-dichloro-4-methylphenyl *0,0*-dimethyl phosphorothioate) 94%. Proposed classification/Use: General. For manufacturing purposes only. (PM 21)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register.** The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Program Management and Support Division (PMSD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the PMSD office (703-557-3262), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

Dated: March 17, 1986.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-6652 Filed 3-25-86; 8:45 am]

BILLING CODE 6560-50-M

[PP 5G3296/T508; FRL-29924]

E.I. du Pont de Nemours & Co., Inc.; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for residues of the herbicide 2-[[[[(*N*-4-methoxy-6-methyl-1, 3, 5-triazin-2-yl) -*N*-methylamino] carbonyl] amino] sulfonyl] benzoate (DPX-L5300) in or on certain raw agricultural commodities. These

temporary tolerances were requested by E.I. duPont de Nemours and Co., Inc.

DATE: These temporary tolerances expire February 25, 1987.

FOR FURTHER INFORMATION CONTACT:

By mail: Richard Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1830).

SUPPLEMENTARY INFORMATION: E. I. duPont de Nemours and Co., Inc., Agricultural Chemicals Dept., Walker's Mill Building, Barley Mill Plaza, Wilmington, DE 19898, has requested in pesticide petition PP 5G3296 the establishment of temporary tolerances for residues of the herbicide 2-[[[(*N*-4-methoxy-6-methyl-1-1, 3, 5-triazin-2-yl)-*N*-methylamino] carbonyl] amino] sulfonyl] benzoate (DPX-L5300), in or on the raw agricultural commodities barley, grain at 0.05 part per million (ppm); barley, straw at 0.1 ppm; wheat, grain at 0.05 ppm; and wheat, straw at 0.1 ppm.

These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 352-EUP-130, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other revelant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. E. I. duPont de Nemours and Co., Inc., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire February 25, 1987. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 610-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: March 17, 1986.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-6653 Filed 3-25-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51587A; FRC-2992-1]

Chemical Premanufacture Notice; Extension of Review Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is extending the review period for an additional 90 days for premanufacture notice (PMN) P 85-1388, under the authority of section 5(c) of the Toxic Substances Control Act (TSCA). The review period will now expire on June 13, 1986.

FOR FURTHER INFORMATION CONTACT: James Alwood, Chemical Control Division (TS-794), Environmental Protection Agency, Rm. E-613, 401 M St., SW., Washington, D.C. 20460, (202-382-3374).

SUPPLEMENTARY INFORMATION: On August 23, 1985, EPA received PMN P 85-1388 for a new chemical substance, vinyl chloride-vinyl acetate hydroxyl modified copolymer. The submitter claimed its identity, chemical identity, production volume, use and process information, and portions of mixture to be confidential business information. Notice of receipt was published in the **Federal Register** of September 9, 1985 (50 FR 36669). The original 90-day review period was scheduled to expire on March 15, 1986.

Based on its analysis, EPA finds that there is a possibility that the substance submitted for review in this PMN may be regulated under TSCA. The Agency requires an extension of the review period, as authorized by section 5(c) of TSCA, to investigate further potential risk, to examine its regulatory options, and to prepare the necessary documents, should regulatory action be required. Therefore, EPA has determined that good cause exists to extend the review period for an additional 90 days, to June 13, 1986.

PMNs are available for public inspection in Rm. E-107, at the EPA headquarters, address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Dated: March 13, 1986.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 86-6654 Filed 3-25-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Washington; Major Disaster and Related Determinations

[FEMA-762-DR]

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Washington (FEMA-762-DR), dated March 19, 1986, and related determinations.

DATE: March 19, 1986.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3616.

Notice is hereby given that, in a letter of March 19, 1986, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288), as follows:

I have determined that the damage in certain areas of the State of Washington resulting from severe storms, landslides, and flooding, beginning on February 22, 1986, is of sufficient severity and magnitude to warrant a major-disaster declaration under Public Law 93-288. I therefore declare that such a major disaster exists in the State of Washington.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. You are authorized to provide Individual Assistance in the affected areas. Pursuant to Section 408(b) of Pub. L. 93-288, you are authorized to advance to the State its 25 percent share of the Individual and Family Grant program, to be repaid to the United States by the State when it is able to do so.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration. Notice is hereby given that, pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Richard A. Buck of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following area of the State of Washington to have been affected adversely by this declared major disaster and is designated eligible as follows:

Cowlitz County for Individual Assistance only.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Julius W. Becton, Jr.,

Director, Federal Emergency Management Agency.

[FR Doc. 86-6558 Filed 3-25-86; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL HOME LOAN BANK BOARD

Ben Milam Savings and Loan Association, Cameron, TX; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Ben Milam Savings and Loan Association, Cameron, Texas on March 14, 1986.

Dated: March 21, 1986.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 86-6579 Filed 3-25-86; 8:45 am]

BILLING CODE 6720-01-M

Mercury Savings Association of Texas, Wichita Falls, TX; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(1)(i)(I) of the National Housing Act, 12 U.S.C. 1729(c)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Mercury Savings Association, to Texas Wichita Falls, Texas on March 14, 1986.

Dated: March 21, 1986.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 86-6580 Filed 3-25-86; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-010905

Title: Japanese-Flag Far East-United States Discussion Agreement

Parties: Japan Line, Ltd., Kawasaki Kisen Kaisha, Ltd., Mitsui O.S.K. Lines, Ltd., Nippon Yusen Kaisha, Showa Line, Ltd., Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed agreement would permit the parties to discuss, agree upon and present common positions on matters such as types and conditions of service; rates and rate services; costs of providing service; vessels, equipment and facilities; commercial and governmental policies and practices affecting services and access to cargo; trade studies; matters concerning other agreements the parties may be participants in, provided that no party not a member of such an agreement may be privy to any exchange of information concerning that agreement, and matters relating to section 18 of the Shipping Act of 1984.

Agreement No.: 221-010906

Title: Georgia Ports Authority Terminal Agreement

Parties: Georgia Ports Authority (Port)-United Arab Shipping Company

Synopsis: The proposed agreement covers the lease assignment of parking slots for operating a container yard within the confines of the Port's Garden City Terminal. The parties have requested a shortened review period.

Agreement No.: 207-010907

Title: Atlantic Marine Transport System Agreement

Parties: Automar VI Corporation, Crowley Atlantic, Inc.

Synopsis: The proposed agreement would permit the parties to utilize two Roll-on/Roll-off vessles to establish a joint service for the carriage of cargo in the trade between U.S. Atlantic and Gulf ports and ports in Europe including the Atlantic Coast of Spain, Greenland, Iceland and the Azores Islands and inland points via such ports, but excluding Mediterranean ports. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: March 21, 1986.

John Robert Ewers,

Secretary.

[FR Doc. 86-6600 Filed 3-25-86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

The Chase Manhattan Corp., Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843 (c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for

processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 10, 1986.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Chase Manhattan Corporation,* New York, New York; to acquire Genola II, Inc., Moberly, Missouri, and thereby engage in personal property leasing on a nationwide basis, pursuant to section 225.25(b)(5) of Regulation Y. The nonbank offices to be acquired would be located in Moberly, Missouri and Columbia, Mississippi.

Board of Governors of the Federal Reserve System, March 20, 1986

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-6540 Filed 3-25-86; 8:45 am]

BILLING CODE 6210-01-M

Chase Manhattan National Holding Corp., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding compnay or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, indentifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 17, 1986.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Chase Manhattan National Holding Corporation, Newark,* Delaware; to acquire 100 percent of the voting shares of Chase Bank of Ohio. Mentor, Ohio.

B. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Citizens Investments, Inc.,* Vineland, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of Capitol State Bank, Trenton, New Jersey.

C. **Federal Reserve Bank of Richmond** (Lloyd, W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Northeast Bancorp, Inc.,* North East, Maryland; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of North East, North East, Maryland.

D. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Shell Lake Bancorp, Inc.,* Shell Lake, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Shell Lake State Bank, Shell Lake, Wisconsin.

E. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *M & F Banchares, Inc.,* Weatherford, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of each of the following: Doss Financial Bancshares, Inc., Weatherford, Texas, and thereby indirectly acquire Texas Bank of Denton, Denton, Texas; Early Financial Bancshares, Inc., Weatherford, Texas, and thereby indirectly acquire Texas Bank, Early, Texas; and the Merchants and Farmers State Bank, Weatherford, Texas.

Board of Governors of the Federal Reserve System, March 20, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-6541 Filed 3-5-86; 8:45 am]

BILLING CODE 6210-01-M

Wells Fargo & Co.; Formation of, Acquisition by, or Merger of Bank Holding Companies, and Acquistion of Nonbanking Company

The company listed in this notice has applied under §225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to became a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under §225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) amd § 225.21(a) of Regulation Y (12 C.F.R. 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 25, 1986.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Wells Fargo & Company.* San Francisco, California; to acquire 100 percent of the voting shares of Crocker National Corportation, San Francisco, thereby indirectly acquiring Crocker Natioanl Bank, San Francisco, California.

Wells Fargo & Company has applied pursuant to section 4(c)(8) of the Act to acquire the following companies: Crocker Mortgage Company, Inc., San Diego, California, and thereby engage in originating, purchasing and servicing mortgages, loans and other extensions of credit; Crocker Trust Company of California, Hawthorne, California, and thereby perform trust company services; Crocker Financial Corportation, Limited, Honolulu, Hawaii, and thereby operate an industrial loan company and engage in the sale of credit life, accident, and health insurance; Crocker Life Insurance Company, San Francisco, California, and thereby underwrite credit life and disability insurance for Crocker National and its subsidiaries; Crocker Investment Management Corp., San Francisco, California, and thereby provide portfolio investment advice and general economic and financial information and advice; CNC Insurance Agency, San Francisco, California, and thereby act as agent for the sale of credit life, and disability insurance directly related to extensions of credit by subsidiaries of Crocker.

Wells Fargo & Company has also applied to section 4(c)(14) of the Act to acquire Crocker Pacific Trade Corporation, San Francisco, California and thereby act as an export trading company.

Wells Fargo & Company will also acquire two Edge Act corporations, Crocker Bank International, New York, New York and Crocker International Investment Corporation, San Francisco, California pursuant to section 25(a) of the Federal Reserve Act.

Board of Governors of the Federal Reserve System, March 20, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-6542 Filed 3-25-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Secretary's Private/Public Sector Advisory Committee on Catastropic Illness; Advisory Committee Meeting; Amended Notice of Meeting

The announced meeting of this Committee in the Federal Register, Volume 51, Number 53, Page 9530, March 19, 1986, has been amended. The Advisory Committee will now meet on April 30, 1986. Committee business will begin at 9:00 a.m., in the Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201 as previously stated.

Dated: March 20, 1986.

Charlene Quinn,

Executive Director.

[FR Doc. 86-6623 Filed 3-25-86; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 86M-0051]

CTL, Inc.; Premarket Approval of CustomEyes™-38 S ET-3/ET-4 (Polymacon) Tinted Hydrophilic Extended Wear Contact Lens

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the supplemental application by CTL, Inc., Raleigh, NC, for premarket approval, under the Medical Device Amendments of 1976, of the spherical CustomEyes™-38 S ET-3/ET-4 (polymacon) Tinted Hydrophilic Extended Wear Contact Lens. The lens is to be tinted under an agreement with Bausch & Lomb, Inc., Rochester, NY, which has authorized CTL, Inc., to incorporate by reference information contained in its approved premarket approval application supplements for the SOFLENS® (polymacon) Contact Lens, 03/04™ Lens Series. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the supplemental application.

DATE: Petitions for administrative review by April 25, 1986.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

SUPPLEMENTARY INFORMATION: On August 12, 1985, CTL, Inc., Raleigh, NC 27612, submitted to CDRH a supplemental application for premarket approval of the spherical CustomEyes™-38 S ET-3/ET-4 (polymacon) Tinted Hydrophilic Extended Wear Contact Lens. The lens is indicated for extended wear from 1 to 30 days between removals for cleaning and disinfecting as recommended by the eye care practitioner. The lens is available in the power range of −0.25 diopters (D) to −6.00 D for the correction of visual acuity in not-aphakic, myopic persons with nondiseased eyes. The lens may be worn by persons who exhibit astigmatism of 2.00 D or less that does not interfere with visual acuity. It is to be disinfected using either a heat or chemical lens care system. The supplemental application provides for Bausch & Lomb, Inc., Rochester, NY, to supply the clear (untinted) finished lens to CTL, Inc. CTL, Inc., will tint the lens blue, green, aqua, brown, or yellow with one or more of the four color additives listed in 21 CFR 73.3117, 73.3118, 73.3119, or 73.3120 for use as a color additive in contact lenses. The application includes authorization from Bausch & Lomb, Inc., to incorporate by reference the information contained in its approved premarket approval application supplements for the SOFLENS® (polymacon) Contact Lens, 03/04™ Lens Series (Docket No. 83M-0272).

On October 17, 1985, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On January 27, 1986, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ-460), address above.

The labeling of the CustomEyes™-38 S ET-3/ET-4 (polymacon) Tinted Hydrophilic Extended Wear Contact Lens states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, to refer to new lens solutions that CDRH approves for use with approved contact lenses made of polymers other than polymethylmethacrylate, to comply with the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 et seq.), and regulations thereunder, and with the Federal Trade Commission Act (15 U.S.C. 41-58), as amended. Accordingly, whenever CDRH publishes a notice in the **Federal Register** of approval of a new solution for use with an approved lens, the applicant shall correct its labeling to refer to the new solution at the next printing or at any other time CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before April 25, 1986, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: March 17, 1986.

John C. Villforth, Director,

Center for Devices and Radiological Health.

[FR Doc. 86-6555 Filed 3-25-86; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Open Meeting

AGENCY: The Food and Drug Administration.

ACTION: Notice.

SUMMARY: Food and Drug Administration (FDA) is announcing the following consumer exchange meeting:

Atlanta District Office, chaired by John H. Turner, District Director. The topic to be discussed is In Vitro Diagnostic Devices for Home Health Use.

DATE: Thursday, April 10, 1986, 9:30 a.m.

ADDRESS: Macon County Courthouse, Rm. 345, 5 West Main St., Franklin, NC 28734.

FOR FURTHER INFORMATION CONTACT: Carolyn L. Hommel, Consumer Affairs Officer, Food and Drug Administration, 60 8th St. NE., Atlanta, GA 30309, 404-347-7355.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: March 20, 1986.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-6554 Filed 3-25-86; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

Meeting of the Minority Biomedical Research Support Subcommittee of the General Research Support Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Minority Biomedical Research Support Subcommittee (MBRSS) of the General Research Support Review Committee (GRSRC), Division of Research Resources (DRR), April 3-4, 1986, 8:30 a.m., at the American Inn, Bethesda. The meeting will be held in the hotel conference room, 8130 Wisconsin Avenue, Bethesda, Maryland 20814.

This meeting will be open to the public from 8:30 a.m. to approximately 12:00 p.m. on April 3, to discuss policy matters relating to the Minority Biomedical Research Support Program (MBRSP). Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on April 3 from approximately 1:00 p.m. to 5:00 p.m. and from 8:30 a.m. to adjournment on April 4 for the review, discussion and evaluation of the individual grant applications submitted to the Minority Biomedical Research Support Program (MBRSP). These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, National Institutes of Health, Building 31, Room 5B10, Bethesda, Maryland 20892, telephone (301) 496-5545, will provide a summary of the meeting and a roster of panel members upon request. Dr. Ethel B. Jackson, Executive Secretary of the General Research Support Review Committee (GRSRC), Building 31, Room 5B11, Bethesda, Maryland 20892, telephone (301) 496-4390, will furnish substantive program information upon your request.

(Catalog of Federal Domestic Assistance Program No. 13.375, Minority Biomedical Research Support Program, National Institutes of Health)

Dated: March 19, 1986.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 86-6705 Filed 3-25-86; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Geological Survey

Interagency Arctic Research Policy Committee Workshop; Meeting

The U.S. Geological Survey, acting through the Interagency Arctic Research Policy Committee, will conduct a meeting beginning at 9 a.m., May 1 and May 2, 1986, at the Anchorage Museum of History and Art auditorium, 121 West 7th Avenue, Anchorage, Alaska, to receive information and discuss the following:

1. Federal energy and mineral programs
2. Research needs in energy and minerals over the next 5 years

In July 1984, President Reagan signed the Arctic Research and Policy Act. Some of the objectives of the Act are: (1) To develop and establish a national Arctic Research policy, (2) to inventory research conducted by Federal, State, and local agencies, universities, and other public and private institutions to help determine priorities, and (3) to develop an integrated 5-year plan for basic and applied research to implement that policy. The Arctic Research Commission, a panel of five Presidential appointees, has endorsed a policy statement on the Arctic. And the Interagency Arctic Research Policy Committee has compiled a detailed list of Federal Arctic Research and drafted a statement of goals and objectives.

The Arctic Policy of the United States includes supporting the sound and rational development of the United States Arctic and its resources, guided by the principal of minimizing any adverse effects on the environment.

The results of the workshop will be combined with those of workshops on Native Health, Ice and Weather Dynamics, Marine Ecosystems, and Land-Based Environmental Research to help develop the 5-year Arctic research plan.

The workshop will be open to the public. Persons and organizations wishing to participate should notify either Dr. Clement F. Shearer, Office of the Director, U.S. Geological Survey, 106 National Center, Reston, Virginia 22092, 703-648-4425, or Dr. Max C. Brewer, U.S. Geological Survey, Alaska Pacific University, Room 124, Gould Hall, University Drive, Anchorage, Alaska 99508, 907-786-7429. If presentations are proposed, such notifications need to be made by April 15, 1986, in order to facilitate agenda planning.

Dated: March 18, 1986.

Clement F. Shearer,

Special Assistant, Office of the Director.

[FR Doc. 86-6549 Filed 3-25-86; 8:45 am]

BILLING CODE 4310-31-M

Bureau of Land Management

Cancellation of Exchange and Termination of Segregation of Public Lands in Humboldt County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Cancellation of Exchange and Termination of Segregation.

The Bureau of Land Management published a Notice of Realty Action, CA-16960, in Vol. 50, No. 190, pages 40061-62 of the **Federal Register** on October 1, 1985. This action terminates the segregative effect created by the aforementioned Notice of Realty Action. Upon publication in the **Federal Register** the segregative effect imposed by Notice of Realty Action, CA-16960, will be lifted from the following described land:

Humboldt Meridian

T. 4 N., R. 3 E.,
Sec. 13: NW¼SW¼—40 acres;
Sec. 24: NE¼NE¼—40 acres;
T. 4 N., R. 4 E.,
Sec. 17: NE¼SW¼—40 acres.
T. 3 S., R. 1 W.,
Sec. 8: W½NE¼, NE¼NW¼—120 acres.

Containing 240 acres total.

Dated: March 18, 1986.

John F. Santora,

Acting Ukiah District Manager, Bureau of Land Management.

[FR Doc. 86-6605 Filed 3-25-86; 8:45 am]

BILLING CODE 4310-84-M

[N-42980]

Competitive Sale Public Land in Lyon County, NV

The following described land, comprising approximately 7.5 acres, has been examined and indentied as suitable for sale under section 203 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2750), 43 U.S.C. 1713:

Mount Diablo Meridian, Nevada

T. 13 N., R. 25 E.,
Sec. 28 W½SE¼NW¼NE¼, W½E½SE¼NW¼NE¼.

The land will be offered at the appraised fair market value through a sealed bid only method of bidding. The date for submitting bids and the sale procedures will be made available to the public at a later date.

The land is being offered for sale because it is not needed for any federal purpose and has more value in private ownership because of its potential for suburban or industrial development. The sale is consistent with Bureau and local planning.

Patent, if and when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States; Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.
2. All minerals shall be reserved to the United States, together with the right to propect for, mine, and remove the minerals.

A more detailed decription of this mineral reservation, which will be incorportated in the patent document, is available for review at this BLM Office. The mineral interests having no known mineral values will be conveyed simultaneously with the surface estate upon submission of $50 and an application pursuant to 43 CFR 2720.

The patent will also be subject to:

1. Those rights for highway purposes which have been granted to the Nevada Highway Department, its successors or assignees, by Right-of-Way Nev-043682 under the authority of the Act of November 9, 1921.

Detailed information concerning the sale is available for review at the Carson City District Office.

Upon publication of this notice in the **Federal Register**, the land described above will be segregated from all forms of nondiscretionary appropriation under the public land laws, including the mining laws, except the mineral leasing laws. The segregative effect of this notice of realty action shall terminate upon issuance of patent or other document of conveyance to such land, upon publication in the **Federal Register** of a termination of the segregation or 270 days from the date of publication, whichever occurs first.

The land will not be offered for sale sooner than 60 days after the date of this notice. For a period of 45 days after the date of this notice, interested parties may submit comments of the Bureau of Land Management, Carson City District Office, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89701. Any adverse comments will be evaluated by the District Manager. The Nevada State Director, Bureau of Land Management, may vacate or modify this realty action and issue of final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

It the land is not sold at the first offering, it will remain available for purchase on a continuing, over-the-counter, "first-come first-served" basis at the appraised fair market value until sold or until other designation or disposition.

Dated this 11th day of March, 1986.

Thomas J. Owen,

District Manager, Carson City District.

[FR Doc. 86-6606 Filed 3-25-86; 8:45 am]

BILLING CODE 4310-HC-M

Minerals Management Service

Outer Continental Shelf Advisory Board; North, Mid, and South Atlantic Regional Technical Working Groups; Meetings

Notice of Meeting: Plenary Session of North, Mid, and South Atlantic Regional Technical Working Groups.

Notice of this meeting is issued in accordance with the Federal Advisory Committee Act (Pub. L. 92-463).

Name: Plenary Session of North, Mid, and South Atlantic Regional Technical Working Groups.

Date: April 24, 1986.

Place: Tysons Corner Holiday Inn, Potomac Room, 1961 Chain Bridge Road, Vienna, Virginia 22102.

Time: 9:00 a.m. to 5:00 p.m.

Committee membership consists of representatives from Federal Agencies, the Coastal States of Maine through Florida, the petroleum industry, and other private interests. The purpose of the meeting is to advise the Director, Minerals Management Service (MMS) on technical matters of Regional concern regarding prelease and postlease sale activities.

Agenda: MMS Program Update; Proposed 5-Year Offshore Oil and Gas Leasing Program and Draft Environmental Impact Statement; MMS Fiscal Year 1988 Environmental Studies Program Recommendations; New York Port Access Route Study; Public Comment; Summary of Action Items.

This meeting will be open to the public. Public attendance may be limited by the space available. Persons wishing to make oral presentations to the Committee regarding items on the agenda should contact Mr. Bruce G. Weetman of the Atlantic OCS Regional Office at (703) 285-2165 by April 10, 1986. Written statements should be submitted by May 1, 1986, to the Atlantic OCS Region, Minerals Management Service, 1951 Kidwell Drive, Suite 601, Vienna, Virginia 22180.

Minutes of the meeting will be available for public inspection and copying by July 4, 1986, at the above address.

Bruce G. Weetman,

Regional Director, Atlantic OCS Region.

[FR Doc. 86-6604 Filed 3-25-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF JUSTICE

Information Collection(s) Under OMB Review

March 21, 1985.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. The list has all entries grouped into new forms, revisions, or extensions. Each entry contains the following information: the name and telephone number of the Agency Clearance Officer (from whom a copy of the form and supporting documents is available); the office of the agency issuing the form; the title of the form; the agency form number, if applicable; how often the form must be filled out; who will be required or asked to report; an estimate of the number of responses; an estimate of the total number of hours needed to fill out the form; an indication of whether section 3504(h) of Pub. L. 96-511 applies; and, the name and telephone number of the person or office responsible for the OMB review. Copies or the proposed form(s) and the supporting documentation may be obtained from the Agency Clearance Officer whose name and telephone number appear under the agency name. Comments and questions regarding the item(s) contained in this list should be directed to the reviewer listed at the end of each entry *AND* to the Agency Clearance Officer. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer and the Agency Clearance Officer of your intent as early as possible.

Department of Justice

Agency Clearance Officer: Larry E. Miesse, 202/633-4312

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Larry E. Miesse, 202/633-4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Certificate of eligibility for Nonimmigrant (F-1) Student Status for Academic and Language Students
(4) I-20AB, I-20MN, I-20ID
(5) On occasion
(6) Individuals or households. Used by consular and immigration officials to determine eligibility or applicant for admission to United States as student (Section 101[a][15][F][i] I&N Act).
(7) 115,000 respondents
(8) 115,000 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395-4814

(1) Larry E. Miesse, 202/633-4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Petition for Alien Fiance(e)
(4) I-129F
(5) On occasion
(6) Individuals or households. Filed by an unmarried U.S. citizen to classify status of nonimmigrant fiance(e).
(7) 15,000 respondents
(8) 7,500 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395-4814

(1) Larry E. Miesse, 202/633-4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Baggage and Personal Effects of Detained Alien
(4) I-43
(5) On occasion
(6) Individuals or households. Form is used to protect the government from claims that detained aliens were not given an opportunity to obtain their personal effects before deportation.
(7) 600,000 respondents
(8) 10,200 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395-4814

(1) Larry E. Miesse, 202/633-4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Petition for Alien Relative
(4) I-130
(5) On occasion
(6) Individuals or households. Information used by INS to determine eligibility for benefits sought (8 U.S.C. 1154[a]).
(7) 550,000 respondents
(8) 275,000 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395-4814

(1) Larry E. Miesse, 202/633-4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Application for Employment by a (G-4) Spouse or Unmarried son or Daughter of an Official of an International Organization
(4) I-566
(5) On occasion

(6) Individuals or households. Form provides formal procedure under which these persons may apply for permission to be employed in US.
(7) 1,200 respondents
(8) 300 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395-4814

(1) Larry E. Miesse, 202/633-4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Petition for Prospective Immigrant Employees
(4) I-140
(5) On occasion
(6) Individuals or households. Data required to determine eligibility for admission to U.S. under Sections 203(A), (3) and (6), I&N Act.
(7) 45,000 respondents
(8) 45,000 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395-4814

(1) Larry E. Miesse, 202/633-4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Application for Stay of Deportation
(4) I-246
(5) On occasion
(6) Individuals or households. Data required to determine eligibility of applicant for stay of deportation.
(7) 2,500 respondents
(8) 625 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395-4814

(1) Larry E. Miesse, 202/633-4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Alien Address Report Card
(4) I-104
(5) On occasion
(6) Individuals or households. Used by aliens to report current addresses, upon 10 days notice, only when required under Section 265 of the I&N Act.
(7) 1 respondent
(8) 1 burden hour
(9) Not applicable under 3504(h)
(10) Robert Veeder—395-4814

(1) Larry E. Miesse, 202/633-4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Petition for Approval of School for Attendance by Nonimmigrant Students
(4) I-17, I-17A, I-17B
(5) On occasion
(6) Individuals or households, non-profit institutions. Data used to determine which schools are bonafide learning institutions.
(7) 1,500 respondents
(8) 1,500 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395-4814

(1) Larry E. Miesse, 202/633-4312
(2) Bureau of Justice Assistance, Office of Justice Programs, Department of Justice
(3) Criminal Justice Block Grants
(4) N/A
(5) Annually
(6) State or local governments. Information collected to comply with the requirements of the Justice Assistance Act, that states and local recipients of block grant funds submit performance reports. Information used as part of report to the President and Congress.
(7) 600 respondents
(8) 600 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395-4814

Revision of a Currently Approved Collection

(1) Larry E. Miesse, 202/633-4312
(2) Bureau of Justice Statistics, Office of Justice Programs, Department of Justice
(3) National Crime Survey
(4) NCS-1, NCS-2, NCS-7, NCS-500
(5) Semi-Annually
(6) Individuals or households. The National Crime Survey is a program for gathering, analyzing, publishing and disseminating statistics on the kinds and amounts of crimes committed against households and individuals throughout the Country.
(7) 295,200 respondents
(8) 61,706 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395-4814

Larry E. Miesse,
Clearance Officer, Department of Justice.
[FR Doc. 86-6570 Filed 3-25-86; 8:45 am]
BILLING CODE 4410-10-M

NATIONAL CREDIT UNION ADMINISTRATION

Agency Forms Submitted to the Office of Management and Budget for Clearance

The following package is being submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35.

Subject: Continued Insurability Status Report (3133-007)

Respondents: Federally Insured State Chartered Credit Unions

Abstract: The state supervisory authority completes the report for each of its federally insured credit unions. The report provides essential information necessary for determining continued insurability of federally-insured state chartered credit unions.

OMB Desk Officer: Robert Neal

A copy of the above information collection packages may be obtained by calling the National Credit Union Administration, Administrative Office on (202) 357-1055.

Written comments and recommendations for the listed information collections should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: March 18, 1986.

Rosemary Brady,
Secretry of the NUCUA Board.
[FR Doc. 86-6629 Filed 3-25-86; 8:45 am]
BILLING CODE 7535-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Ad Hoc Subcommittee on TVA; Postponement of Meeting

The notice previously published on March 7, 1986 (51 FR 8054) concerning the ACRS Ad Hoc Subcommittee on TVA scheduled for March 27, 1986, Washington, DC has been postponed indefinitely.

Dated: March 21, 1986.

Morton W. Libarkin,
Assistant Executive Director for Project Review.
[FR Doc 86-6661 Filed 3-25-86; 8:45 am]
BILLING CODE 7590-01-M

Bi-Weekly Notice; Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Pub. L. 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular bi-weekly notice. Pub. L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This bi-weekly notice includes all amendments issued, or proposed to be

issued, since the date of publication of the last bi-weekly notice which was published on March 12, 1986 (51 FR 8584), through March 17, 1986.

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probabilty 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 margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

By April 25, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Indentification Number 3737 and the following message addressed to (*Branch Chief*): Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for

amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the local public document room for the particular facility involved.

Arkansas Power and Light Company, Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: January 24, 1986.

Description of amendment request: The proposed amendment would remove from the Technical Specifications (TSs) the tabular listing of snubbers, as suggested by Generic Letter 84-13 dated May 3, 1984.

Basis for proposed no significant hazards consideration determination: Generic Letter 84-13, May 3, 1984, "Technical Specifications for Snubbers" concludes that the tabular listing of snubbers included in Technical Specifications may be deleted by any licensee submitting a license amendment.

The removal of the tabular listing of snubbers from the Technical Specifications is of an administrative nature and does not in itself affect plant design or operation, involve modifications to plant equipment, or make changes that would affect plant safety analyses. The Technical Specifications will continue to require the snubbers to be operable. Appropriate actions to be taken if the snubbers are inoperable will also remain in the Technical Specifications. Additionally, the NRC staff has determined that inclusion of snubber listings in Technical Specifications is not necessary because any changes in snubber quantities, types, or locations are controlled under the provisions of 10 CFR 50.59 as a change to the facility.

The proposed amendment will not:

1. Involve a significant increase in the probability of consequences of an accident previously evaluated because the removal of the snubber listing does not impact the existing snubber operability requirements.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change introduces no new mode of plant operation nor does it require physical modification to the plant.

3. Involve a significant reduction in the margin of safety because it does not involve changes in plant design or operation or affect plant safety analyses. The purpose of the change is to conform to the NRC guidance in Generic Letter 84-13. Any proposed changes to the snubbers would be subject to the provisions of 10 CFR 50.59 and, as a result, should any proposed change significantly reduce the margin of safety, an application for a license amendment would be submitted.

Based on the above, the Commission's staff proposes to determine that the application for amendment does not involve a significant hazards consideration.

Local public document room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Attorney for licensee: Nicholas S. Reynolds, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street NW., Suite 700, Washington, DC 20036.

NRC project director: John F. Stolz.

Carolina Power & Light Company, Docket No. 50-324, Brunswick Steam Electric Plant, Unit 2, Brunswick County North Carolina

Data of application for amendment: December 20, 1985.

Description of amendment request: The proposed amendment would change the Technical Specifications (TS) for the Brunswick Steam Electric Plant, Unit No. 2. The purpose of this amendment is to incorporate more conservative minimum critical power ratio (MCPR) values, thereby allowing reload licensing for Brunswick 2 Cycle 7 under the provisions of 10 CFR 50.59.

This amendment request provides more conservative power distribution limits for operation of Brunswick 2. The current limits were supplied in the General Electric Report No. 23A1765, "Supplemental Reload Licensing Submittal for Brunswick Steam Electric Plant, Unit No. 2 Reload 5" submitted June 26, 1984. These more conservative limits will bound the Brunswick 2 Reload 6 limits, allowing reload licensing for Brunswick 2 Cycle 7 under the provision of 10 CFR 50.59. A copy of the General Electric topical report for Reload 6 will be forwarded to the NRC. In addition to the more conservative power distribution limits, other administrative changes are being made to prepare the Brunswick 2 TS for future 10 CFR 50.59 reload licensing.

Additional changes made in the request include deletion of references to the 8x8 fuel type which has been totally removed from the core and the combining of the TS Table 3.2.3.2-1 Transient Operating Limit MCPR Values for turbine trip/load reject without bypass and feedwater control failure into a common category of pressurization transients. Creation of the common pressurization transients category of MCPR values will allow future reload licensing under the provisions of 10 CFR 50.59. For each pressurization transient MCPR value, a factor of conservatism was added to the MCPR values provided for the turbine trip/load reject without bypass transient, which already bounded the feedwater control failure transient. This results in pressurization transient MCPR values which bound both the original sets of MCPR values.

Basis for proposed no significant hazards consideration determination: The Carolina Power & Light Company (CP&L) has reviewed this request and determined that:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because in each case the changes represent more conservative power distribution limits. Formation of a common pressure transient category of MCPR values in TS Table 3.2.3.2-1 results in more conservative MCPR values than those previously established. In addition, the final core configuration will consist of no fuel assemblies significantly different from those previous found acceptable to the NRC. Other changes made as a result of this amendment request are administrative in nature.

2. The proposed amendment does not create the possibility of a new or different kind of accident than previously evaluated for the same reasons as stated in item 1.

3. The proposed amendment does not involve a significant reduction in a margin of safety because the plant will be operated under stricter power distribution limits as a result of the amendment.

Based on the above reasoning, CP&L has determined that the proposed amendment does not involve a significant hazards consideration.

The staff has reviewed the CP&L determination and finds that the amendment request meets the standards for determining whether a signficant hazards condition exists (10 CFR 50.92(c)), that is, the proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (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 safety.

Based on the above discussion the Commission proposed to determine that the amendment does not involve a significant hazards consideration.

Local Public Document Room location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Attorney for licensee: George F. Trowbridge, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: Daniel R. Muller.

Carolina Power & Light Company, Docket No. 50-324, Brunswick Steam Electric Plant, Unit 2, Brunswick County, North Carolina

Date of application for amendment: January 27, 1986.

Description of amendment request: The proposed amendment would change the Technical Specifications (TS) to revise TS Table 3.6.3-1 to reflect modifications being made during the current refueling outage to provide a dedicated purge system for post-accident combustible gas control which meets the requirements of NUREG-0737 Item II.E.4.1.

The staff position in regard to Item II.E.4.1 was that plants using external recombiners or purge systems for post-accident combustible gas control of the containment atmosphere should provide containment penetration systems for external recombiner or purge systems that are dedicated to that service only, that meet the redundancy and single-failure requirements of General Design Criteria 54 and 56 of Appendix A to 10 CFR 50, and that are sized to satisfy the flow requirements of the recombiner or purge system.

The procedures for the use of combustible gas control systems following an accident that results in a degraded core and release of radioactivity to the containment must be reviewed and revised, if necessary.

The modifications being performed on the Brunswick Unit 2 containment atmospheric dilution (CAD) system will provide a dual dedicated single active failure proof supply of nitrogen for use in post-accident conditions. Currently, nitrogen is transported from the storage tank into the reactor building by a 1-inch line. Once inside the reactor building, the 1-inch line ties into a 20-inch inerting line. Supply of nitrogen through this line into the containment is currently contingent on operation of large air operated isolation valves. The scheduled modification reroutes both the inerting and exhaust lines of the CAD system, thereby providing post-accident purging capability independent of these large air operated isolation valves. The 20-inch inerting and exhaust lines will still be used under normal startup and makeup conditions. As a result of the modification, the suppression chamber and drywell makeup CAD inlet valves (CAC-V47 and CAC-V48) are being deleted from TS Table 3.6.3-1. In addition, seven new primary containment isolation valves are being added to TS Table 3.6.3-1.

Basis for proposed no significant hazards consideration determination: The proposed revision reflects the installation of a dedicated purge system for post-accident combustible gas control. This system will meet the requirements of NUREG-0737, Item II.E.4.1. The bypassing of the two large air operated valves by two separate one-inch nitrogen lines provides a more reliable source of nitrogen for post-accident conditions. The replacement valves are in redundant pairs in parallel. Therefore there would be a decrease in the probability or consequences of an accident previously evaluated. There would not be a new or different kind of accident, nor a reduction in a margin of safety since the nitrogen is more reliably available, not less. Based on the above the staff finds 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; (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. Thus, CP&L has determined that the proposed license amendment involves no significant hazards consideration.

Therefore, the staff proposes to determine that this action does not involve a significant hazards consideration.

Local Public Document Room Location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Attorney for licensee: George F. Trowbridge, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: Daniel R. Muller.

Commonwealth Edison Company, Docket No. 50-237, Dresden Nuclear Power Station, Unit No. 2, Grundy County, Illinois

Date of amendment request: March 10, 1986.

Description of amendment request: The proposed amendment would extend the allowable outage period for the Unit 2/3 Diesel Generator (DG) from 7 to 14 days on a one time only basis to allow installation of Appendix R modifications on the DG.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c).

The licensee has presented its determination of no significant hazards consideration as follows:

As a result of the variety of alternate sources of AC power which will be available during the extended outage period, Commonwealth Edison has determined that the proposed amendment does not represent a significant hazards consideration. Specifically, the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because the inoperability of the diesel generator is a passive state which cannot of itself initiate an accident nor [change] the probability of an accident. The consequences of an accident will not be increased because alternate sources of AC power will be available to assure power feed to at least one of two redundant ECCS divisions. In addition to backup sources of AC power normally available and reflected in the Technical Specifications, an additional source via the Unit 3 dedicated diesel generator will be available as a backup to the Unit 2 diesel during the extended outage. Therefore, the probability of loss of all AC power is not significantly affected by the proposed amendment.

2. Create the possibility of a new or different kind of accident from any previously evaluated because the proposed amendment only affects the reliability of backup AC power. Unavailability of the 2/3 diesel generator for an additional seven days is a passive state which cannot initiate an accident of any type. The availability of other sources of AC power will assure that the progression of an accident and functioning of required mitigating systems will not be appreciably different than previously evaluated.

3. Involve a reduction in the margin of safety because compensatory measures are being taken to assure the availability of backup AC power in the unlikely event it is required during the additional seven day period. Specifically, the operability of the 4kV bus-tie and the Unit 3 diesel will be verified to assure redundancy in available AC power feeds to required accident mitigating systems. This increase in reliability of power feed to at least one ECCS division (thru bus 24-1) off-sets the incremental risk associated with the extended period the 2/3 diesel will be unavailable.

The staff has reviewed the licensee's no significant hazards consideration determination as well as the compensatory measures proposed by the licensee to provide additional assurance of backup AC power availability and agrees with the licensee's analysis. Therefore, based on this review, the staff has made a proposed determination that

the requested amendment involves no significant hazards consideration.

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

Attorney for licensee: Robert G. Fitzgibbons, Jr., Isham, Lincoln and Beale, Three First National Plaza, Suite 5200, Chicago, Illinois 60602.

NRC Project Director: John A. Zwolinski.

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, La Salle County Station, Units 1 and 2, La Salle County, Illinois

Date of amendment request: March 10, 1986.

Description of amendment request: The proposed amendments to Operating License NPF-11 and Operating License NPF-18 would revise the La Salle Units 1 and 2 technical Specifications Appendix B, to first eliminate the reporting requirements to the NRC of NPDES violations and second to terminate the fog and ice monitoring program. In the area of environmental protection, the NRC relies on the Illinois Environmental Protection Agency for regulation. Since the Illinois Environmental Protection Agency receives the noncompliance reports, no report should be required to the NRC. Therefore, this proposed amendment request deletes the requirement to provide the NRC with copies of these reports.

The second proposed revision is the termination of the fog and ice monitoring program, Sections 2.2 and 4.2.2. The justification for terminating the fog and ice monitoring program is that the results of the monitoring programs has met the requirements of performing analyses for a 12 month period of one unit in operation and a 12 month period of two unit operation. In addition, the results with respect to icing was determined to be not a factor in vegetation injury in or around La Salle County Station and that fogging was of minimal occurrence.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences for an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined and the NRC staff agrees that the proposed amendments will not:

(1) Involve a significant increase in the probability or consequences or an accident previously evaluated, and

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because: The proposed amendments merely (a) remove redundant reporting requirements with regards to the NPDES permit administered by the Illinois Environmental Protection Agency, and (b) remove the requirement to perform fog and ice monitoring which is no longer necessary.

(3) Involve a significant reduction in the margin of safety because these changes do not effect Technical Specifications limit.

Accordingly, the Commission proposes that the changes would fall into the category of a no significant hazards consideration determination.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Attorney for licensee: Isham, Lincoln and Burke, Suite 840, 1120 Connecticut Avenue, NW., Washington, DC 20036.

NRC Project Director: Elinor G. Adensam.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: February 21, 1986.

Description of amendment request: The proposed license amendment would incorporate three new fire protection systems, which are required to protect safe shutdown equipment, into the Haddam Neck Plant technical specifications. These modifications include the directional spray water suppression system in the cable-spreading area hallway, the water curtain-type spray system in the area of the service water pumps and two early warning fire detectors in the auxiliary feedwater pump room.

Basis for proposed no significant hazards consideration determination: The proposed revisions to incorporate three new systems into the plant technical specifications provide an improved level of protection for fire-protection systems. The Commission has provided examples (48 FR 14870, April 6, 1983) of actions not likely to involve a significant hazards consideration. Example (ii) of this guidance states that a change that constitutes an additional limitation, restriction or control not presently included in the technical specifications, for example, a more stringent surveillance requirement would not likely constitute a significant hazard. The staff has reviewed the proposed license amendment and concluded that it falls within the envelope of example (ii) since the proposed amendment adds additional limitations to the plant technical specifications concerning fire protection systems. Accordingly, the staff proposes to determine that the proposed changes do not involve a significant hazards considerations.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry and Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: Christopher I. Grimes.

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: February 14, 1983, as supplemented August 14, 1985 and January 3, 1986.

Description of amendment request: This submittal supplements the request for amendment dated February 14, 1983, as supplemented August 14, 1985. The February 14, 1983 submittal was noticed in the **Federal Register** on September 21, 1983 (48 FR 43133). The August 14, 1985 submittal was noticed in the **Federal Register** on October 9, 1985 (50 FR 41246). The proposed Technical Specification Revisions would revise portions of Consolidated Edison's amendment application to clarify the sections relating to control of heavy loads during refueling. The revision would provide statements with regard to the applicable restrictions for the value of Tave, reactor subcriticality and containment integrity when fuel is in the reactor and the reactor vessel head bolts are less than fully tensioned.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for a no significant hazards consideration determination by providing certain examples (48 FR 14870). One of the examples (ii) of actions not likely to involve a significant hazards consideration relates to a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specification. The staff proposes to determine that this change does not involve a significant hazards

considerations since it establishes additional restrictions on operating parameters.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Project Directorate: Steven A. Varga.

Duke Power Company, et. al., Docket No. 50-414, Catawba Nuclear Station, Unit No. 2, York County, South Carolina

Date of amendment request: July 22, 1985 as supplemented September 11, 1985, and March 7, 1986.

Description of amendment request: The proposed amedment would revise the Catawba Nuclear Station, Unit 2, Technical Specifications (TS) to increase the allowed out-of-service times for Reactor Trip System (RTS) channels.

The changes would revise Table 3.3-1 for the following channels:

1. Power Range Neutron Flux.
2. Overtemperature Delta-T.
3. Overpower Delta-T.
4. Pressurizer Pressure—Low.
5. Pressurizer Pressure—High.
6. Pressurizer Water Level—High.
7. Reactor Coolant Flow—Low.
8. Steam Generator Water Level—Low-Low.
9. Reactor Coolant Pumps—Undervoltage.
10. Reactor Coolant Pumps—Underfrequency.
11. Turbine Trip.

For these channels, the changes would: (1) Increase the time an inoperable channel may be maintained in an untripped condition from one hour to six hours, and (2) increase the time an inoperable channel may be bypassed to allow testing of another channel in the same function from two hours to four hours (or increase the time for channel test in the bypass mode with the inoperable channel tripped). A third change which does not require a change to the TS but is related to these changes, would result in changes to plant procedures to provide for routine testing of these channels in a bypassed condition.

These changes are three of the four changes proposed by WCAP-10271 and Supplement 1 and approved as part of the NRC's Safety Evaluation Report dated February 21, 1985. A fourth change discussed in WCAP-10271 and the SER would decrease the surveillance frequency for RTS analog channel operational tests from once per month to once per quarter. This fourth change is not currently being proposed for Catawba, Unit 2.

Basis for proposed no significant hazards consideration determination: The Commisson has provided certain examples (48 FR 14870) of actions likely to involve no significant hazards considerations. The request involved in this case does not match any of those examples. However, the Commission has reviewed the licensee's request for the above amendment and has determined that should this request be implemented, it 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 or accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The bases for these conclusions follows:

Criterion 1—Operation of Catawba, Unit 2 in accordance with the proposed license amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes affect the Reactor Trip System (RTS), the system which monitors reactor system conditions and scrams the reactor when those conditions reach or are outside a predetermined allowable envelope. Scramming the reactor stops the fission process by rapidly inserting control rods. Failure of the RTS system can lead to a transient or accident without a scram. While such events are not a design basis accident, the probability and consequences of such a situation have been analyzed. The accident sequences which describe such situations are referred to as Anticipated Transients Without Scram (ATWS).

For design basis accidents, the RTS will successfully scram the reactor because the system meets the single failure criteria. The proposed changes do not affect the way in which the system meets the single failure criteria.

The proposed changes would not change the analyzed consequences of an ATWS since those consequences are based on an assumed failure of the RTS to stop the fission process. The proposed changes would not change this assumed failure.

The proposed changes do not significantly increase the probability of an RTS failure. WCAP-10271 and Supplement 1 evaluated the increases in ATWS probability for the four changes proposed by WCAP-10271 on a generic basis. Sensitivity analyses were used to examine the effects of each of the four changes. WCAP-10271 concluded that the changes in probability were very small. For Catawba, only three of the four changes addressed in WCAP-10271 are being requested—those related to maintenance time, test time and testing in bypass. The change in test interval is not being proposed for Catawba. The change related to testing in bypass does not require a change in Technical Specifications for Catawba.

In its February 21, 1985 Safety Evaluation Report addressing WCAP-10271, the NRC also concluded that the increase in probability of RTS failure due to the four proposed changes was very small and not significant.

The sensitivity analyses demonstrate that some increased probability is associated with each of the changes. However, the overall probability for all four of the changes proposed by WCAP-10271 was judged by the NRC not to be significant. The proposed subset of three changes would result in a smaller increase in probability than all four WCAP-10271 changes. Therefore, the increased probability associated with the three changes proposed for Catawba, Unit 2, would also not be significant.

Criterion 2—The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The four changes proposed in WCAP-10271 affect only the amount of time during which individual RTS channels may be unavailable and the frequency of testing of the RTS channels. The Technical Specifications presently allow the unavailability of individual channels for short periods of time. Changes in the allowed unavailability times and test intervals do not create a new failure mechanism; they only affect the probability of that failure as discussed under Criterion 1. As explained under Criterion 1, failures of the RTS have been analyzed.

Since none of the changes proposed by WCAP-10271 create new failure mechanisms, the changes proposed for Catawba, Unit 2 (which are a subject of the WCAP-10271 changes) would not create new failure mechanisms.

Criterion 3—The proposed license amendment does not involve a significant reduction in a margin of safety.

The proposed changes do not alter any safety limits or limiting safety system settings, nor do the changes reduce the requirements for the number of operable RTS channels.

As explained above under Criteria 1 and 2, the changes proposed by WCAP-10271 only affect the test intervals and allowed unavailable times for the RTS channels, and the increase in the

probability of RTS failure due to the proposed changes is not significant. In the February 21, 1985 SER the NRC concluded that the resultant increase in the overall plant risk of core damage was not significant.

Since the changes proposed for Catawba are a subset of the WCAP-10271 proposal, the resultant increase in overall plant core damage risk would be smaller than the increase for the four WCAP-10271 changes. Therefore, the overall reduction in plant margin of safety is not significant for the three changes proposed for Catawba.

Accordingly, the Commission proposes to determine that these changes do not involve a significant hazards consideration.

Local Public Document Room locations: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Attorney for licensee: Mr. William L. Porter, Esq., Duke Power Company, P.O. Box 33189, Charlotte, North Carolina 28242.

NRC Project Director: B.J. Youngblood.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: September 6, 1985.

Description of amendment request: The proposed change would correct the channel trip logic of the Containment Pressure Control System (CPCS) in Specification Table 3.3-3 "Engineered Safety Features Actuation System (ESFAS) Instrumentation" and clarify CPCS table headings within Tables 3.3-3, 3.3-4 "ESFAS Instrumentation Trip Setpoints" and 4.3-2 "ESFAS Instrumentation Surveillance Requirements" consistent with the corrected logic. The proposed change would also revise CPCS setpoints in Table 3.3-4 and rephrase the requirements of Surveillance Specifications 4.6.2c and 4.6.5.6.2 by referencing the revised Table 3.3-4.

CPCS Logic

Item 6 of Table 3.3-3 lists the CPCS as having four channels per train with 2-out-of-four trip logic and at least three channels required to be operable. This is inconsistent with the actual system logic as described in FSAR Section 7.6.16 and accepted by SER 7.6.2 because each of the four channels has a different function in the operation of the CPCS. Each of the pressure switches provides a start permissive/termination signal to one or two of the following components: Containment Spray Pump, Containment Air Return Fan, Hydrogen Skimmer Fan, Containment Air Return Damper, Hydrogen Skimmer Inlet Valve, and Containment Spray Isolation Valves. Therefore, in order to assure proper operation of the CPCS, all four channels must be operable. Table 3.3-3 would be revised to reflect that there are two trains of four channels each, and that all eight channels are required to be operable, or action in accordance with a new "Action 26" statement referenced by the table would be required. The new Action 26 would require that with any of the eight channels inoperable, the operator is to place the inoperable channel(s) in the start permissive mode within one hour and apply the action statement applicable to the affected component(s) (i.e., for Containment Spray components, apply the action statement of Specification 3.6.2; for the Containment Air Return components or the Hydrogen Skimmer components, apply the action of Specification 3.6.5.6). New Action 26 would replace Action 19 which is inappropriate for the actual CPCS system logic. Action 19 presently states that:

> With the number of OPERABLE channels one less than the Total Number of Channels, STARTUP and/or POWER OPERATION may proceed provided the following conditions are satisfied:
>
> a. The inoperable channel is placed in the tripped condition within 1 hour, and
>
> b. The Minimum Channels OPERABLE requirement is met; however, the inoperable channel may be bypassed for up to 2 hours for surveillance testing of other channels per Specification 4.3.11 and Specification 4.3.2.1.

Also, an existing footnote referenced in Table 3.3-4 in conjunction with Action 19, which granted relief from the provisions of Specification 3.0.4, would not be referenced in conjunction with new Action 26.

Item 6 of Tables 3.3-3, 3.3-4 and 4.3-2 designates the heading (i.e., functional unit) "Containment Pressure Control System", and includes as subheadings, "a. Start Permissive" and "b. Termination". The proposed change would combine the two subheadings and main heading into a single heading, "Containment Pressure Control System Start Permissive/Termination (SP/T)", or (for Table 3.3-3) just "Containment Pressure Control System". The existing subheadings are misleading because they imply that separate instrument channels (an bi-tables) are provided for the start permissive and for the termination functions. In reality, each CPCS instrument channel provides both the start and termination functions. No change in system intent or operation is associated with this proposed change. Rather, the revised heading would be a clarification consistent with the actual installed system as described in FSAR Section 7.6.16 and as accepted by the NRC staff in SER Section 7.6.2.

CPCS Setpoints

The function of the CPCS is to preclude underpressurization of the containment. As described in FSAR Section 7.6.16 and accepted in SER Section 7.6.2, the CPCS interlocks with the containment spray and containment air return/hydrogen skimmer systems to prevent operation when containment presure is below approximately 0.25 psig. As containment pressure increases, the CPCS provides a start permissive signal to allow operation of the Engineered Safety Features (containment spray and air return systems). The setpoint (containment high-high pressure, Item 4c of Table 3.3-4) for these ESF systems is less than or equal to 2. psig; the CPCS start permissive may occur at any containment pressure below 2.9 psig (but at or above about 0.25 psig) and will not affect system operation.

The current CPCS trip setpoint in Table 3.3-4 is impractical in that the start permissive and termination both occur at the same value of differential containment pressure (0.25 psid), which provides no adjustment band about the setpoint. The current CPCS allowable setpoint in Table 3.3-4 is the same value as for the CPCS trip setpoint, which is impractical because it does not provide for normal variations such as instrument drift. Also, the current CPCS setpoint allows termination of CPCS at any value less than or equal to 0.25 psid and is, thus, inconsistent with the FSAR which requires that termination occur at a value greater than −1.5 psig (e.g., a termination setpoint of −2.0 would satisfy the current technical specification, but not the FSAR).

Accordingly, the proposed amendment would change the CPCS trip setpoint in Table 3.3-4 from "less than or equal to 0.25 psid" to a range that is "greater than or equal to 0.3, but not in excess of 0.4 psig" and the CPCS allowable value from "less than or equal to 0.25 psid" to a range that is "greater than or equal to 0.25, but not in excess of 0.45 psig".

The CPCS setpoint changes for Table 3.3-4 and some editorial rephrasing would also be reflected in the surveillance specifications for the two ESF systems associated with the CPCS logic. Surveillance Specification 4.6.2c presently requires that each Containment Spray System periodically be demonstrated operable, in part, by:

(3) Verifying that each spray pump is prevented from starting by the Containment Pressure Control System when the containment atmosphere pressure is less than or equal to 0.25 psid,

(4) Verifying that each spray pump discharge valve is prevented from opening by the Containment Pressure Control System when the containment atmosphere pressure is less than or equal to 0.25 psid, and

(5) Verifying that each spray pump is automatically de-energized by the Containment Pressure Control System when the containment atmosphere pressure is reduced to less than or equal to 0.25 psid.

The proposed change would delete paragraphs (4) and (5) and rephrase (3) to read: "Verifying that the Containment Pressure Control System functions within the setpoint limits specified in Table 3.3–4, Item 6."

Similarly, Surveillance Specification 4.6.5.6.2 requires each Containment Air Return and Hydrogen Skimmer System to periodically be demonstrated operable "by verifying that each air return fan and hydrogen skimmer fan is prevented from starting by the Containment Pressure Control System when the containment internal pressure is less than or equal to 0.25 psid relative to the outside atmosphere." The quoted portion of this specification would be changed to read: "by verifying that the Containment Pressure Control System functions within the setpoint limits specified in Table 3.3–4, Item 6."

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether license amendments involve significant hazards considerations by providing certain examples (48 FR 14870). One of the examples, (i), of actions not likely to involve a significant hazards consideration relates to administrative changes to the Technical Specifications. The proposed changes to the headings for Item 6 in Tables 3.3–3, 3.3–4 and 4.3–2, and the rephrasing of Surveillance Specification 4.6.2c and 4.6.5.6.2 by substitution of functionally-equivalent statements, match the example of an administrative change. The other proposed changes do not match any of the examples. However, as discussed above, they are of a corrective nature and are intended to more accurately reflect the design and function of the CPCS as previously reviewed and accepted by the NRC. Such corrective changes are necessary for assurance of proper system operation. The proposed changes to clarify the required setpoints and allowable values, and the substitution of appropriate action statements, do not significantly change the intent or operation of the CPCS. Therefore, operation of the facility in accordance with the proposed amendments would not: (1) Involve a significant increase in the probability or consequence of an accident previously evaluated; or (2) involve a significant reduction in a margin of safety. These proposed changes also would not involve hardware modifications or design changes, and therefore, would not (3) create the possibility of a new or different kind of accident from any accident previously evaluated. Accordingly, the staff proposes to determine that this request involves no significant hazards consideration.

The licensee's letter of September 6, 1985, also requested changes to add Technical Specifications for Doghouse Water Level Instrumentation. This part of the request is outside the scope of this notice.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina, 28223.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Project Director: B. J. Youngblood.

Florida Power and Light Company, et al., Docket 50–335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of amendment request: February 28, 1985.

Description of amendment request: The proposed amendment would change the expiration date for the St. Lucie Plant, Unit No. 1 Operating License, DPR–67 from July 1, 2010 to March 1, 2016.

Basis for proposed no significant hazards consideration determination: The currently licensed term for St. Lucie Plant, Unit No. 1, is 40 years commencing with the issuance of the construction permit. The construction permit was issued to Florida Power and Light Company on July 1, 1970. Construction activities were completed just short of 6 years later and the operating license was issued on March 1, 1976. The effective operating license term resulting from the construction activities is just slightly more than 34 years. The licensee's application requests a 40-year operating license term for St. Lucie Plant, Unit No. 1, commencing with the operating license issuance date of March 1, 1976.

The licensee's request for extension of the operating license is based on the fact that a 40-year service life was considered during the design and construction of the plant. Although this does not mean that some components will not require replacement during the plant lifetime, design features were incorporated that maximize the inspectability of structures, systems, and equipment. Surveillance and maintenance practices that are implemented in accordance with the ASME Code and the unit Technical Specifications provide assurance that any degradation in plant equipment will be identified and corrected.

The design of the reactor vessel and its internals considered the effects of 40 years of operation at full power with a plant capacity factor of 80% (32 effective full power years). Analyses have demonstrated that expected cumulative neuron fluences will not be a limiting consideration. Calculations, based on a 40 year operating life, were made in accordance with the requirements of 10 CFR 50.61 and found to be below the screening criteria. In addition, to these calculations, surveillance capsules placed inside the reactor vessel provide a means of monitoring the cumulative effects of power operation.

Aging analyses have been performed for all safety-related electrical equipment in accordance with the requirements of 10 CFR 50.49, "Environmental qualification of electrical equipment important to safety for nuclear power plants", identifying qualified lifetimes for this equipment. These lifetimes are incorporated into equipment maintenance and replacement practices to insure that all safety-related electrical equipment remains qualified and available to perform its safety function throughout a 40 year lifetime.

Based upon the above, it is concluded that the extension of the operating license for St. Lucie Plant, Unit No. 1, to allow a 40-year service life is consistent with the safety analysis in that all issues associated with plant aging that are required to be addressed have been addressed. Since the proposed amendment does not involve changes in the Technical Specifications or safety analysis, the staff concludes that it meets the criteria of 10 CFR 50.92 in that it does not: (i) Involve any significant increases in the probability or consequences of an accident previously evaluated; or (ii) create the possibility of a new or different kind of accident from any accident previously evaluated; or (iii) involve any reduction in the margin of safety.

Based on this, the Commission proposes to determine that the proposed amendment, which provides for a 40 year operating life for St. Lucie Plant, Unit No. 1, involves no significant hazards considerations.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Ft. Pierce, Florida.

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street NW., Washington, DC 20036.

NRC Project Director: Ashok C. Thadani.

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: December 30, 1985.

Description of amendment request: The proposed change to the Technical Specifications would change the Moderator Temperature Coefficient (MTC) to provide more operating flexibility and remove restrictive operational requirements above 70% power. The amendment would change the MTC from 0.0×10^{-4} delta p/°F to $+0.3\times10^{-4}$ delata p/°F above 70% power.

Basis for proposed no significant hazards consideration determination: As a result of the high Reactor Coolant System dissolved boron concentrations required to accommodate 18-month cycles and 2700 MWt operation, Beginning-of-Cycle Moderator Temperature Coefficients (MTC) at St. Lucie Plant, Unit No. 2 have become more positive, at times approaching the Technical Specification Limits on MTC. This poses and operational constraint during power ascensions, particularly at the 70% power plateau. At this power level, the current Technical Specification limit on MTC changes abruptly from less than or equal to $+0.5\times10^{-4}$ delta p/°F (at or below 70% power) to $+0.0\times10^{-4}$ delta p/°F (above 70% power). To satisfy the more restrictive limit above 70% power, it has been necessary to hold at 70% power while xenon builds up. The buildup of xenon adds the negative reactivity necessary to reduce the critical boron concentration. The reduction in dissolved boron conentration, in turn, reduces the MTC below the Technical Specification limit. To avoid such time consuming and costly delays in power ascension, this amendment proposes to revise the current Technical Specification limit to provide more operating flexibility. The desired change is to permit an MTC of $+0.3\times10^{-4}$ delta p/°F above 70% power.

The proposed change to the MTC limit is an input parameter in various transient and accident analyses. Allowing the operating MTC to be more positive does not influence whether or not the transient is more or less likely to occur. Safety analyses have been performed to demonstrate that any transients or accidents whose results would be affected by more positive MTC limit do not have consequences that are significantly worse than previously evaluated. In addition, the revised analyses, incorporating the proposed change in MTC limit continue to demonstrate that all appropriate analyses criteria reported in the Reload Analysis Report "St. Lucie Unit 2 Proposed License Amendment Cycle 2 Reload", L-84-148, June 4, 1984, are met. In particular, the change does not increase previously calculated site boundary doses and the upset pressure limit for peak RCS pressure is not exceeded. Therefore, the proposed change in the MTC limit does not involve any increase in the probability or consequences of any accident previously evaluated.

The proposed change to the MTC limit does not constitute any change in the procedures for plant operation or hardware nor does it require any change in the accident analysis methodology discussed in the Cycle 2 Reload Analysis Report. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to the MTC limit does not significantly change the degree of protection for the design basis events as discussed above because detailed calculations showed that incorporation of the more positive MTC limit, yield results that are within the existing acceptance criteria. Therefore, the operation of the facility in accordance with the proposed amendment involves no significant reduction in a margin of safety.

Based on the above information, the staff proposed to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virgina Avenue, Ft. Pierce, Florida.

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street NW., Washington, DC 20036.

GPU Nuclear Corporation, Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: November 7, 1985, as revised March 3, 1986 (TSCR 135).

Description of amendment request: Requests approve of changes to the Appendix A Technical Specifications (TS) pertaining to the facility licensed operator staffing requirements. The change would revise the facility staffing requirements in TS Section 6.2.2. for the minimum number of licensed operators in the control room during the various modes of reactor operation. It would add requirements on the number of licensed operators to specifically allow more such operators in the control room.

Basis for proposed no significant hazards consideration determination: The licensee has proposed Technical Specification Change Requests (TSCR) No. 135 to revise the faciltity staffing requirements in TS Section 6.2.2 for the minimum number of licensed operators in the control room. The TS are being revised to be in accordance with the licensed operator staffing requirements in 10 CFR 50.54(m)(2). The station has been operating in accordance with these Commission regulations since January 1, 1984, as required; but the TS have not been revised to reflect these requirements. The propose change adds requirements on the minimum number of licensed senior operators and revises an existing requirement on the number of licensed operators to state *"At least* two *licensed reactor operators shall . . . ."* instead of "Two licensed reactor operators shall . . . ."

The original November 7, 1985, submittal was noticed in the **Federal Register** on December 18, 1985 (50 FR 51624).

The Commission has provided guidance concerning application of the standards for determining whether license amendments involve significant hazards by providing certain examples (48 FR 14870). One example of an amendment which is considered not likely to involve significant hazards considerations is: "(vii) A change to make a license conform to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations."

The proposed changes to conform with 10 CFR 50.54(m)(2) would provide an additional source of senior operator expertise on shift when needed and would not be likely to result in any other changes to facility operations. Those changes are therefore consistent with example (vii).

On that basis, the staff has reached a preliminary conclusion that these changes would not: (1) Involve a significant increase in the probability or consequences of a accident previously or consequences of an accident previously evaluated, (2) create the possibility of an accident of a type different from any evaluated previously, or (3) involve a significant reduction in a margin of safety.

Having reached the above conclusions, the staff proposes to determine that the application for amendment does not involve a significant hazards consideration.

Local Public Document Room location; Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

Attorney for licensee: G.F. Trowbridge, Esquire, Shaw, Pittman, Potts, and Trowbridge, 1800 M Street NW., Washington, DC 20036.

NRC Project Director: John A. Zwolinski.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authorty of Georgia, City of Dalton, Georgia, Docket No. 50-321, Edwin I. Hatch Nuclear Plant, Unit No. 1, Appling County, Georgia

Date of amendment request: January 6, 1986.

Description of amendment request: The amendment deletes fire hose stations T5-TA and T8-TA at elevation 147' in the Control Building from Table 3.13-2 of the Hatch Unit 1 Technical Specifications.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). One of the examples (i) of actions involving no significant hazards considerations relates to a purely administrative change to Technical Specifications. Table 3.13-2, which was added by Amendment 50, was intended to list hose stations serving areas which contain safety-related equipment. Subsequent reviews by the licensee have determined that no safety related equipment is contained in the areas served by the hose stations proposed for deleting. Operation of the hose stations is not altered by this change. The effect of this change is to remove the two stations from the control of the Technical Specifications so that they may be under administrative controls appropriate for non-safety related equipment. This change is an administrative change similar to the example. The Commission therefore proposes to determine that this action involves no significant hazards considerations.

Local Public Document Room Location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: G.F. Trowbridge, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: Daniel R. Muller.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-321, Edwin I. Hatch Nuclear Plant, Unit No. 1, Appling County, Georgia

Date of amendment request: January 7, 1986.

Description of amendment request: This amendment would modify the Technical Specifications to provide revised reactor vessel operating temperature and pressure limits and to make associated editorial changes including the deletion of Figure 3.6.1 which has no use in the revised requirements and the renumbering of other figures to reflect the deletion of Figure 3.6.1.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain Examples (48 FR 14870). Examples of actions involving no significant hazards considerations are Example (i) an amendment involving a purely administrative change to Technical Specifications and Example (ii) an amendment involving a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications. The current Technical Specification limits are provided through use of four Figures: Figure 3.6.1 Predicted Adjustment Reference Temperature as a Function of Fluence, Figure 3.6.2 Minimum Temperature for Pressure Tests such as Required by Section XI, Figure 3.6.3 Minimum Temperature for Non-Nuclear Heating or Cooldown Following Nuclear Shutdown, and Figure 3.6-4 Minimum Temperature for Core Operation (Criticality). Figure 3.6.1 is used with each of the other three figures to establish the temperature correction that must be added to the curves in these figures in order to determine the pressure temperature limit for the current Fluence explosure. The proposed change revises Figures 3.6.2, 3.6.3 and 3.6.4 to provide the pressure-temperature limits for 16 effective full power years (EFPY) of operation, eliminating the need to use Figure 3.6.1 to correct the curves in these Figures. In addition, the revised reactor vessel temperature-pressure limits reflect the results of tests conducted on surveillance specimens that were removed from the Hatch Unit 1 reactor vessel in November 1984 and are more restrictive than the current Technical Specification limits. Therefore this change is similar to Example (ii). The associated editorial changes including the deletion of Figure 3.6.1 which has no use in the revised requirements and the renumbering of other figures to reflect the deletion of Figure 3.6.1 are similar to Example (i).

Therefore, since the application for amendment involves proposed changes that are similar to examples for which no significant hazards consideration exists, the Commission has made a proposed determination that the application for amendment involves no significant hazards considerations.

Local Public Document Room Location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: G.F. Trowbridge, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: Daniel R. Muller.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366 Edwin I. Hatch Nuclear Plant, Unit Nos. 1 and 2, Appling County, Georgia

Date of amendment request: January 6, 1986.

Description of amendment request: These amendments would modity the Technical Specifications (TS) for each unit to delete the requirement that a "normal 8 hour day" be the objective for the normal working hours for operating personnel. They would however retain the objective of a normal 40 hour week while the plant is operating. the licensee has proposed this change in normal workday hours in order to implment a more flexible shift schedule with alternating weeks of three and four 12 hour days.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Since the normal 40 hour week is maintained, and the change results in

fewer shift turn overs and allows more days off between work periods, it is not expected to result in a significant increase in the probability or consequence of an accident previously evaluated or result in a significant reduction in a margin of safety. Since modes of plant operation are unchanged, no new types of accident are created by this change.

On the basis of the above, the Commission has determined that the request amendments meet the three criteria and therefore has made a proposed determination that the amendment application does not involve a significant hazards consideration.

Local Public Document Room Location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: G.F. Trowbridge, Shaw, Pittman and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: Daniel R. Muller.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-321 and 50-366 Edwin I. Hatch Nuclear Plant, Units Nos. 1 and 2, Appling County, Georgia

Date of amendment request: January 6, 1986.

Description of amendment request: These amendments would modify the Technical Specifications for Hatch Units 1 and 2 to delete the requirements for the Control Building CO_2 fire suppression system. Primary and secondary fire protection in each of the areas serviced by the Control Building CO_2 system is now provided by other means includig sprinklers, hose station, and portable fire extinguishers. These changes were initiated in response to Appendix R requirements. Therefore, the Control building CO_2 system is now redundant to other installed fire suppression systems. Because CO_2 displaces oxygen in the human body, a life safety hazard is presented during performance of surveillance on this system. Maintenance and surveillance of the system by personnel, as well as inadvertent actuation, could pose a significant personnel safety hazard. GPC requested that the NRC delete the requirement for an operable Control Building CO_2 system from the Hatch Units 1 and 2 Technical Specifications for these reasons.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exits (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The probability of occurrence and the consequences of an accident or malfunction of equipment important to safety are not increased above those analyzed in the FSAR dur to this change because other fire protection systems are provided which will ensure equivalent or better protection from the fire hazard in each of the areas serviced by the control building CO_2 system.

The possibility of an accident or malfunction of a different type than analyzed in the FSAR does not result from this change because no changes to the plant modes of operation are being proposed and the remaining fire suppression capabilities are sufficient for the hazards involved.

The margin of safety is not changed significantly be deletion of the Control Building CO_2 system because new systems have been added and provided with appropriate Technical Specification requirements.

On the basis of the above, the Commission has determined that the requested amendments meet the three criteria and therefore has made a proposed determination that the amendment application does not involve a significant hazards consideration.

Local Public Document Room Location: Appling county Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: G. F. Trowbridge, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: Daniel R. Muller.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Unit Nos. 1 and 2, Appling County, Georgia

Date of amendment request: March 7, 1986.

Description of amendment request: These amendments would modify the Technical Specifications to permit temporary adjustments to trip setpoints for the Main Steam Line Radiation Monitor (MSLRM) instruments as described in Tables 3.11, 3.2-1 and 3.2-8, to allow performance of tests of hydrogen injection into the primary coolant. These tests will be performed in order to evaluate Hydrogen Water Chemistry (HWC) as a potential mitigator of intergranular stress corrosion cracking (IGSCC).

The temporary change proposed would permit the normal full power background level, associated with the Main Steam High Radiation scram and isolation setpoints, to be increased only so as to compensate for the anticipated increase in the main steam radiation levels during hydrogen injection. This background radiation level increase when hydrogen injection is underway is caused by higher levels of short half-life N-16 carryover into the main steam.

The proposed modification would allow this temporary adjustment to the setpoints to be made only when above 20 percent of rated power and would require that it be made within 24 hours prior to planned start of hydrogen injection. It would also require that normal setpoints be established 24 hours of reestablishing normal radiation levels after completion of the hydrogen injection and prior to establishing power levels below 20 percent rated power.

A similar change was approved for the purpose of hydrogen injection tests at the Pilgrim Nuclear Plant by amendment 86 to the Pilgrim license, dated April 5, 1985.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determination whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment woud 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 current setpoints are less than or equal to 3 times normal rated power background. The only design basis accident which takes credit for main steam isolation valve (MSIV) closure on Main Steam Line high radiation is the design basis control rod drop accident (CRDA). The CRDA is only of concern below 10 percent of rated power. Since the current MSLRM setpoint will not be changed when at or below 20 percent rated power, the MSLRM sensitivity to fuel failure is not impacted and the

FSAR analysis for the CRDA remains valid.

The MSLRM also performs a general function of monitoring for failed fuel. This capability to monitor fuel failures is retained with the adjusted radiation "background" setpoint. Additionally, this fuel failure monitoring capability is provided through the offgas radiation monitor, performance of primary coolant analyses, and routine radiation surveys.

If, due to a recirculation pump trip or other unanticipated power reduction event, the reactor drops below 20 percent rated power without setpoint readjustment, control rod withdrawal will be prohibited by procedures until the necessary setpoint readjustment is made. This ensures that fuel failures of the type concerning the MSLRM (specifically FSAR CRDA analysis) are unlikely.

On the basis of the above, the Commission has determined that the requested amendments meet the three criteria and therefore has made a proposed determination that the amendment application does not involve a significant hazards consideration.

Local Public Document Room location: Applying County Public LIbrary, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: G.F. Trowbridge, Shaw, Pittman, Potts and Trowbridge, 1800 M Street NW., Washington, DC 20036.

NRC Project Director: Daniel R. Muller.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: January 9, 1986.

Description of amendment request: The proposed amendment would revise the Duane Arnold Energy Center (DAEC) Technical Specifications to (a) conform to the Commission rule 10 CFR 50.49 related to environmental qualification of safety related electrical equipment, (b) achieve consistency throughout the Technical Specifications, (c) correct several inadvertent errors caused by previous amendments, and (d) correct some typographic errors.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (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 staff has reviewed the licensee's request and finds that the proposed amendment: (1) Does not involve a significant increase in the probability or consequences of an accident previously evaluated because (a) conformance with a Commission rule is intended to decrease probability or consequences of accidents, (b) consistency of the Technical Specifications does not affect the probability or consequences of any accidents, (c) correction of inadvertent errors caused by previous amendments does not affect the probability or consequences of previously evaluated accidents, and (d) correction of typographic errors is an administrative change which does not affect the probability or consequences of any accidents; (2) does not create the probability of a new or different accident because (a) conformance with a Commission rule, (b) consistency throughout the Technical Specifications, (c) correction of errors caused by previous amendments, and (d) correction of typographic errors will not create a new or different kind of accidents; and (3) does not involve a significant reduction in any margin of safety because changes (a), (b), (c), and (d) do not reduce any margins of safety.

Therefore, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room Location: Cedar Rapids Public Library, 500 First Street, SE., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Harold F. Reis, Esquire, Newman and Holtzinger, 1025 Connecticut Avenue NW., Washington, DC 20036.

NRC Project Director: Daniel R. Muller.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: February 7, 1986.

Description of amendment request: The proposed amendment would revise the Duane Arnold Energy Center (DAEC) Technical Specifications (TS) reflecting the future incorporation of normal range radiation monitor to be located in the new Low-Level Radwaste Processing and Storage (LLRPS) facility at the DAEC. The LLRPS facility is being built in accordance with 10 CFR 50.59. The normal range radiation monitor is being installed in the LLRPS facility's ventilation exhaust stack, and is intended to provide monitoring of any release of radioactive effluent to the environments, as required by General Design Criterion 64 of 10 CFR 50, Appendix A. Specifically, the proposed change will incorporate additional restrictions relative to actions to be taken if the proposed instrument is found to be inoperable, and provides for surveillance requirements intended to assure the instrument operability.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (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 staff has reviewed the licensee's request and finds that the proposed amendment: (1) Does not involve a significant increase in the probability or consequences of an accident previously evaluated because incorporation of the additional restrictions regarding the new radiation monitor has no effect on the probability or consequences of accidents previously evaluated; (2) does not create a possibility of new or different kind of accident because the change incorporates additional restrictions in the TS; and (3) does not involve a significant reduction in a margin of safety because the proposed restrictions in the TS have no effect on any margins of safety.

Therefore, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street SE., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Harold F. Reis, Esquire, Newman and Holtzinger, 1025 Connecticut Avenue NW., Washington DC 20036.

NRC Project Director: Daniel R. Muller.

Long Island Lighting Company, Docket No. 50-322 Shoreham Nuclear Power Station, Suffolk County, New York

Date of amendment request: January 20, 1986.

Description of amendment request: The proposed amendment would (1) add a footnote to Table 4.11.1.1.1-1 of the Shoreham Technical Specifications (TS) to require that the analysis of the batch waste release tanks and sumps for dissolved and entrained gases be performed on one batch per month, only if a batch is released during the month; and (2) revise the description of the location of the milk sample control locations in Table 3.12.1-1, Part 4a, of the TS.

The licensee requested the change to Table 4.11.1.1.1-1 in consideration of the fact that batch discharges of liquid radioactive waste may not be made every month, especially if the plant is shutdown for long periods. The change to the location of the "control" milk samples has been requested to ensure that the locations better satisfy the concept of a "control", by representing true background values which are unaffected by plant operations.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; 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.

A discussion of these standards as they relate to these amendment requests follows:

Standard 1—Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

Batch Tank Analysis Frequency

This proposed change does not involve any physical modification to any power plant component. Waste tanks would continue to be sampled prior to discharge, but would not be required to be sampled monthly for gaseous activity unless a batch were actually discharged. The probability of accidental discharge is therefore not changed and neither are the consequences. In fact, the probability of an accidental discharge is probably reduced, because reducing the number of samples reduces the probability that an operator error during the sampling process would cause an accidental discharge.

Milk Sample Control Location

Milk control samples are compared to milk samples taken in the vicinity of the facility to monitor the uptake of radioactive material by animals (cows and goats) from the plant during normal operation. This control function has no connection with accidents at the facility, and consequently, this change has no effect on the probability or consequences of an accident.

Standard 2—Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated.

Batch Tank Analysis Frequency

None of the batch tanks or sumps or any of their attendant equipment or instrumentation are modified by the proposed change. The tanks will continue to be sampled prior to discharge, and the actual discharge procedures will not be changed, only the frequency of the samples. This change does not, therefore create the possibility of a new or different kind of accident.

Milk Sample Control Location

As described above, the location where the milk control sample is taken has no effect on the operation of the plant. It is an off-site event. It cannot create the possibility of any type of accident.

Standard 3—Involve a significant Reduction in a Margin of Safety.

Batch Tank Analysis Frequency

The proposed change does not affect the limits on the types, amounts or rates at which radioactive material may be discharged. Waste will still be required to be sampled prior to discharge, and must continue to meet the same limits in order to limit the exposure to the public from the discharge. Because the discharge limits are not changed, the margins of safety concerning permissible radiation doses to the public are not reduced.

Milk Sample Control Location

The proposed change to the control sample location is intended to ensure that the control sample is not contaminated by effluent from the plant, so that the effects of plant effluents on samples taken closer to the plant are not masked. This change is therefore intended to maintain the margins of safety associated with minimizing radiation doses to the public.

Local Public Document Room location: Shoreham Wading River Public Library, Route 25A, Shoreham, New York 11786.

Attorney for licensee: Anthony F. Earley, Esquire, Long Island Lighting Company, 175 East Old Country Road, Hicksville, New York 11801.

NRC Project Director: Walter R. Butler.

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of Amenement Request: December 2, 1985.

Decription of Amenement Request: The proposed change would revise the Appendix A Technical Specifications by revising Technical Specification 3.1.1.3, MODERATOR TEMPERATURE COEFFICIENT. Technical Specification 3.1.1.3 defines acceptable values of the moderator temperature coefficient (MTC) for various thermal power levels. Surveillance Requirement 4.1.1.3.2 defines the required MTC measurement frequency, including the requirement that MTC be measured within 7 effective-full-power days (EFPD) of reaching 40 EFPD core burnup after each refueling.

A MTC measurement will be performed as part of the standard reload startup testing program for Waterford 3. However, core burnup at that stage of the test program is on the order of 5-10 EFPD—less than the minimum 33 EFPD presently required by Surveillance Requirement 4.1.1.3.2. The proposed change would allowt the "40 EFPD" MTC measurement to be taken at a thermal power level greater than 15% at any point prior to reaching 40 EFPD core burnup. This change would continue to satisfy the intent of an MTC measurement performed during the reload startup testing program.

Basis for Proposed No Significant Hazards Considerations Determination: The NRC staff proposes to determine that the proposed change does not involve a significant hazards consideration because it meets the three criteria of 10 CFR 50/92(c). The basis for this proposed finding is given below.

(a) Technical Specification 3.1.1.3 exists in order to ensure that the MTC values assumed in the FSAR Safety Analyses are conservative with respect to the measured values. MTC varies slowly as a function of core burnup, being more positive at the begining of core life and becoming more negative with increasing burnup. Measurements of MTC are still required prior to operation above 5% of rated thermal

power and at any thermal power within 7 EFPD of reaching two-thirds of expected core burnup each cycle. Therefore, the earlier in core life that MTC is measured, the closer will be the measured value to the positive limits of Technical Specification 3.1.1.3. In this sense, the proposed change to allow for an earlier MTC measurement is in the conservative direction. Therefore the proposed change will not involve an increase in the probability or consequences of any accident previously evaluated.

(b) The MTC measurement is performed to confirm that the measured value meets the criteria in the limiting condition for operation of Technical Specification 3.1.1.3. The proposed change does not alter the LCO criteria; rather, it allows performance of the MTC measurement at any earlier (more conservative) time than persently allowed. The measured MTC value is not used as an imput to any safety-related calculation, setpoint, etc. and thus has no potential for affecting future plant operations. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(c) In performing the MTC measurement during reload startup testing all standard criteria (e.g., xenon equilibrium)will be met to ensure an accurae measurement. With respect to MTC, safety margin is defined by the LCO criteria of Technical Specification 3.1.1.3. Allowing for a slightly earlier measurement of MTC has no effect on the existing safety margin. Therefore, the proposed change will not involve a reduction in a margin of safety.

As the change requested by the licensee's December 2, 1985 submittal satisfies the criteria of 50.92, it is concluded that: (1) The proposed change does not constitute a significant hazards cinsideration as defined by 10 CFR 50.92: (2) there is a resonble assurance that the health and safety of the public will not be endangered by the proposed change; and (3) this action will not result in a condition which significantly alters the impact of the station on the environment as described in the NRC Final Environmental Statement.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: Mr. Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M St., NW., Washington, DC 20036.

NRC Project Director: George W. Knighton.

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of Amendment Request: December 2, 1985.

Description of Amendment Request: The proposed change would revise the Appendix A Technical Specifications by revising the applicability of Technical Specification 3.4.8.3, OVERPRESSURE PROTECTION SYSTEMS. Technical Specification 3.4.8.3 defines the requirements for low temperature overpressure protection (LTOP) provided by the shutdown cooling system including the applicable operation modes. The proposed change revises the applicability in Mode 4 to allow a lower Reactor Coolant System (RCS) temperature during inservice leak and hydrostatic testing without imposing the requirements of LTOP. This change is necessary to allow compliance with the requirements of Technical Specification 3.4.9 which requires that the integrity of all ASME Code Class 1, 2 and 3 components be maintained. (Note: LTOP is required at all times, either through the shutdown cooling system relief valves or the primary safety valves. When this evaluation indicates that LTOP is not required, the reference is to the LTOP provided by the shutdown cooling system only.) In the event that the Code Class 1 component does not meet the integrity requirements of Technical.

Specification 3.4.9 (e.g., a weld repair), Action Statement a. requires that integrity be restored prior to increasing the RCS temperature more than 70 °F above the minimum temperature required by NDT considerations—presently 202 °F (Lowest Service Temperature of Figures 3.4-2 and 3.4-3). Restoring integrity includes a hydrostatic test per the ASME Code at approximately 2400 psia which, by Action Statement a., must be done prior to increasing the RCS temperature above 272 °F.

The present restriction in Technical Specification 3.4.8.3 requiring that LTOP be implemented below 285 °F (i.e., Shutdown Cooling System Relief Valves aligned and lift setting less than or equal to 430 psia) will not allow the hydrostatic test to be performed. Additionally, the one-hour Action Statement b. of Technical Specification 3.4.8.3 does not allow sufficient time to voluntarily enter the action, and complete the necessary preparations, pressurization, inspections and depressurization per ASME Code requirements. By lowering the Mode 4 temperature to 260 °F (for inservice leak and hydrostatic testing only) at which Technical Specification 3.4.8.3 becomes applicable, compliance with Action Statement a. of Technical Specification 3.4.9 will be allowed with no reduction in safety margin.

Basis for Proposed No Significant Hazards Considerations Determination: The NRC staff proposes to determine that the proposed change does not involve a significant hazards consideration because it meets the three criteria of 10 CFR 50.92(c). The basis for this proposed finding is given below.

(a) The present temperature of 285 °F specified in Technical Specification 3.4.8.3 was established based on the most restrictive heatup or cooldown induced stress condition (allowed by Technical Specification 3.4.8.1) which is necessary to ensure compliance with 10 CFR 50 Appendix G. The limiting case requires pressure below the 50 °F/Hr heatup limit shown on Figure 3.4-2. At 285 °F, the allowable pressure limit is 2,500 psia, corresponding to the lift pressure of the primary safety valve required by Technical Specification 3.4.2.1. Above this temperature (285 °F), the safety valve provides overpressure protection and LTOP is no longer required. All other allowed heatup and cooldown rates are bracketed by this condition and are conservative.

For the proposed change, restricting temperature changes during inservice hydrostatic and leak testing operations to less than or equal to 10 °F in any one hour period per Technical Specification 3.4.8.1.g. reduces termal stresses and permits RCS pressure of 2500 psia at or above 260 °F. Under this condition the LTOP provided by Technical Specification 3.4.8.3 is not required to comply with Appendix 6 (refer to Figure 3.4-2, Inservice Test curve) and no increased probability of brittle fracture of RCS components results. Therefore, the proposed change will not involve an increase in the probability or consequences of any accident previously evaluated,

(b) The only consideration involved in determination of the appropriate LTOP temperature is that of brittle fracture. It is necessary to restrict the combined stress conditions in the RCS materials due to thermal differentials and pressure induced stresses to an acceptable level. This is accomplished through compliance with Technical Specification 3.4.8.1. LTOP protection is provided to limit the maximum RCS pressure from certain postulated transients whenever the RCS safety valve setpoint is not sufficient to limit the maximum pressure (i.e., below 285 °F). Restricting the allowable temperature change during

inservice hydrostatic and leak testing results in lower thermal stresses, compensating for the higher allowable pressure up to the setting of the RCS Safety Valve. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(c) The proposed change described above results in the continued compliance with the criteria of 10 CFR Part 50 Appendix G and the Standard Review Plan Section 5.2.2, including Branch Technical Position RSB 5-2. The proposed change does not affect the safety margin as shown in Figure 3.4-2, nor does the proposed change affect compliance with the fracture toughness requirements of Appendix G due to the restriction on heatup and cooldown rates imposed by Technical Specification 3.4.8.1. Therefore, safety margins are not reduced.

As the changes requested by the licensee's December 2, 1985 submittal satisfy the criteria of 50.92, it is concluded that: (1) The proposed change does not constitute a significant hazards consideration as defined by 10 CFR 50.92; (2) there is a reasonable assurance that the health and safety of the public will not be endangered by the proposed change; and (3) this action will not result in a condition which significantly alters the impact of the station on the environment as described in the NRC Final Environmental Statement.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Attorney for licensee: Mr. Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M St., NW., Washington, DC 20036.

NRC Project Director: George W. Knighton.

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of Amendment Request: December 2, 1985.

Description of Amendment Request: The proposed changes would delete Technical Specification 2.2.2, "Core Protection Calculator Addressable Constants"; delete Table 2.2-2, which provides a listing of the CPC Type I and Type II Addressable Constants; and delete the associated Bases. The proposed changes will also revise the appropriate page of the Index, delete the reference to specification 2.2-2 from Notation (9) of the Table 4.3-1 and delete the note in Administrative Control 6.8.1.g.

The addressable constants of the Core Protection Calculators (CPCs) provide a mechanism to incorporate reload-dependent parameters and calibration constants to the CPC software so that the CPC core model is maintained current with changing core configurations and operating characteristics. As a method to avoid gross errors upon operator entry of an addressable constant, a reasonability check requirement was imposed by the original NRC CPC Review Task Force. The CPC software has been designed with automatic acceptable input checks against limits that are specified by the CPC functional design specifications. Therefore, inclusion of the addressable constants and the software limit values in the Technical Specifications (2.2.2 and Table 2.2-2) is redundant. Furthermore, inclusion of addressable constant values in the Technical Specifications that are more restrictive than the software limit values does not result in additional safety benefit because existing LCOs (e.g. 3.2.3, 3.3.1) either provide adequate assurance that CPC-calculated values are accurate, or prohibit operation with non-conservative addressable constant values.

Proper administrative control procedures are available to assure that correct values of addressable constants are entered by the operator. Any CPC software changes involving addressable constants or software limit values are made and tested under NRC-approved software change procedures and are available for review.

Basis for Proposed No Significant Hazards Considerations Determination The Commission has provided guidance concerning the application of standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870) of amendments that are considered not likely to involve significant hazards considerations. Example (i) relates to a purely administrative change to Technical Specifications: for example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature. Example (iv) relates to a relief granted upon demonstration of acceptable operation from restriction that was imposed because acceptable operation was not yet demonstrated. This assumes that the operating restriction and the criteria to be applied to a request for relief have been established in a prior review and that it is justified in a satisfactory way that the criteria have been met.

In this case, the proposed changes are similar to both Example (i) and Example (iv) in that deletion of Technical Specification 2.2.2, Table 2.2-2 and modifications to the related pages are purely administrative changes, and are also relief granted upon demonstration of acceptable operation from an operating restriction that was imposed because acceptable operation had not yet been demonstrated.

Conceptually, the addressable constant reasonability checks are the equivalent of the limits of an adjustable potentiometer in the conventional analog hard-wired type protection system. Potentiometer limits are not specified in the Technical Specifications of analog plants, as doing so would be unrealistic and would make no contribution to plant safety. The addressable constants are basically calibration constants used to assure that the CPC calculations of core parameters accurately reflect actual plant conditions. The proposed changes may therefore be considered to achieve consistency throughout the Technical Specifications in that they remove a listing of calibration constants which is redundant in purpose and is not provided for any other plant system.

Removal of the listing of the CPC addressable constants and the allowable ranges is a relief from an operating restriction that was imposed by the NRC CPC Review Task Force because acceptable operation was not yet demonstrated. The addressable constants Technical Specification was imposed on the first CPC plants because this system was the first application of a digital computer based portion of a reactor protection system. Subsequent operational experience with the CPC system by several plants has demonstrated acceptable operation. Relief from this administrative restriction has been approved following several meetings between the utilities with CPC-equipped plants and the NRC staff, which included members of the CPC Review Task Force. The criteria applied to the relief from this operating restriction have been established and there is satisfactory justification that they have been met. The NRC staff issued a draft Safety Evaluation Report dated April 12, 1985 (concerning the removal of the addressable constants Technical Specification), which provides this justification.

This change eliminates redundant administrative requirements concerning the CPC addressable constants. The function of these requirements is already implemented by the allowable value checks in the CPC software.

Changes to the addressable constants are complished through strict administrative procedures. Therefore, the proposed changes will not involve an increase in the probability or consequences of an accident previously evaluated.

This change involves an elimination of redundant administrative requirements. The analyses in Chapter 15 of the Waterford 3 FSAR continue to bound all events where the CPCs may be challenged. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The safety margin is governed by LCOs (e.g. 3.2.3, 3.3.1) independently of the addressable constant limits of Table 2.2–2. Administrative procedures involving the CPC addressable constants ensure that the CPC core model is calibrated to current plant conditions. Therefore, the proposed change will not involve a reduction in a margin of safety.

As the changes requested by the licensee's December 2, 1985 submittal fit the examples provided, as well as satisfy the criteria of 50.92, it is concluded that: (1) The proposed changes do not constitute a significant hazards consideration as defined by 10 CFR 50.92; (2) there is a reasonable assurance that the health and safety of the public will not be endangered by the proposed changes; and (3) this proposed action will not result in a condition which significantly alters the impact of the station on the environment as described in the NRC Final Environmental Statement.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Attorney for licensee: Mr. Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M St., NW., Washington, DC 20036.

NRC Project Director: George W. Knighton.

Mississippi Power & Light Company, Middle South Energy, Inc., South Mississippi Electric Power Association, Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: December 27, 1985, as supplemented January 31, 1986.

Description of amendment request: The amendment would change License Condition 2.C.(33)(d)(2) regarding the test and analytical program for demonstration of the acceptability of the Grand Gulf Nuclear Station (GGNS) Unit 1 hydrogen control system by changing the schedule for completion of the program from the first refueling outage to the schedular requirements in the January 25, 1985, amendment to 10 CFR 50.44, "Standard for combustible gas control system in light-water-cooled power reactors."

Basis for proposed no significant hazards consideration: The facility License Condition 2.C.(33)(d)(2) states, "Prior to startup following the first refueling outage, MP&L must obtain NRC approval that an adequate hydrogen control system for the plant is installed and will perform its intended function in a manner that provides adequate safety margins." By letter dated December 27, 1985, the licensee proposed to change this license condition to state that the hydrogen control research program shall be completed in accordance with the requirements of the recently published final hydrogen control rule (10 CFR 50.44, as amended January 25, 1985).

The present license condition was issued August 31, 1984, in Amendment 13 to the low power operating license based on the then-existing analysis and test program for the hydrogen control system. Since that time, the analysis and test program has been expanded in response to staff requests for additional analysis and tests and because of delays in the test facility construction and operation. By letter dated January 31, 1986, the licensee stated that completion of the hydrogen control test program and submittal of the final analysis of the hydrogen control system for the Grand Gulf Nuclear Station is presently estimated as June 30, 1987.

The hydrogen control rule in § 10 CFR 50.44(c)(3)(vii) required holders of operating licenses to submit a proposed schedule for meeting the requirements in the rule by June 25, 1985. The rule also requires the proposed schedule to be consistent with relevant license conditions on hydrogen control measures or to be consistent with approved amendments to the license conditions. By letter dated June 24, 1985, the licensee proposed a completion date of December 31, 1986, which was not consistent with its scheduled startup from the first refueling outage. By letter dated October 22, 1985, the staff requested licensee to reconsider its completion date or propose a license amendment to change the required date in License Condition 2.C.(33)(d)(2). This amendment would change the schedular requirement to reflect the requirements of the rule as amended January 25, 1985. Under the amended rule the required completion date is proposed by the licensee and approved by the NRC staff.

The Commission has provided certain examples (48 FR 14870) of actions likely to involve no significant hazards considerations. One of the examples, (vii), is a change to make a license conform to changes in regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations. This amendment will make the license consistent with the schedular requirements in the current rule on hydrogen control systems, which was amended after License Condition 2.C.(33)(d)(2) was issued. The Grand Gulf Nuclear Station, Unit 1, has installed and is using a hydrogen control system which was reviewed and accepted by the staff in Supplement No. 5 to the Safety Evaluation Report (NUREG–0831) subject to confirmation of its adequacy. By letters dated December 27, 1985, and January 31, 1986, the licensee has provided information regarding the significant hazards considerations involved in extending the date for completion of tests and analyses to June 30, 1987. The licensee has concluded, based on present tests and analyses, that the results of the present test program are expected to lead to very few minor modifications. The NRC staff concludes, based on a preliminary review of the licensee's submittals that the proposed change in License Condition 2.C.(33)(d)(2) will result in very minor changes, if any, in plant operation for a short time interval and the changes are clearly in keeping with the regulations. Therefore, the proposed amendment is similar to example vii. Accordingly, the Commission proposes to determine that this amendment does not involve a significant hazards consideration.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39145.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036

NRC Project Director: Walter R. Butler.

Niagara Mohawk Power Corporation, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of amendment request: January 3, 1986.

Description of amendment request: The proposed amendment would restrict the replacement of dry tubes associated with the intermediate range monitor (IRM) and source range monitor (SRM) instrumentation. The same basis

specified for local power range monitor (LPRM) associated dry tubes now in the Technical Specifications (TS) would be applicable. The proposed amendment would replace the term "LPRM" with the word "instrument" in order to include the assorted monitoring devices. Currently, the TS do not directly consider instrument penetrations, except for LPRM, in determining the operability of the core spray or containment spray systems. This change would assure that these systems are considered operable only when no more than one control rod drive housing or instrument penetration is opened at one time.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c).

The licensee presented its determination of no significant hazards considerations as follows:

The proposed amendment in accordance with the operation of Nine Mile Point Unit 1 will not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change to allow for the replacement of dry tubes associated with SRM and IRM instrumentation will not increase the probability of any accident previously evaluated. The requirement that no more than one penetration be allowed opened at the same time will be applicable to more penetrations and will therefore be more restrictive than the current Technical Specifications. Additionally, controls and available preventative measures now utilized in the opening of LPRM penetrations, will apply for other instrument penetrations.

The proposed amendment in accordance with operation of Nine Mile Point Unit 1, will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed amendment will allow for the performance of a maintenance task under conditions already approved for similar equipment. Additionally, the approval of this change will not initiate a new or different procedure. This section could currently be interpreted as addressing the other instruments, but it is Niagara Mohawk's intent to clarify this section of the Technical Specifications in order to improve the overall clarity of Nine Mile Point Unit 1 Technical Specifications.

The proposed amendment in accordance with the operation of Nine Mile Point Unit 1 will not involve a significant reduction in a margin of safety. Although the Technical Specifications currently address only LPRM penetrations, the supporting information above demonstrates that by changing "LPRM" to instrument, no new situation or hazard will be created. Therefore, the change does not represent a significant reduction in a margin of safety.

Based on the above analysis, the proposed amendment involves no significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis.

Therefore, based upon this review, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: State University College at Oswego, Penfield Library—Documents, Oswego, New York 13126.

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner and Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

NRC Project Director: John A. Zwolinski.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of amendment request: January 28, 1986.

Description of amendment request: The amendment would modify the Technical Specifications (TS) to reflect a change in the limits for minimum reactor vessel temperature for pressurization. These limits are based on measured nil-ductility temperature (NDT) shifts of irradiated Nine Mile Point Unit 1 (NMP-1) reactor vessel material specimens. In addition, operating limits during hydrostatic testing with the reactor critical would be deleted.

Three surveillance capsules were installed in the NMP-1 reactor vessel prior to startup in 1969. Two surveillance capsules have been removed from the NMP-1 reactor vessel to date. The A Capsule was removed in 1979 after a vessel exposure of 5.8 effective full power years (efpy) and the C Capsule was removed in 1982 after a vessel exposure of 8.0 efpy. Due to the reaial, circumferential, and axial positions of the capsules, the exposure of the capsule specimens is calculated to be 87 percent of the maximum exposure of the reactor vessel shell at the ¼t location. Thus, the exposures of the three original capsules lag the maximum reactor vessel exposure.

The full contents from the C Capsule were tested to determine tensile properties and reactor vessel base metal, weld metal, and heat affected zone (HAZ) Charpy impact NDT. Six Charpy base metal specimens from the A Capsule were also tested to confirm the NDT shift of the base metal observed in the C Capsule specimens. In addition, one base metal tensile specimen from the A Capsule will be tested in order to obtain further information correlating yield strength changes with shifts in NDT.

Based on three tests, pressure/temperature operating limits appropriate for up to 11 efpy were established. The Regulatory Guide 1.99 (proposed Revision 2) method for extrapolation was used except for the recommended addition of one standard deviation to the NDT shift. The operating limits associated with the 11 efpy have been administratively implemented at NMP-1 and are considered applicable to current plant operation.

Figure 3.2.2.d would be deleted. It currently sets forth operating limits during hydrostatic testing with the reactor critical. This condition is not utilized for NMP-1 activities and therefore is not required. *Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c).

The licensee has presented its determination of no significant hazards considerations as follows:

10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analysis, using the standards in 10 CFR 50.92, about the issue of no significant hazards consideration. Therefore, in accordance with the 10 CFR 50.91 and 10 CFR 50.92, the following analysis has been performed:

1. *The proposed amendment in accordance with the operation of Nine Mile Point Unit 1 will not involve a significant increase in the probability or consequences of an accident previously evaluated.* The proposed amendment incorporates the results on testing of Nine Mile Point Unit 1 reactor vessel material surveillance specimens which have been irradiated during station operation. Testing of the material surveillance specimens was performed in accordance with 10 CFR Part 50 Appendix H.

Components of the reactor primary coolant system are operated so that no substantial pressure is imposed unless the reactor vessel materials are above nil-ductility transition temperature. The nil-ductility transition temperature increases as a function of the integrated neutron dose. The proposed amendment incorporates (1) the results of testing of irradiated nine mile Point Unit 1 the results of testing of irradiated Nine Mile Point Unit 1 reactor vessel material, (2) calculation of stress intensity factors according to Appendix G of Section III of the ASME Boiler and Pressure Code 1980 Edition with Winter 1982 Addenda and (3) the Regulatory Guide 1.99 (Proposed Revision 2) method for extrapolation with the exception of the recommended addition of one standard deviation to the nil-ductility temperature shift. The recommended addition of one standard deviation to the nil-ductility temperature shift was not included since the added conservatism is not warranted as a

result of the use of measured nil-ductility shifts.

Operation of Nine Mile Point Unit 1 in accordance with the proposed pressure/temperature operating limits will preclude brittle failure of the reactor vessel material. Safety margins for brittle failure will be in accordance with those specified in 10 CFR 50 Appendix G and Appendix G of the ASME Code.

2. *The proposed amendment in accordance with the operation of Nine Mile Point Unit 1 will not create the possibility of a new or different kind of accident from any accident previously evaluated.* The proposed amendment incorporates pressure/temperature operating limits based on analysis of irradiated samples. No mofification to the plant is required in order to implement the proposed amendment. Therefore, the proposed limits will not create the possibility of a new or different kind of accident from any accident previously evaluated.

2. *The proposed amendment in accordance with the operation of Nine Mile Point Unit 1 will not involve a significant reduction in a margin of safety.* Implementation of the proposed pressure/temperature operating limits will ensure station operations are conducted with the reactor vessel materials above nil-ductility transition temperature. Operation in accordance with the proposed pressure/temperature operating limits and proposed surveillance program will preclude brittle failure of the reactor vessel material, since safety margins specified in 10 CFR 50 Appendix G and the ASME code Appendix G will be maintained.

As determined by the analysis above, this proposed amendment involves no significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: State University College at Oswego, Penfield Library—Documents, Oswego, New York 13126.

Attorney for licensee: Troy B. Conner, Jr., Esquire Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

NRC Project Director: John A. Zwolinski.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of amendment request: January 28, 1986.

Description of amendment request: The amendment would modify the Technical Specifications (TS) to eliminate the requirement for Emergency Cooling System (Emergency Condenser) operability during hydrostatic testing with the reactor not critical and reactor coolant temperature greater than 212°F.

Hydrostatic test temperatures and pressures are governed by the requirements of TS 3.2.2. The pressure/temperature limits set forth therein are periodically revised based on measured nil-ductility temperature shifts of irradiated vessel material samples. Recent revisions to these pressure/temperature limits will result in minimum temperatures for pressurization in excess of 212°F. The Emergency Cooling System is normally an integral part of the hydrostatic test performed at Nine Mile Point Unit 1. During the test, the Emergency Cooling System steam supply piping and emergency condenser tube bundles are filled with water. In this condition, the Emergency Cooling System is not available nor required to perform its intended function.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c).

The licensee has presented its determination of no significant hazards consideration as follows:

10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analysis, using the standards in § 50.92, about the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the following analysis has been performed:

The proposed amendment in accordance with the operation of Nine Mile Point Unit 1 will not involve a significant increase in the probability or consequences of an accident previously evaluated. The Emergency Cooling System is a standby high pressure system designated to act as a redundant backup to the main station condenser for receiving reactor core decay heat following reactor vessel isolation and scram.

In addition, for small line breaks, the Emergency Cooling System assists the Automatic Depressurization System (ADS) in depressurizing the reactor vessel.

The Emergency Cooling System is not intended to mitigate the effects of initial pressure peaks resulting from various transients such as turbine trip, or main steam line isolation valve closure, but rather longer term decay heat removal.

The Emergency Cooling System consists of two independent loops each designed to remove decay heat at a rate of approximately three percent of maximum reactor steam flow. This capacity is sufficient to handle the decay heat production at 100 seconds following SCRAM. Each loop consists of a 12-inch steam supply header, two parallel condensers, a 10-inch condensate return line, two steam supply isolation valves and one condensate return isolation valve, separate shell steam vents and separate instrumentation and control.

The Emergency Cooling System is designed such that operation is maintained by natural circulation. Steam flows from the reactor vessel to the condensers where it is condensed. The condensate returns by gravity to the suction side of a reactor recirculation loop where it is returned to the reactor vessel.

The configuration of Nine Mile Point Unit 1 for the hydrostatic test conditions differs from normal operation. Control rods are fully inserted and water level is outside its normal band. Pressurization is controlled utilizing the control rod drive system and/or hydrostatic test pump while temperature changes are affected utilizing the reactor recirculation system and/or other supplemental heat sources. Also, the reactor coolant system, with the exception of the Emergency Cooling System, is isolated. In this configuration the capability of the Emergency Condenser System to remove decay heat following reactor isolation or to assist in reactor depressurization for a small line break is not required.

Therefore, the proposed amendment will not invoke a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment in accordance with the operation of Nine Mile Point Unit 1 will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed amendment eliminates the requirement for Emergency Condenser System operability with reactor coolant temperature greater than 212 °F during hydrostatic testing with the reactor not critical. The Emergency Cooling System is normally included in hydrostatic testing of the reactor coolant system. With its steam supply lines full of water, the system is not available nor necessary to perform its designed function. A break in the Emergency Condenser System under hydrostatic conditions is enveloped by a similar break under normal operating conditions. Also, transients, which operation of the Emergency Cooling System would mitigate, are not feasible to occur due to the plant configuration existing during hydrostatic testing. The proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment in accordance with the operation of Nine Mile Point Unit 1 will not involve a significant reduction in a margin of safety. Implementation of the proposed change will have no effect on the availability of the Emergency Cooling System for those plant operating conditions where it is required to mitigate the effects of operational transients. Excluding the operability of the Emergency Cooling System during hydrostatic testing of the reactor coolant system with the reactor not critical will not result in a reduction in the margin of safety.

As determined by the analysis above, this proposed amendment involves no significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the

licensee's analysis. Therefore, the staff proposes to determine that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: State University College at Oswego, Penfield Library—Documents, Oswego, New York 13126.

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner and Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington DC 20006.

NRC Project Director: John A. Zwolinski.

Pennsylvania Power & Light Company, Docket Nos. 50-387/388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: December 19, 1985.

Description of amendment request: In the licensee's December 19, 1985 submittal, the licensee requested a change to Table 3.3.3-1 of the Unit 1 and Unit 2 Technical Specifications. This change would replace the existing Actions 30 and 31, which apply to inoperable ADS trip functions with the proposed Action 37. The existing Actions 30 and 31 require the licensee to declare the associated Emergency Core Cooling System (ECCS) inoperable when an ADS trip system is inoperable. The licensee states that Actions 30 and 31 result in an overly restrictive shutdown Action when an operable ADS trip system still exists (the design of the ADS logic is such that either of the two divisionalized trip system will activate all of the six ADS valves). As the Technical Specifications are presently written, there is no provision to perform a repair of the affected trip system without shutting down the unit.

Presently the Technical Specifications put the licensee into a shutdown Action statement immediately upon the loss of an ADS trip system. The licensee submits that: (1) It is overly restrictive to declaree an ECCS INOPERABLE due to the loss of the ADS trip system when, in fact, the logic as designed at Susquehanna would allow the Emergency Core Cooling System Actuation Instrumentation (in this case ADS trip system) to perform its intended function so long as one ADS system out of two is operable and (2) that the Allowed Out of Service Time (AOT) for one ADS trip system is too short considering that one ADS trip system, capable of performing the intended safety function, is still available.

The licensee further states that because the existing Technical Specifications include an AOT for surveillance testing, it is already recognized that one ADS division may be inoperable for a short period of time. The failure that causes a division of ADS to be inoperable can be treated as a single failure for safety analysis purposes. The analyses in the FSAR considered single failures which bound the failure of one ADS division. The equipment available during the AOT for maintenance will be the same as that during the AOT for testing. Therefore, the addition of an AOT for corrective maintenance does not affect the safety analyses in the FSAR.

The licensee states that the results of their analyses show that a seven day outage time for corrective maintenance of one ADS division does not produce a significant safety hazard. There is no impact on safety analyses in the FSAR and the effect on core melt frequency is negligible.

Basis for Proposed No Significant Hazards Consideration Determination: The licensee in a letter dated December 19, 1985, stated that:

1. The proposed change does not involve significant increase in the probability consequences of an accident previously evaluated.

As discussed above, the FSAR depressurization analysis considers single failures which bound the unavailability of one division of ADS. Based on this provision, an AOT is provided for surveillace testing of one division. Since the proposed change allows an AOT for maintenance on one division, the FSAR safety analysis is not affected.

The safety assessment contained in PP&L's submittal indicates a negligible affect on core melt frequency from that provided previously.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

As stated in 1 above, an AOT was provided previously for testing purposes. Providing one for maintenance does not create new concerns since the FSAR analysis considered the single failure of one division of ADS.

3. The proposed change does not involve a significant reduction in a margin of safety.

Safety margin is likely unaffected by the allowance of an AOT since the existing safety analysis considered single failures of one division. The increase in the AOT was evaluated on a risk basis and found to be of negligible consequence.

Based on the above discussion the NRC staff agrees with the licensee's consideration associated with the propose amendment and proposes to determine that the amendment request does not involve a significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Attorney for licensee: Jay Silberg, Esquire; Shaw, Pittman, Potts and Trowbridge, 1800 M Street NW., Washington, DC 20036.

NRC Project Director: Elinor Adensam.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Unit No. 3, Westchester County, New York

Date of amendment request: January 2, 1986.

Description of amendment request: Generic Letter 85-19, "Reporting Requirements on Primary Coolant Iodine Spikes" states that the reporting requirements related to primary coolant specific activity levels could be satisfied by the inclusion of the relevant information in an Annual Report. The proposed Technical Specification 6.9.1.7 details the information to be included in the annual report. The requirement for the submittal of a special report when the primary coolant activity limits are exeeded has been deleted from Technical Specification 6.9.2.

The deletion of the reactor coolant system activity reporting requirement from Technical Specification 6.9.2 and the ensuing relabeling of the remaining report requirements has necessitated administrative changes to Sections 3.5 and 4.9. These administrative changes concern the referencing of the reporting requirements provided by Technical Specification 6.9. For the sake of convenience and clarity, the historical requirements provided by Technical Specification 4.9 concerning the mid-cycle 4 inspections and inspection reports have been deleted since cycle 4 is past.

Generic Letter 85-19 also states that in light of improved nuclear fuel quality, the existing requirements to shutdown if coolant iodine activity limits are exceeded for a specified time in a one year period can be eliminated. Technical Specification 3.1.D.5, which requires plant shutdown if the cumulative time for operation above the allowable primary coolant specific activity limit exceeded 10% of the unit's total yearly operating time, has been deleted.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards of a no significant hazards consideration

determination by providing certain examples (April 6, 1983, FR 14870). One of the examples (i) of actions not likely to involve a significant hazards consideration relates to purely administration changes to the Technical Specifications, for example, a change to achieve consistency throughout the Technical Specifications; correction of an error, or a change in nomenclature. The proposed changes to Technical Specifications 3.5, 4.9 and 6.3 fall into this category. Another example (iv) is one where relief is granted upon demonstration of acceptable operation from an operating restriction that was imposed because acceptable operation was not yet demonstrated. The change to Technical Specification 3.1 falls into this category.

Based upon the above discussion, the staff proposes to determine that the requested change does not involve a significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Steven A. Varga.

South Carolina Electric and Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina

Date of amendment request: January 16, 1986.

Description of amendment request: The amendment would revise Technical Specification 3/4.4.5, "Steam Generators" and its bases to allow for the repair of steam generator tubes. This request is being made to allow for alternatives to tube plugging in the event degradation occurs in the steam generator tubes.

Basis for proposed no significant hazards consideration determination: Concurrently Technical Specifications allow only for plugging those steam generator tubes with eddy current indications showing greater than 40% thru wall cracks. However, steam generator technology is expanding to include repair methods, such as sleeving, which allows the tube to be returned to "like new" service conditions. The proposed Technical Specification change would permit the licensee to select a tube repair method, to perform an evaluation in accordance with 10 CFR 50.59, and to utilize the method in the repair of defective steam generator tubes.

The Commission has provided certain examples (48 FR 14870) of actions likely to involve no significant hazards considerations. The request involved in this case does not match any of those examples. However, the staff has reviewed the licensee's request for the above amendment and determined that should this request be implemented, it will not (1) involve a significant increase in the probability or consequences of an accident previously evaluated because the requirements of 10 CFR 50.59 must be met by the repair method, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated because the plant design is not being changed. Also, it will not (3) involve a significant reduction in a margin of safety because as required by 10 CFR 50.59, the repair method must not reduce the margin of safety as defined in the Technical Specification bases. Accordingly, the Commission proposes to determine that this change does not involve significant hazards considerations.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Attorney for licensee: Randolph R. Mahan, South Carolina Electric and Gas Company, P.O. Box 764, Columbia, South Carolina 29218.

NRC Project Director: Lester S. Rubenstein.

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: January 30, 1986.

Description of amendment request: The proposed amendment would change the technical specifications (TS) of the operating license to require taking milk and vegetation samples from three instead of four dairy farms in the vicinity of the plant. The amendment would also correct an error in the nominal lower limit of detection (LLD) of strontium 89 in water. The correct LLD would be the same as that listed for strontium 89 in milk.

The reason for making the change in number of farms is that there are only three dairy farms in the vicinity of the plant, as determined by the most recent land use survey conducted in accordance with ETS section 4.2.3.b and to correct an error in Environmental Technical Specification (ETS). On pages 20, 21, 35 and 42 of Appendix B ETS for Units 1, 2 and 3, the requirement to collect milk and vegetation samples from four dairy farms has been changed to require samples from three farms since only three farms have been identified by the most recent land use survey.

The reason for making the change in the LLD for water on page 40 of the ETS is to correct a typographical error. The norminal lower limit of detection (LLD) for strontium 89 in water should be 10 (pCi/1). The current LLD listed in ETS is 3 (pCi/1) which is an error. The LLD should be the same for water as it is for milk, both of which have an LLD of 10 (pCi/1).

Basis for proposed no significant hazards consideration determination: The operational environmental monitoring program is based upon a preoperational program which is described in Section 2.6 of the Final Safety Analysis Report (FSAR). The reference samples provide a running background which will make it possible to distinguish significant radioactivity introduced into the environment by the operation of the plant from that introduced by nuclear detonations and other sources. These ETS changes will not result in any changes to, or contradictions of the FSAR and have no effect on nuclear safety. Furthermore, since all available dairy farms in the vicinity of the plant are being monitored, the maximum safety and data collections are achieved in this area of concern.

The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

A discussion of these standards as they relate to this amendment follows:

1. The probability of the occurrence or the consequences of an accident previously evaluated in the FSAR has not been affected since the sampling activities involved in the proposed amendment are not considered in determining the probabilities or consequences of an accident.

2. The proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated since no equipment changes are involved and no new operation conditions are allowed.

3. The margin of safety is not reduced by the proposed changes since one change only corrects an error and is consistent with other

existing TS, and because only three dairy farms have been identified in the vicinity of the plant and all of these will be monitored. Finally the proposed TS amendment will still be compatible with the environmental monitoring program described in the FSAR.

Based on the above considerations, TVA determined that the proposed amendment does not involve a sigificant hazards consideration.

The staff has reviewed the proposed determination and finds it acceptable. Based on that review the staff proposes to determine that the proposed amendment does not involve a significant hazard consideration.

Local Public Document Room location: Athens Public Library, South and Forrest, Athens, Alabama 35611.

Attorney for licensee: H.S. Sanger, Jr., Esquire, General Counsel, Tennessee Valley Authority, 400 Commerce Avenue, E 11B 33C, Knoxville, Tennessee 37902.

NRC Project Director: Daniel R. Muller.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Unit Nos. 1 and No. 2, Louisa County, Virginia

Date of amendments request: November 19, 1985.

Description of amendments request: The proposed amendments would modify License Condition 2.E to reference the latest authorized revision of the Commission approved Site Security, Safeguards Contingency and Guard Training and Qualifications Plans. The change would serve to clarify the license and thereby avoid confusion by Company personnel and NRC inspectors as to the plan versions currently in effect.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards for determining whether a proposed action involves a significant hazards consideration by providing certain example (See 48 FR 14870). Example (i) states: "A purely administrative change to technical specifications: For example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature." The proposed change is enveloped by example (i) above, since the proposed change would revise the NA-1&2 License Condition 2.E to reference the latest authorized revision of the Commission approved Site Security, Safeguards, Contingency, and Guard Training and Qualification Plans. Accordingly, the Commission proposes to determine this change involves no significant hazards consideration.

Local Public Document Room location: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093 and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Attorney for licensee: Michael W. Maupin, Esq., Hunton, Williams, Gay and Gibson, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Lester S. Rubenstein.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of Amendment Request: April 10, 1985 as modified February 14, 1986.

Description of Amendment Request: The proposed amendment revises the Technical Specifications (T.S.) for Point Beach Nuclear Plant Units 1 and 2 with regard to the limiting conditions for operation (LCOs) for reactor coolant pumps. The latest submittal revises the earlier amendment request in respnse to staff concerns. The latest submittal provides more restrictive limiting conditions for operation when one or both reactor coolant pumps are lost., i.e., "reactor power shall not be maintained above 3.5% of rated power unless both reactor coolant pumps are in operation." The previous submittal used 10% of rated power as this limit.

As discussed with and agreed to by the licensee in a March 10, 1986 conference call with the NRC Project Manager, additional words clarifying the intent of T.S. 15.3.1.A.1a(3) were added. This specification as submitted in the February 14, 1986 submitted read, "If both reactor coolant pumps cease operating and power is greater than 3.5% of rated power, reactor shutdown shall commence immediately and the reactor trip breakers opened within one hour." This specification has been clarified to read "If both reactor coolant pumps cease operating and power is greater than 3.5% of rated power but less than 10% of rated power, reactor shutdown will commence immediately and reactor trip breakers shall be verified open within one hour." The associated bases have also been revised to reflect the new LCO and a typographical error concerning an FSAR reference has been corrected.

Basis for proposed no significant hazards consideration determination: The staff previously proposed to determine that the earlier version of the amendment (April 10, 1985) involved no significant hazards. This finding was published in the **Federal Register** on July 31, 1985 (50 FR 31076). No comments were received. The latest submittal is more restrictive that the earlier version of the amendment with respect to allowable power level when one or both reactor coolant pumps cease operating.

The Commission provided guidance for determining whether an amendment involved a significant hazards consideration by providing certain examples of actions not likely to involve a significant hazards consideration (48 FR 14870, April 6, 1983). Two of the examples of actions not likely to involve a signficant hazards consideration were examples (i) a purely administrative change (such as correction of a typographical error) and (ii) a change that constitutes an additional limitation, restriction or control not presently included in the Technical Specifications. The staff finds that the latest revision meets these examples with respect to the original application.

For this reason, the staff finds that its original determination is still valid and proposes to determine that the amendment involves no significant hazards considerations.

Local Public Document Room Location: Joseph P. Mann Public Library, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: George E. Lear.

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices because time did not allow the Commission to wait for this bi-weekly notice. They are repeated here because the bi-weekly notice lists all amendments 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.

Arizona Public Service Company, et al., Docket No. 50-528, Palo Verde Nuclear Generating Station, Unit 1, Maricopa County, Arizona

Date of amendment request: February 5, 1986.

Brief description of amendment: License change to allow (i) the transfer by Public Service Company of New Mexico (PNM) to equity investors of its remaining fee interest in PVNGS Unit 1 and (ii) the simultaneous transfer by the equity investors back to PNM of a long term (approximately 28½ years) possessory leasehold interest of this share under the terms described in this application. Under the proposed transaction, it is represented that PNM will remain in possession of its present interests in PVNGS under a leasehold rather than by virtue of ownership.

Date of publication of individual notice in **Federal Register:** March 10, 1986 (51 FR 8259).

Expiration date of individual notice: April 9, 1986.

Local Public Document Room location: Phoenix Public Library, Business Science and Technology Department, 12 E. McDowell Road, Phoenix, Arizona 85004.

Duke Power Company, Dockets Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units Nos. 1, 2 and 3, Oconee County, South Carolina

Date of amendment request: November 19, 1985, as revised January 14 and February 14, 1986.

Brief description of amendment: The proposed amendments would revise the Station's common Technical Specifications (TSs) to support the operation of Oconee Unit 1 at full rated power during the upcoming Cycle 10. The proposed amendment request changes the following areas:

1. Core Protection Safety Limits (TS 2.1);
2. Protective System Maximum Allowable Setpoints (TS 2.3);
3. Rod Position Limits (TS 3.5.2); and
4. Power Imbalance Limits (TS. 3.5.2).

To support the license amendment request for operation of Oconee Unit 1, Cycle 10, the licensee submitted, as an attachment to the application, a Duke Power Compnay (DPC) Report, DPC-RD-2006, "Oconee Unit 1, Cycle 10 Reload Report." A summary of the Cycle 10 operating parameters is included in the report, along with safety analyses.

During the refueling outage, 117 fuel assemblies will be reinserted, similar to those previously used, and 60 fuel assemblies will be discharged and replaced by new but substantially similar assemblies of the Mark BZ type. As in the previous cycle, Cycle 10 will utilize gray (less absorbing) axial power shaping rods (APSRs) instead of the previously used black (highly absorbing) APSRs.

As part of these proposed amendments, the licensee is proposing to clarify some of the TSs. Some of the Figures and a Table in Section 2, such as the rod position limits and operational power imbalance limits which have been individually given for each Unit, are being combined into one TS. The Reactor Protective System setpoints have been assigned the same values and thus Section 2 would be written such that it is generic to all Oconee units. Also, the Bases for Section 2 have been revised to simplify and clarify this section. A discrepancy was found between TS 3.5.1. and its bases. It appears that the bases for this TS were not reworded when the licensee previously requested a revision to Table 3.5.1-1. The footnote allowing a one-out-of-two logic for up to four hours in the power range instrumentation is being clarified.

Date of publication of individual notice in **Federal Register:** February 28, 1986 (51 FR 7161).

Expiration date of individual notice: March 31, 1986.

Local Public Document Room Location: Oconee County Library, 501 West Southboard Street, Walhalla, South Carolina 29691.

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: February 4, 1986.

Brief description of amendment: The proposed amendment would modify the Once Through Steam Generator (OTSG) tube repair criteria for TMI-1. The present TMI-1 Technical Specifications (TSs) require that defects extending greater than 40% of the tube wall thickness shall be repaired. Defects penetrating less than 40% of the tube wall thickness are acceptable regardless of their length. The licensee proposes to change the repair criteria to allow not repairing the tube, under certain circumstances, if it has a defect up to 50% tube wall penetration.

The proposed amendment has certain limitations on the 50% tube wall criteria. First, the 50% tube wall repair criteria do not apply to defects on the outer diameter (secondary side) of the tube or areas on the inner diameter (primary side) of reduced eddy current sensitivity (upper and lower tube sheet, secondary faces and support plate entry and exit locations). In these areas, the present 40% criteria will still apply. Second, in areas where the 50% tube wall criteria apply, there is a limitation on the maximum allowable length of a defect of 0.55 inches if it is between 40% and 50% pentration of the tube wall. Third, the proposed amendment is only in effect until the next scheduled refueling outage (scheduled for approximately December 1986). Based on the results of steam generator inspections, both the licensee and the NRC staff will evaluate what repair criteria should apply on restart from the refueling outage.

Date of publication of individual notice in **Federal Register:** February 28, 1986 (51 FR 7157).

Expiration date of individual notice: March 31, 1986.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Mississippi Power & Light Company, Middle South Energy, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: February 17, 1986.

Brief description of amendment: The amendment would change a Technical Specification surveillance requirement for the heaters in the standby gas treatment system SGTS). To demonstrate operability of the SGTS, the heaters would be required to dissipate 48±5.0 kw instead of the presently required 50±5.0 kw when tested in accordance with Technical Specification 4.6.6.3.d.5.

Date of publication of individual notice in **Federal Register:** March 7, 1986.

Expiration date of individual notice: April 7, 1986.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Virginia Electric and Power Company, et al., Docket No. 50-338, North Anna Power Station, Unit No. 1, Louisa County, Virginia

Date of amendment request: January 17, 1986.

Brief description of amendment: The proposed change would allow 7 percent steam generator tube plugging levels at North Anna 1 to support power operation at the currently licensed reactor thermal power of 2775 Megawatts thermal MWt). The currently approved level for steam generator tube plugging is 5%.

Date of publication of individual notice in **Federal Register:** March 7, 1986 (51 FR 8057).

Expiration date of individual notice: April 7, 1986.

Local Public Document Room locations: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093, and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Virginia Electric and Power Company, et al., Docket Nos. 50-338, and 50-339, North Anna Power Station, Unit No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: February 6, 1986.

Brief description of amendments: The proposed amendment would revise Table 3.6-1 of the Technical Specifications to reflect the planned and present installation of new containment isolation valves in the letdown lines.

Date of publication of individual notice in **Federal Register:** March 6, 1986 (51 FR 7863).

Expiration date of individual notice: April 4, 1986.

Local Public Document Room locations: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093, and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Virginia Electric and Power Company, et al., Docket No. 50-339, North Anna Power Station, Unit No. 2, Louisa County, Virginia

Date of amendment request: September 26, 1985, amended January 16, 1986.

Brief description of amendments: The proposed changes would allow the widening of the axial flux difference bands from the current ±5% about a target value of +6% to −15% at 100% power and +20% to −28% at 50% power. The proposed changes would provide additional operating flexibility during return-to-power after trips near the end of the NA-2 cycle No. 4.

Date of publication of individual notice in **Federal Register:** February 26, 1986 (51 FR 6816).

Expiration date of individual notice: March 28, 1986.

Local Public Document Room locations: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093, and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last bi-weekly 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 Comission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessement, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Alabama Power Company, Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Unit Nos. 1 and 2, Houston County, Alabama.

Date of application for amendments: November 27, 1985.

Brief description of amendments: The amendments revise Technical Specifications surveillance requirements for the Quadrant Power Tilt Ratio to allow use of a full core flux map using two sets of four symmetric thimble locations to determine core quadrant tilt. The change agrees with Draft Revision 5 to the Westinghouse Standard Technical Specifications.

Date of issuance: March 14, 1986.

Effective date: March 14, 1986.

Amendment Nos.: 61 and 52.

Facilities Operating License Nos. NPF-2 and NPF-8. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 15, 1986 (51 FR 1869).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 14, 1986.

No significant hazards consideration comments received.

Local Public Document Room location: George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303.

Carolina Power and Light Company, Docket No. 50-261, H.B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: November 13, 1985.

Brief description of amendment: The proposed amendment would revise Technical Specifications (TS) for the H.B. Robinson Steam Electric Plant, Unit No. 2. The proposed revision involves deleting Technical Specification requirements for monitoring a highly borated water inventory and its associated limiting conditions for operation and surveillance.

Carolina Power and Light's (CP&L) submittal is in response to Generic Letter 85-16 which highlighted incidents at operating plants in which boric acid has crystallized in the internals of vital safety related pumps and piping thereby rendering those systems inoperable. In addition, licensees of Westinghouse plants have requested that they be allowed to either physically remove the boron injection tank from safety injection piping or reduce boron concentrations in the tank to levels safely used in other sections of the safety injection piping and refueling water storage tank. To support their requests, licensees have submitted new analyses of the steamline break event that demonstrated that their purposed change involves no significant hazards consideration. The staff has reviewed these analyses and granted these requests.

Date of issuance: March 7, 1986.

Effective date: Immediate.

Amendment No. 97.

Facility Operating License No. DPR-23. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 29, 1986 (51 FR 3711).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 7, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Carolina Power & Light Company, Docket No. 50-324, Brunswick Steam Electric Plant, Unit 2, Brunswick County, North Carolina

Date of application for amendment: August 20, 1985.

Brief description of amendment request: The amendments change the Technical Specifications for the Brunswick Steam Electric Plant, Units 1 and 2, Table 3.3.3-1, Emergency Core Cooling System (ECCS) Actuation Instrumentation, by adding a footnote to allow required surveillance without placing the trip system in the tripped condition.

Date of issuance: March 13, 1986.

Effective date: March 13, 1986.

Amendment Nos.: 95 and 120.

Facility Operating License Nos. DPR-71 and DPR-62: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 9, 1985 (50 FR 41244).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 13, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Commonwealth Edison Company, Docket No. 50-373, La Salle County Station, Unit 1, La Salle County, Illinois

Date of application for amendment: January 9, 1986.

Brief description of amendment: This amendment revises the La Salle Unit 1 Technical Specifications to change the Main Steam Line Low Pressure instrument response time from 1 to 2 seconds in Technical Specifications Table 3.3.2-3.

Date of issuance: March 13, 1986.

Effective date: March 13, 1986.

Amendment No. 36.

Facility Operating License No. NPF-11. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 29, 1986 (51 FR 3712).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 13, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, La Salle County Station, Units 1 and 2, La Salle County, Illinois

Date of amendments request: December 3, 1985.

Brief description of amendments: The amendments to Operating License NPF-11 and Operating License NPF-18 revise the La Salle Units 1 and 2 Technical Specifications to allow an alternate method for controlling access to high radiation areas, and this alternative method requires a Radiation Work Permit for entry into a high radiation area. In addition, the definition of a high radiation area was changed and defined more conservatively.

Date of issuance: March 12, 1986.

Effective date: March 12, 1986.

Amendment Nos: 35 and 19.

Facility Operating Licenses Nos. NPF-11 and NPF-18. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 30, 1985 (50 FR 53229).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 12, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Commonwealth Edison Company, Docket No. 50-254, Quad Cities Nuclear Power Station, Unit 1, Rock Island County, Illinois

Date of application for amendment: October 2, 1984 and October 29, 1985.

Brief description of amendment: Permits the use of hafnium for neutron absorber material in control rod blades and changes the maximum average planar linear heat generation rate curves in the technical specifications for the subject plant.

Date of issuance: March 13, 1986.

Effective date: March 13, 1986.

Amendment No.: 93.

Facility Operating Licenses No. DPR-29. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 27, 1985 (50 FR 7982); January 29, 1986 (51 FR 3712).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 13, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Moline Public Library, 504—17th Street, Moline, Illinois 61265.

Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan

Date of application for amendment: August 5, 1985, and November 1, 1984, as supplemented May 16, 1985, and revised October 9, 1985.

Brief description of amendment: Incorporates a valve name change, a revised plant staff organization chart supporting a plant staff reorganization, and various typographical corrections.

Date of issuance: March 10, 1986.

Effective date: March 10, 1986.

Amendment No. 83.

Facility Operating License No. DPR-6. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 3, 1985 (50 FR 27504); October 9, 1985 (50 FR 41246).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 10, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Dates of amendment requests: April 25, 1985; September 6, 1985; August 20, 1985, as supplemented November 6, 1985, and January 28, 1986.

Description of amendment requests: The amendments change the Technical Specifications to increase by 50% the allowed containment overall integrated leakage rate, provide for retention of records of QA activities in accordance with ANSI N45.2.9-1974, and add requirements for the existing doghouse water level instrumentation.

Date of issuance: March 5, 1986.

Effective date: March 5, 1986.

Amendment Nos. 51 and 32.

Facility Operating License Nos. NPF-9 and NPF-17. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 29, 1986 (51 FR 3715); December 18, 1985 (50 FR 51621); December 30, 1985 (50 FR 53232).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 5, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina Charlotte (UNCC Station), North Carolina, 28223.

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: March 29, 1985.

Brief description of amendment: This amendment adds a requirement to the TSs for annual reporting of all challenges to the pressurizer power operated relief valve (PORV) and pressurizer safety valves.

Date of issuance: March 5, 1986.

Effective date: March 5, 1986.

Amendment No.: 87.

Facility Operating License No. DPR-72. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 20, 1985 (50 FR 47863).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 5, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Crystal River Public Library, 668 NW First Avenue, Crystal River, Florida 32629.

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: August 20, 1985.

Brief description of amendment: This amendment modifies TMI-1 TS 3.13, *Secondary coolant System Activity,* by (1) decreasing the specification for I-131 activity from 1.0 μCi/cc to 0.1 μCi/gram DOSE EQUIVALENT I-131, (2) describing actions to be taken if the limit is exceeded, (3) eliminating the weekly gross activity determination in favor of isotopic analysis for DOSE EQUIVALENT 1-131 once per every 72 hours, and (4) deleting the requirement to determine the I-131 condenser partition factor if primary to secondary leakage develops.

Date of issuance: March 17, 1986.

Effective date: 60 days after issuance:

Amendment No. 115.

Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 20, 1985 (50 FR 47864).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 17, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: October 24, 1985, as supplemented December 10, 1985.

Brief description of amendment: This amendment modifies the TSs to allow defeating of two automatic reactor trips during low power physics testing. The specific reactor trips involved are the Anticipatory Reactor Trips for main feedwater pump trip and main turbine trip.

Date of issuance: March 14, 1986.

Effective date: March 14, 1986.

Amendment No.: 114.

Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 15, 1986 (51 FR 1875).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 14, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvaina 17126.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-321, Edwin I. Hatch Nuclear Plant, Unit No. 1, Appling County, Georgia

Date of application for amendment: January 11, 1985.

Brief description of amendment: The amendment revises the TSs to delete the definition of the unused term "Cumulative Downtime" and to correct a bases section number.

Date of issuance: March 4, 1986.

Effective date: March 4, 1986.

Amendment No.: 123.

Facility Operation License No. DPR-57. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 23, 1985 (50 FR 16003).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 4, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Long Island Lighting Company, Docket No. 50-322, Shoreham Nuclear Power Station, Suffolk County, New York

Date of application for amendment: October 21, 1985.

Brief description of amendment: The amendment revises Technical Specification Tables 3.3.7.5-1 and 4.3.7.5-1 to reflect the conversion of one of the two Reactor Building Standby Ventilation System low range noble gas radiation monitors into a low range plant vent stack noble gas radiation monitor.

Date of issuance: March 4, 1986.

Effective date: March 4, 1986.

Amendment No.: 2.

Facility Operating License No. NPF-36: Amendment revises Technical Specification Tables 3.3.7.5-1 and 4.3.7.5-1.

Dates of initial notice in **Federal Register:** November 6, 1985 (50 FR 46214).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 4, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Shoreham-Wading River Public Library, Route 25A, Shoreham, New York 11786.

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: January 14, 1985, as supplemented December 13, 1985.

Brief description of amendment: These changes to the Technical Specifications reflect changes to require monthly operability testing of the turbine driven auxiliary feedwater pump which is in conformance with the staff's recommendation transmitted by letter dated May 14, 1985.

Effective Date: March 4, 1986.

Amendment No.: 87.

Facility Operating License No. DPR-36: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 15, 1986 (51 FR 1868 at 1877).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 4, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wiscasset Public Library, High Street, Wiscasset, Maine.

Nothern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: April 26, 1985, as supplemented October 16, 1985.

Brief description of amendment: The amendment revises the Technical Specifications for the following items: (1) Snubber Table, (2) Section 6.5.G, Plant Operating Procedures, (3) Radiological Effluent Technical Specifications, (4) Rod Block Monitor Test Frequency, and (5) several miscellaneous administrative changes.

Date of issuance: March 13, 1986.

Effective date: March 13, 1986.

Amendment No.: 39.

Facility Operating License No. DPR-22. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 14, 1985 (50 FR 32799); December 4, 1985 (50 FR 49787).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 13, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Pennsylvania Power and Light Company Dockets Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: November 26, 1985.

Brief description of amendments: By letter dated November 26, 1985, the licensee requested a change to both the Unit 1 and Unit 2 Technical Specifications. The amendments involve redefining the A.C. power distribution load groups during operating and shutdown modes. The previous Technical Specifications (Technical Specifications 3.8.3.1 and 3.8.3.2) delineated certain motor control centers (MCC's) and instrument panels as separate load groups. These MCC's and panels are powered by busses in a specific channel; it is more technically correct to include these MCC's and panels under their appropriate load group channels. The Technical Specifications have been revised to group the MCC's to reflect more accurately the actual plant configuration.

In addition to the above change for Units 1 and 2, the licensee in their November 26, 1985, submittal requested a second change specific to Unit 2. This is a change to Technical Specification 3.8.3.1 and allows a required Unit 1 and common A.C. distribution load group used for Unit 2 to be de-energized for up to 72 hours.

Date of issuance: March 7, 1986.

Effective date: Upon issuance

Amendment Nos. 55 and 23.

Facility Operating License Nos. NPF-14 and NPF-22: Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** January 15, 1986 (51 FR 1878).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 7, 1986.

No comments on the proposed determination were received.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Philadelphia Electric Company, Docket No. 50-322, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of Amendment Request: December 18, 1985, January 29, February 5, February 25, and March 3, 1986.

Brief Description of Amendment: The amendment to Operating License NPF-39 revises the Limerick Generating Station Unit 1 Technical Specification to provide a one-time-only extension of up to 12 weeks on the surveillance testing interval for certain containment isolation valves. The purpose of the amendment is to allow a combination of the isolation valve testing, which must be performed with the reactor in a shutdown condition, with other surveillance testing and maintenance activities to take place in an outage beginning on or before May 26, 1986. The NRC staff has concluded that the licensee's determinations that postponing the tests until May 26, 1986 will have little or no effect on containment integrity and will require no changes to the safety analyses are acceptable.

Date of Issuance: March 3, 1986.

Effective Date: March 3, 1986.

Amendment No.: 2.

Facility Operating License No. NPF-39: Amendment revises the Technical Specifications.

Date of initial notice in the **Federal Register:** December 30, 1985 (50 FR 53235).

Comments Received: No timely comments were received.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 3, 1986.

No Significant Hazards considerations comments received: No public comments were received within the time provided by the **Federal Register** notice of consideration of this amendment request.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: July 17, 1985.

Brief description of amendments: The changes to the TSs permit the bypassing of a scram signal for main steam line isolation (MSIV) closure or main condenser low vaccum while not in the "RUN" mode without a reactor pressure restriction, and delete footnotes referencing modifications and testing which have been completed.

Date of Issuance: March 14, 1986.

Effective Date: March 14, 1986.

Amendments Nos.: 117 and 121.

Facility Operating Licenses Nos. DPR-44 and DPR-56. Amendments revised the Technical Specifications.

Date of initial notice in the **Federal Register:** September 25, 1985 (50 FR 38920).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 14, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Portland General Electric Company, Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Dates of application for amendments: May 2, 1985, as amended September 6, 1985, and June 14, 1985.

Brief description of amendment: The amendment revises the Operating License and the Technical Specifications to: (1) Revise the Surveillance Requirements for Axial Flux Difference, (2) delete the ACTION statement associated with reportability of out-of-specification RCS chemistry in accordance with the revised Licensee

Event Report (LEV) rule of 10 CFR 50.72 and 50.73, (3) reflect a change to the fire pump diesel engine Surveillance Requirement, (4) correct inconsistencies in the RCS volume, (5) more clearly identify the low population zone, and (6) make editorial corrections.

Date of Issuance: March 3, 1986.

Effective Date: March 3, 1986.

Amendment No.: 110.

Facilities Operating License No. NPF-1: Amendment revised the Technical Specifications.

Date of initial notice in the **Federal Register:** November 6, 1986 (50 FR 46217).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 3, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Multnomah County Library, 801 SW. 10th Avenue, Portland, Oregon.

Portland General Electric Company, Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: October 11, 1985.

Brief description of amendment: The amendment revises the Technical Specifications to clarify the surveillance requirements for the Containment Ventilation Isolation System (Section 4.9.9) by specifying which monitoring channels must be included in the system operability test.

Date of Issuance: March 4, 1986.

Effective Date: March 4, 1986.

Amendment No.: 111.

Facilities Operating License No. NPF-1: Amendment revised the Technical Specifications.

Date of initial notice in the **Federal Register:** December 4, 1985 (50 FR 49790).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 4, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Multnomah County Library, 801 S. W. 10th Avenue, Portland, Oregon.

Portland General Electric Company, Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: August 7, 1985.

Brief description of amendment: The amendment revises the Technical Specifications to add operability and surveillance requirements for the core exit thermocouples and the Reactor Vessel Level Instrumentation System (RVLIS).

Date of Issuance: March 10, 1986.

Effective Date: March 10, 1986.

Amendment No.: 112.

Facilities Operating License No. NPF-1: Amendment revised the Technical Specifications.

Date of initial notice in the **Federal Register:** September 25, 1985 (50 FR 38921).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 10, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Multnomah County Library, 801 S. W. 10th Avenue, Portland, Oregon

Portland General Electric Company, Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: September 13, 1985.

Brief description of amendment: The amendment revises the Technical Specifications to reflect a change in the offsite and onsite Quality Assurance (QA) Organizations made to clarify the delineation of responsibilities, improve coordination between onsite and offsite QA groups, and improve operating independence for the onsite QA group.

Date of issuance: March 11, 1986.

Effective date: March 11, 1986.

Amendment No.: 113.

Facilities Operating License No. NPF-1: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 4, 1985 (50 FR 49789).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 11, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Multnomah County Library, 801 S. W. 10th Avenue, Portland, Oregon.

Portland General Electric Company, Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: March 12, 1985.

Brief description of amendment: The amendment revises a number of areas of the Technical Specifications including: Reactor Trip Instrumentation Setpoints, Borated Water Sources, Reactivity Control System, and Power Distributions Limits. The changes correct errors in the present specifications, clarify the meaning of the specifications or make the specifications easier to use by restating operating limits in terms of equivalent parameters that are readily monitored by the plant operators.

By letter dated August 22, 1985, the licensee requested that the portion of the March 12, 1985 amendment request related to the definition of Containment Integrity (Specification 1.8) be withdrawn. The change would have allowed 24 hours for restoration of air lock operability and 4 hours for restoration of isolation valve operability instead of the current 1 hour limit. The staff has reviewed the August 22, 1985 request and has determined that since the current Technical Specification are more conservative withdrawal is acceptable

In addition, the licensee's requests related to surveillance requirements for the ECCS when the reactor is in Hot Shutdown (Technical Specification 4.5.3.1) have been denied and are the subject of a separate Notice of Denial.

Date of issuance: March 12, 1986.

Effective date: March 12, 1986.

Amendment No.: 114.

Facilities Operating License No. NPF-1: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 9, 1985 (50 FR 41255).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 12, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Multnomah County Library, 801 S. W. 10th Avenue, Portland, Oregon.

Power Authority of the State of New York Docket No. 50-286, Indian Point Unit No. 3, Westchester County, New York

Date of application for amendment: June 20, 1985.

Brief description of amendment: The amendment revises the Technical Specifications to limit overtime in accordance with NUREG-0737 Item I.A.1.3 and revises the minimum shift crew composition in accordance with NUREG-0737 Item I.A.1.3.

Date of issuance: March 10, 1986.

Effective date: March 10, 1986.

Amendment No.: 64.

Facilities Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 30, 1985 (50 FR 53236).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 10, 1986.

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 and Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: August 30, 1985 and supplemented December 19, 1985.

Brief description of amendment: The amendments permit operation with only one Service Water header operable during modes 5 and 6 during a refueling outage

Date of issuance: March 7, 1986.

Effective date: March 7, 1986.

Amendment Nos.: 72 and 46.

Facility Operating Licensee No. DPR-70 and DPR-75: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 18, 1985 (50 FR 51626).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 7, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Salem Free Library, 112 West Broadway, Salem, New Jersey 08079.

Public Service Electric and Gas Company, Docket No. 50-311, Salem Nuclear Generating Station, Unit 2, Salem County, New Jersey

Date of application for amendment: October 15, 1984.

Brief description of amendment: The amendment revises the Heatup Limits Curve and the Cooldown Limits Curve for Unit No. 2.

Date of issuance: March 10, 1986.

Effective date: March 10, 1986.

Amendment No.: 47.

Facility Operating License No. DPR-75: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 27, 1985 (50 FR 12160).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 10, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Salem Free Library, 112 West Broadway, Salem, New Jersey 08079.

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendment: December 21, 1984, as superseded November 5, 1985.

Brief description of amendment: The amendments change the Technical Specifications to add a requirement for plant procedures to limit overtime worked by plant staff in accordance with NRC policy. This action satisfies the guidance of NUREG-0737 Item I.A.1.3 for overtime limitations.

Date of issuance: February 26, 1986.

Effective date: 90 days from the date of issuance.

Amendment Nos.: 127, 122 and 98.

Facility Operating License Nos. DPR-33, DPR-52 and DPR-68. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 27, 1985 (50 FR 8009).

The November 5, 1985 letter revised the proposed amendment by substituting an express commitment to limiting overtime worked by individuals performing safety-related functions in accordance with Commission policy for previous proposed language which provided that such limitation would be similar to Commission policy. Since the revision implements more completely the purpose of the original amendment request as well as the proposal as explained in the original notice, the revision does not depart from the proposal as originally published. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 26, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Athens Public Library, South and Forrest, Athens, Alabama 35611.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit No., 1, Callaway County, Missouri

Date of application for amendment: November 15, 1985.

Brief description of amendment: The amendment modifies the Technical Specifications to indicate that containment leak rate testing is to be performed at the calculated peak containment internal pressure of 48.1 psig.

Date of issuance: March 4, 1986.

Effective date: March 4, 1986.

Amendment No.: 13.

Facility Operating License No. NPF-30: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 29, 1986 (51 FR 3719).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 4, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room locations: Fulton City Library, 709 Market Street, Fulton, Missouri 65251 and the Olin Library of Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit No. 1, Callaway County, Missouri

Date of application for amendment: November 18, 1985.

Brief Description of amendment: The amendment modifies the Technical Specifications to reflect the Nuclear Function Qualify Assurance organizational changes associated with the establishment of a new corporate Quality Systems Department.

Date of issuance: March 4, 1986.

Effective date: March 4, 1986.

Amendment No.: 14.

Facility Operating License No. NPF-30: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 29, 1986 (51 FR 3720).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 4, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room locations: Fulton City Library, 709 Market Street, Fluton, Missouri 65251 and the Olin Library of Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Virginia Electric and Power Company et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: May 2 and September 19, 1985.

Brief description of amendments: The amendments clarify the North Anna 1 and 2 TS 3.6.1.3, Action Statement A.1, to permit entries into the air lock for repair of an inoperable inner air lock door. Also, the amendments change the allowable seal leakage from zero to a small measurable amount. The allowable seal leakage is only a small part of either the total Type B and C leakage limits specified by 10 CFR Part 50, Appendix J.

Date of issuance: March 12, 1986.

Effective date: March 12, 1986.

Amendment Nos.: 75 and 62.

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 15, 1986 (51 FR 1868 at 1881).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 12, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room locations: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093, and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last bi-weekly 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 circumstancs associated with the date the amendment was needed, there was not time for the Commission to publish for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing. For exigent circumstances, a press release seeking public comment as to the propsed no significant hazards consideration determination was used, and the State was consulted by telephone. In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant, a shorter public comment period (less than 30 days) has been offered and the State 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, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By April 25, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine withnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission,

Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Branch Chief*): Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Unit Nos. 1 and 2, Benton County, Illinois

Date of application for amendments: February 24, 1986.

Description of amendments request: These amendments revise the nuclear instrumentation system positive and negative rate trip setpoints from ± 15 percent in 5 seconds to ± 5 percent in 2 seconds.

Date of issuance: February 24, 1986.

Effective date: February 24, 1986.

Amendment Nos.: 95 and 85.

Facility Operating License Nos. DPR-39 and DPR-48: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

Comments received: No.

The Commission's related evaluation is contained in a Safety Evaluation.

Attorney to licensee: P. Steptoe, Esq., Isham, Lincoln and Beale, Counselors at Law, Three First National Plaza, 51st Floor, Chicago, Illinois 60602.

Local Public Document Room location: Zion-Benton Library District, 2600 Emmaus Avenue, Zion, Illinois 60099.

Niagara Mohawk Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of amendment request: January 15, 1986, as supplemented March 3, 1986.

Brief description of amendment: The amendment revises Technical Specifications Sections 3.6.2 and 4.6.2. to allow Yarway water level column No. 12 to be out of service during the Spring 1986 refueling outage.

Date of issuance: March 7, 1986

Effective date: March 7, 1986.

Amendment No.: 79.

Facility Operating License No. DPR-63: Amendment revised the Technical Specifications.

Public comments requested as to proposed no signficant hazards consideration: Yes. 51 FR 5285 (February 12, 1986).

Comments received: No.

The Commission's related evaluation of the amendment, consultation with State of New York, and final no significant hazards considerations determination are contained in a Safety Evaluation dated March 7, 1986.

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW, Washington, D.C. 20006.

Local Public Document Room location: State University College at Oswego, Penfield Library—Documents, Oswego, New York 13126.

NRC Project Director: John A. Zwolinski.

Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Platteville, Colorado

Date of application for amendment: December 6, 1986.

Brief description of amendment: This amendment changes the Technical Specifications concerning safety-related snubbers.

Date of issuance: March 4, 1986.

Effective Date: March 4, 1986.

Amendment No.: 47.

Facility Operating License No. DPR-34: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes. A notice requesting comments was published on December 30, 1985 at 50 FR 53240.

Comments received: No.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 4, 1986.

Attorney for licensee: Bryant O'Donnell, Public Service Company of Colorado, P.O. box 840, Denver, Colorado 80201.

Local Public Document room location: Greeley Public Library, City Complex Building, Greeley, Colorado.

Dated at Bethesda, Maryland, this 19th day of March 1986.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Acting Deputy Director, Division of PWR Licensing-A.

[FR Doc. 86-6533 Filed 3-25-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-445-CPA; ASLBP No. 86-528-02-CPA]

Texas Utilities Electric Co. et al.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding:

Texas Utilities Electric Company, et al.

Comanche Peak Steam Electric Station, Unit 1

Construction Permit No. CPPR-126

In a Memorandum and Order dated March 13, 1986 (CLI-86-04, 23 NRC), the Commission directed the establishment of this Board to consider requests for hearing and petitions to intervene in regard to the Texas Utilities Electric Company's application for an extension of its construction permit for the Comanche Peak Steam Electric Station, Unit 1. The Board will preside over further proceedings on the application in accordance with 10 CFR Part 2, Subpart G. The scope of any such proceedings will be limited to challenges to Texas Utilities Electric Company's effort to show good cause for the extension.

The Board is comprised of the following Administrative Judges:

Peter B. Bloch, Chairman; Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Dr. Walter H. Jordan, Atomic Safety and

Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Dr. Kenneth A McCollom, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Issued at Bethesda, Maryland, this 20th day of March, 1986,

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 86-6662 Filed 3-25-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-302]

Florida Power Corp. et al.; Withdrawal of Applications for Amendments to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the withdrawal of five applications filed by Florida Power Corporation. The applications, described below, requested amendments to Facility Operating License No. DPR-72 for operation of the Crystal River Unit No. 3 Nuclear Generating Plant located in Citrus County, Florida.

An application dated January 24, 1985, proposed Technical Specification (TS) changes to delete the allowance to test only certain test groups in the engineered safety features circuitry during Cycle 5 since testing of all groups would be possible during Cycle 6. The Commission issued a Notice of Consideration of Issuance of Amendment in the **Federal Register** on June 19, 1985 (50 FR 25485).

An application dated August 30, 1984, as supplemented on June 17, 1985, proposed TS changes to revise the old remote shutdown system to be consistent with the new system and add operability and surveillance requirements. The Commission issued a Notice of Consideration of Issuance of Amendment in the **Federal Register** on November 21, 1984 (49 FR 45949). The request was partially granted in Amendment No. 75 issued on July 3, 1985, by revising the location of several remote shutdown monitoring instruments from the Engineered Safeguards (ES) Switchgear Room to the Remote Shutdown Panel. However, the balance of the request which involved incorporation of the new Remote Shutdown System into the TSs was to be completed as a separate action. Further action on this issue was withdrawn by the licensee's letter of December 19, 1985.

An application dated May 26, 1982, as supplemented February 3, 1984, proposed TS changes to modify a limiting condition for operation (LCO) for the cooling water intake canal such that a minimum cross-sectional area must be maintained rather than an absolute canal bottom datum level. The Commission issued a Notice of Consideration of Issuance of Amendment in the **Federal Register** on December 21, 1983 (48 FR 56504).

An application dated July 25, 1984, as supplemented on December 19, 1984, proposed TS changes to permit auxiliary building ventilation system inoperability for up to 12 hours for maintenance purposes as well as for surveillance testing which was allowed. The Commission issued a Notice of Consideration of Issuance of Amendment in the **Federal Register** on October 9, 1984 (49 FR 39628).

An application dated November 20, 1979, as supplemented on November 19, 1982, proposed TS changes to allow more flexibility in allowable outage time and/or allowable calibration error in out-of-core instrumentation. This request was not noticed.

By letter dated December 19, 1985, the licensee withdrew the above applications for amendments. The Commission has considered the licensee's request for the withdrawals and has determined that permission to withdraw the subject applications should be granted.

For further details with respect to this action, see: (1) The individual applications referenced above, and (2) the licensee's letter dated December 19, 1985.

All of the above documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC., and at the Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida.

Dated at Bethesda, Maryland, this 13th day, of March 1986.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, PWR Project Directorate No. 6, Division of PWR Licensing-B.

[FR Doc. 86-6658 Filed 3-25-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-338]

Virginia Electric and Power Company et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing; Correction

This document corrects a typographical error contained in FR Doc. 86-5057 that appeared in the **Federal Register** of Friday, March 7, 1986 (51 FR 8057).

On page 8057, third column, the first full paragraph is corrected to read:

"The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Specifically, as discussed above, the proposed change will not increase the probability of occurrence or consequences of any malfunction or accident previously addressed. The re-analyzed large break LOCA analysis shows that operation under the revised specifications would not result in any increase in accident consequences. The analysis assumptions for the remainder of the UFSAR Chapter 15 transient analyses have not changed and they remain bounding. Also, no new accident types or equipment malfunction scenarios will be introduced as a result of operating in accordance with the revised specifications. And, finally, the margin of safety, as defined in the basis for the affected Technical Specifications, is not reduced. Operation at the lower FQ limit will not reduce the margin to the LOCA acceptance limits. Therefore, based on these considerations and the criteria given above, the Commission has made a proposed determination that the amendment request does not involve a significant hazards consideration."

Dated at Bethesda, Maryland, this 19th day of March 1986.

For the Nuclear Regulatory Commission.

Lester S. Rubenstein,

Director, PWR Project Directorate No. 2, Division of PWR Licensing-A.

[FR Doc. 86-6659 Filed 3-25-86; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC AND CONSERVATION PLANNING COUNCIL

Mainsteam Passage Advisory Committee; Meeting Correction

AGENCY: The Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Corrected notice of meeting.

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby corrects an announcment that appeared at page 9731 of the **Federal Register** of March 20, 1986 [51 FR 9731] regarding a forthcoming meeting of its Mainstem Passage Advisory Committee to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. The committee agenda, as corrected, includes:

- 1986 Juvenile Fish Passage Plan;
- Alternatives to summer spill;
- Production planning process;
- Other; and
- Public comment.

DATE: The meeting will be held at 9:00 a.m. on April 2, 1986, rather than on April 3, 1986 as previously announced.

ADDRESS: The meeting will be held in the Council's Meeting Room, 850 SW, Broadway, Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Jim Ruff, 503-222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 86-6551 Filed 3-25-86; 8:45 am]

BILLING CODE 0000-00-M

State Agency Advisory Committee; Regular Meeting

AGENCY: The Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its State Agency Advisory Committee, to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix, I, 1-4, Activities will include:

- Overview of the 1986 Power Plan.
- Cost-effectiveness analysis.
- Action Plan implementation.
- Other issues of interest to the Task Force.

DATE: Tuesday, April 1, 1986, 9:00 a.m.

ADDRESS: The meeting will be held at the Council's Central Office, 850 SW. Broadway; Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Jim Litchfield, (503) 222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 86-6552 Filed 3-25-86; 8:45 am]

BILLING CODE 0000-00-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-24054; 70-7232]

Indiana & Michigan Electric Co.; Proposal To Acquire Promissory

March 20, 1986.

Indiana & Michigan Electric Company ("I&M"), One Summit Square, P.O. Box 60, Fort Wayne, Indiana 46801, an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed an application with this Commission pursuant to sections 9 and 10 of the Public Utility Holding Company Act of 1935 ("Act").

I&M proposes to acquire a promissory note from the Industrial Foundation of South Bend, Indiana ("Foundation") in the amount of $386,127.50 in consideration of and as security for I&M's sale to the Foundation of that part of its Twin Branch plant site which is no longer useful in I&M's business. The Foundation is planning to develop the Twin Branch site as an industrial park.

Under the Purchase and Sale Agreement ("Agreement") for the Twin Branch site between I&M and the Foundation, the Foundation will pay to I&M over a 10 year period the purchase price for the Twin Branch site in increments, from time to time, as the Foundation actually develops the Twin Branch site as an industrial park as specified in the Agreement. In addition, the Foundation may elect to extend the Agreement for an additional 5-year period in consideration of an additional purchase price which is based upon the number of undeveloped acres at the Twin Branch site after the expiration of the initial 10-year term. If the Foundation elects to extend the Agreement, then it must execute an additional promissory note to secure the additional purchase price payable at the expiration of the 5-year extensions. I&M is also requesting authority to acquire the additional promissory note should the Foundation elect to extend the Agreement.

The application and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by April 14, 1986, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application, as filed or as it may be amended, may be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-6631 Filed 3-25-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15006; (812-6180)]

Mortgage Bankers Financial Corporation I; Mortgage-Backed Bond Application

March 20, 1986.

Notice is hereby given that Mortgage Bankers Financial Corporation I, 1718 Connecticut Avenue, NW., Washington, D.C. 20009 (the "Applicant") filed an application on August 7, 1985, and amendments thereto on March 6 and March 19, 1986, for an order of the Commission, pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act"), exempting the Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein which are summarized below.

According to the application, Applicant, a Delaware corporation, is a wholly-owned, limited purpose finance subsidiary of Mortgage Bankers Financial Corporation, a Delaware corporation engaged in the mortgage finance business. Applicant states that it is a financing entity providing a source of funds to home builders, mortgage bankers, thrift institutions, commercial banks, insurance companies and other entities engaged in real estate and mortgage finance. Applicant does not propose to engage in any unrelated business or investment activities.

According to the application, Applicant limits its activities to issuing

and delivering bonds or other evidences of indebtedness (the "Bonds") secured by Funding Agreements and Mortgage Collateral, as defined below, lending the proceeds therefrom to borrowers ("Borrowers") for use in connection with the funding or acquisition of Mortgage Collateral or using the proceeds to purchase Mortgage Collateral and other activities incidental to or necessary for such purposes. Applicant represents that it has no significant assets other than the Funding Agreements and Mortgage Collateral which back and secure the Bonds.

Applicant states that the Bonds are issued pursuant to an indenture (the "Indenture") between Applicant and an independent trustee (the "Trustee"). Applicant further states that it may issue and sell Bonds in separate series backed either by Funding Agreements, as defined below, secured in turn by Mortgage Collateral, or direct Mortgage Collateral, or a combination of Funding Agreements and direct Mortgage Collateral. To the extent a series of Bonds is backed with Funding Agreements, Applicant represents that it will enter into an agreement with each Borrower participating in such series, pursuant to which, upon the issuance of Bonds by the Applicant: (i) The Applicant lends a proportionate share of the proceeds of the sale of the Bonds to each Borrower; (ii) the Borrower pledges and physically delivers the Mortgage Collateral to the Applicant as security for its loan; (iii) the Borrower is obligated to repay the loans made to it by the Applicant by causing payments on the Mortgage Collateral to be made directly to the Trustee on behalf of the Applicant in such amounts as are necessary to pay a proportionate share of the principal of and interest on the Bonds as they become due; and (iv) if so provided in such agreement, the Borrower issues one or more promissory notes evidencing the obligation to repay its loan. The security for the Bonds intended to be afforded by the indebtedness under the Funding Agreement is not affected by the use or nonuse of promissory notes. (Any such agreement together with the promissory notes, if any, issued to evidence the Borrower's obligation to repay its loan hereunder is referred to herein as a "Funding Agreement"). To the extent its Bonds are secured by direct Mortgage Collateral, Applicant states that it issues Bonds and uses the proceeds of the sale of Bonds to purchase the Mortgage Collateral directly.

According to the application, the Mortgage Collateral consists of: (i) Mortgage loans secured by first liens on single (one-to-four) family residential properties (together with payments that may become due under certain related mortgage insurance policies) ("Mortgage Loans"), (ii) fully modified pass-through certificates guaranteed as to payment of principal and interest by the Government National Mortgage Association ("GNMA Certificates"), (iii) mortgage pass-through certificates issued by the Federal National Mortgage Association ("FNMA Certificates"), (iv) mortgage participation certificates issued by the Federal Home Loan Mortgage Corporation ("FHLMC Certificates"), and (v) other pass-through certificates evidencing an undivided interest in pools of Mortgage Loans ("Private Mortgage Certificates"). Mortgage Collateral and any reserve funds, credit supports, collection accounts or other collateral securing the Bonds are sometimes collectively referred to herein as "Bond Collateral". GNMA Certificates, FNMA Certificates, FHLMC Certificates and Private Mortgage Certificates are collectively referred to herein as "Mortgage Certificates".

In connection with the issuance of certain series of Bonds secured in whole or in part by Mortgage Certificates, Applicant may purchase all the right, title and interest in and to the Mortgage Certificates except for the right to receive that portion of the interest payable thereunder not necessary to amortize the Bonds secured by such Mortgage Certificates (the "Excess Interest"). The Excess Interest is retained by the seller of the Mortgage Certificates. In such circumstances, Applicant acquires full control over the Mortgage Certificates, including all rights exercisable upon default against the issuer or guarantor thereof.

Applicant asserts that it may use the above structure when the Bonds are collateralized with high coupon Mortgage Certificates which sell at a price greater than par. Despite the premium on certain Mortgage Certificates in the cash market, Applicant states that Standard & Poor's prohibits the valuation of such Mortgage Certificates at a price greater than par when they are pledged as collateral for triple-A-rated Bonds, which are the only class of Bonds issued by Applicant. Consequently, a gap exists between the price paid for these Mortgage Certificates and the net proceeds of the Bond issue which they collateralize. The Mortgage Certificates will generate interest income in excess of the amount needed to service the Bonds. Applicant submits that in an effort to conserve its resources, it will require the seller of the Mortgage Certificates to retain this Excess Interest, thereby achieving a reduced purchase price and greater efficiency in its business.

Applicant asserts that this structure does not disadvantage the Bondholder in any way because, from the Bondholder's standpoint, it is as if the Excess Interest had not been retained by the seller. Applicant states that the entire Mortgage Certificate is pledged to secure the Bonds and, in the event of default under the Indenture, the Trustee may foreclose on the Mortgage Certificate, including the Excess Interest.

Applicant represents that it assigns and physically delivers to the Trustee, as security for the Bonds, its entire right, title and interest in the Funding Agreements (except its right to indemnification as stated in the application), the Mortgage Collateral pledged thereunder, and the Mortgage Collateral purchased directly by the Applicant. In addition, the seller assigns its rights to the Excess Interest to the Trustee as security for the Bonds. Thus, the Bonds are secured by a first lien on the Mortgage Certificates in their entirety. Applicant represents further that the payments on the Mortgage Collateral are the primary source of funds for payments of principal and interest due on the Bonds. The scheduled available principal and interest payments on the Mortgage Collateral securing the Bonds plus income received thereon are sufficient to make the interest payments on and amortize the principal of the Bonds by their stated maturity.

Applicant states that it will provide computer data and other information concerning any Mortgage Loans and Mortgage Loans underlying any Private Mortgage Certificates, not previously rated, securing a series of Bonds to the statistical rating organization or organizations rating the series of Bonds for their review with respect to relevant credit considerations, and to independent third parties, such as independent accountants or the administrator of the Mortgage Collateral, to determine the quality and value of such Mortgage Collateral as described in the prospectus or other offering memorandum for such series of Bonds.

The Bonds provide for mandatory and discretionary redemption of the Bonds by the Applicant under certain circumstances at a price equal to their outstanding principal amount, plus accrued interest. The Bonds may also provide for redemptions at the option of Bondholders, but only to the extent that

payments received on the Mortgage Collateral are available for such redemptions. Under no circumstances will Bondholders be entitled to compel the liquidation of the Mortgage Collateral in order to redeem the Bonds prior to maturity. Applicant represents that none of these redemption procedures would make any of the Bonds a "redeemable security" under the Act.

Applicant represents that its future securities offerings will be limited to offerings of Bonds meeting the conditions set forth below:

(1) Each series of Bonds will be registered under the Securities Act of 1933 ("1933 Act"), unless offered in a transaction exempt from registration pursuant to section 4(2) of the 1933 Act.

(2) The Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934, as amended. In addition, the Mortgage Collateral underlying the Bonds will be limited to: Mortgage Loans, Private Mortgage Certificates, GNMA Certificates, FNMA Certificates or FHLMC Certificates.

(3) New Mortgage Loans will be substituted for Mortgage Loans initially pledged as Mortgage Collateral only in the event of default, late payments or defect in the collateral being replaced. New Private Mortgage Certificates will be substituted for Private Mortgage Certificates initially pledged as Mortgage Collateral only in the event of default, late payments or defect in the collateral being replaced. If new Mortgage Collateral is substituted, the substitute collateral must: (i) Be of equal or better quality than the collateral replaced; (ii) have similar payment terms and cash flow as the collateral replaced; (iii) be insured or guaranteed to the same extent as the collateral replaced; and (iv) meet the conditions set forth in paragraphs numbered (2), (4) and (6). In addition, new collateral will not be substituted for more than 20% of the aggregate face amount of the Mortgage Loans initially pledged as Mortgage Collateral or for more than 40% of the aggregate face amount of the Mortgage Certificates initially pledged as Mortgage Collateral. In no event will any new Mortgage Collateral be substituted for any substitute Mortgage Collateral.

(4) All Mortgage Loans, Mortgage Certificates, funds, accounts or other collateral securing a series of Bonds will be held by the Trustee or on behalf of the Trustee by an independent custodian (the "Custodian"). The Custodian may not be an affiliate (as the term "affiliate" is defined in 1933 Act Rule 405 (17 CFR 230.405)) of the Applicant or of the master servicer or originating lender of any Mortgage Loans that are pledged as Mortgage Collateral. If there is no master servicer, no servicer of those Mortgage Loans may be an affiliate of the Custodian. The Trustee will have a first priority perfected security or lien interest in and to all Bond Collateral.

(5) Each series of Bonds will be rated in the highest bond rating category by at least one nationally recognized statistical rating organization that is not affiliated with the issuer of the securities. The Bonds will not be redeemable securities within the meaning of section 2(a)(32) of the Act.

(6) The master servicer of any Mortgage Loans pledged as Mortgage Collateral may not be an affiliate of the Trustee. If there is no master servicer, no servicer of those Mortgage Loans may be an affiliate of the Trustee. Any master servicer and servicer of a Mortgage Loan will be approved by the Federal National Mortgage Association ("FNMA") or the Federal Home Loan Mortgage Corporation ("FHLMC") as an "eligible seller/servicer" of conventional, residential Mortgage Loans. The agreement governing the servicing of Mortgage Loans shall obligate the servicer to provide substantially the same services with respect to the Mortgage Loans as it is then currently required to provide in connection with the servicing of Mortgage Loans insured by FHA, guaranteed by the VA or eligible for purchase by FNMA or FHLMC.

(7) No less often than annually, an independent public accountant will audit the books and records of the Applicant and in addition will report on whether the anticipated payments of principal and interest on the Mortgage Collateral continue to be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion, copies of the auditor's report(s) will be provided to the Trustee.

Applicant asserts that it is not the type of entity which was intended to be regulated under the Act and its limited activities do not require the protection of the Act. On the basis of the foregoing, Applicant submits that granting the requested exemption is necessary and 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. Accordingly, Applicant requests that an order be entered, pursuant to section 6(c) of the Act, exempting the Applicant from all provisions of the Act in accordance with the terms and conditions set forth in the application.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 14, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant(s) at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-6632 Filed 3-25-86; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-14749]

Application and Opportunity for Hearing; Universal Health Services, Inc.

March 21, 1986.

Notice is hereby given that Universal Health Services, Inc., a Delaware corporation, ("Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding that the trusteeships of Manufacturers Hanover Trust Company ("MHTC") under an indenture qualified under the Act and a new indenture which will not be immediately qualified under the Act are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify MHTC from acting as trustee under one of such indentures.

Section 310(b) of the Act provides, in part, that if a trustee under n indenture qualified under the Act has or shall acquire any conflicting interest defined in the section, it shall within ninety days after ascertaining that it has such conflicting either eliminate such conflicting interest or resign. Subsection (1) of this section provides, with certain exceptions, that a trustee is deemed to have a conflicting interest if it is acting as trustee under another indenture under which any other securities of the same obligor are outstanding. However,

pursuant to clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture or indentures under which other securities of such obligor are outstanding, if the issuer shall have sustained the burden of proving on application to the Commission, and after opportunity for a hearing thereon, that the trusteeship under the qualified indenture and such other indenture is not so lilely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under any of such indentures.

The Applicant alleges that:

1. On April 6, 1983, the Applicant filed a Registration Statement (Registration No. 2-82718) covering $110,000,000 principal amount of Securities.

2. Applicant and MHTC entered into an Indenture, dated as of April 1, 1983, authorizing the issuance of $110,000,000 aggregate principal amount of debentures (the "Securities"). The Identure has been qualified under the Act in connection with a Form T-1, File No. 22-12395.

3. The Applicant has issued $110,000,000 aggregate principal amount of 7½% Convertible Subordinated Debentures due April 1, 2008 under the Indenture for which MHTC is the Trustee.

4. Applicant and MHTC entered into an indenture dated as of February 10, 1986 (the "New Indenture").

5. The Applicant is proposing an issuance of up to $50,000,000 in aggregate principal amount of 13½% Subordinated Notes due 1991 by private placement (the "Notes").

6. The Notes will be issued pursuant to the New Indenture and Applicant desires to appoint MHTC, by resolution of the Board of Directors, as indenture trustee for the Notes under the New Indenture.

7. The Indenture and the New Indenture are both wholly unsecured. The Securities and the Notes are junior debt and will be of equal rank. Accordingly, in the opinion of the Applicant, the trusteeships of MHTC under the previous Indenture and the New Indenture are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors that MHTC be disqualified from acting as trustee under one of such indentures.

The Applicant has waived notice of hearing, hearing, and any and all rights to specify procedures under the Rules of Practice of the Commission with respect to the application.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said application, File No. 22-14749, which is a public document on file in the offices of the Commission at the Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549.

Notice is further given that any interested person may, not later than April 14, 1986, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest or for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-6633 Filed 3-25-86; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments should be submitted within 21 days of this publication in the **Federal Register.** If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Copies of the forms, request for clearance (S.F. 83), supporting statement, instructions, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Richard Vizachero, Small Business Administration, 1441 L Street NW., Room 200, Washington, DC 20416, Telephone: (202) 653-8538

OMB Reviewer: Patty Aronsson, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395-7231

Title: Application Forms for Participation in 8(a) Program

Form Nos. SBA 1010A-E&I

Frequency: On occasion

Description of Respondents: The data submitted by small business concerns will be evaluated by SBA personnel to determine whether the business is owned and controlled by economically and socially disadvantaged individuals and meets other eligibility criteria.

Annual Responses: 3000

Annual Burden Hours: 63000

Type of Request: Reinstatement

Title: License Application, Personal History and Qualification of Management

Form Nos. SBA 415,415A

Frequency: One time only

Description of Respondents: Investment companies provide SBA with the necessary data to make a judgment as to whether the applicant will conduct itself and provide the financing to small businesses as intended by the Act.

Annual Responses: 80

Annual Burden Hours: 6400

Type of Request: Extension.

Dated: March 17, 1986.

Richard Vizachero,

Chief, Administration Procedures and Documentation Section, Small Business Administration.

[FR Doc. 86-6624 Filed 3-25-86; 8:45 am]

BILLING CODE 8025-01-M

[License No. 06/10-0044]

Trammell Crow Investment Co.; License Revocation

Notice is hereby given that Trammell Crow Investment Company (TCIC), 2001 Bryan Tower, Dallas, Texas 75201 has had its license revoked and no longer operates as a small business investment company under the Small Business Investment Act of 1958, as amended, (the Act). TCIC was licensed by the Small Business Administration on April 13, 1961.

Under the authority vested by the Act and pursuant to the regulations promulagated thereunder, the revocation was effective February 27, 1986, and accordingly, all rights, privileges and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 20, 1986.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 86-6625 Filed 3-25-86; 8:45 am]

BILLING CODE 8025-01-M

Maximum Annual Cost of Money to Small Business Concerns

13 CFR 107.302(a) and (b) limit the maximum annual Cost of Money (as defined in 13 CFR 107.3) that may be imposed upon a Small Concern in connection with Financing by means of Loans or through the purchase of Debt Securities. The cited regulation incorporates the term "FFB Rate", which is defined elsewhere in 13 CFR 107.3 in terms that require SBA to publish, from time to time, the rate charged by the Federal Financing Bank on ten-year debentures sold by Licensees to the Bank. Notice of this rate is generally published each month.

Accordingly, Licensees are hereby notified that effective April 1, 1986, and until further notice, the FFB Rate to be used for computation of maximum cost of money pursuant to 13 CFR 107.302(a) and (b) is 7.895% per annum.

13 CFR Section 107.302 does not supersede or preempt any applicable law imposing an interest ceiling lower than the ceiling that the Regulation imposes. Attention is directed to section 308(i) of the Small Business Investment Act, as amended by Pub. L. 99-226, December 28, 1985, to the law's Federal override of State usury ceilings, and to its forfeiture and penalty provisions.

Dated: March 20, 1986.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 86-6626 Filed 3-25-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Proposed Revocation of Section 401 Certificates of Imperial Airlines, Inc. and Tyee Airlines, Inc.

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of order to show cause, (order 86-3-63); docket 43895.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order revoking the certificates of Imperial Airlines, Inc., and Tyee Airlines, Inc., issued under section 401 of the Federal Aviation Act.

DATE: Persons wishing to file objections should do so no later than April 14, 1986.

ADDRESSES: Responses should be filed in Docket 43895 and addressed to the Documentary Services Division, Department of Transportation, 400 7th Street SW., Room 4107, Washington, DC 20590 and should be served on the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Patricia T. Szrom, Special Authorities Division, P-47, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590, (202) 755-3812.

Dated: March 20, 1986.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 86-6621 Filed 3-25-86; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

[Dept. Cir.—Public Debt Series—No. 13-861]

Treasury Notes of March 31, 1990, Series N-1990

Washington, March 19, 1986.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $7,000,000,000 of United States securities, designated Treasury Notes of March 31, 1990, Series N-1990 (CUSIP No. 912827 TL 6), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated March 31, 1986, and will accrue interest from that date, payable on a semiannual basis on September 30, 1986, and each subsequent 6 months on March 31 and September 30, through the date that the principal becomes payable. They will mature March 31, 1990, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount of due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. Notes in registered definitive form will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Notes in book-entry form will be issued in multiplies of those amounts. Notes will not be issued in bearer form.

2.5. Denominational exchanges of registered definitive Notes, exchanges of Notes between registered definitive and book-entry forms, and transfers will be permitted.

2.6. The Department of the Treasury's general regulations governing United States securities apply to the Notes offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1 Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Standard Time, Tuesday, March 25, 1986. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, March 24, 1986, and received no later than Monday, March 31, 1986.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desire, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have

entered into an agreement, nor make an agreement to purchase or sell otherwise dispose of any noncompetitve awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federal-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders wil be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of 1 percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.000. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Monday, March 31, 1986. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, March 27, 1986. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Monday, March 31, 1986. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2 In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes alloted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted are not required to be assigned if the new Notes are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new Notes are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (Notes offered by this circular) in the name of (name and taxpayer identifying number)". Specific instructions for the issuance and delivery of the new Notes, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment must be delivered at the expense and risk of the holder.

5.4. Registered definitive Notes will not be issued if the appropriate identifying number as required on tax returns and other documents submitted to the Inernal Revenue Service (e.g., an individual's social security number or an employer identification number) is not furnished. Delivery of the Notes in registered definitive form will be made after the requested form of registration has been validated, the registered interest account has been established, and the Notes have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, to issue and deliver the Notes on full-paid allotments, and to maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 86-6702 Filed 3-24-86; 11:29 am]

BILLING CODE 4810-40-M

[Dept. Circ.—Public Debt Series—No. 14-86]

Treasury Notes of April 15, 1993, Series F-1993

Washington, March 19, 1986.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $6,500,000,000 of United States securities, designated Treasury Notes of April 15, 1993, Series F-1993 (CUSIP No. 912827 TM 4), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated April 3, 1986, and will accrue interest from that date, payable on a semiannual basis on October 15, 1986, and each subsequent 6 months on April 15 and October 15 through the date that the principal becomes payable. They will mature April 15, 1993, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. Notes in registered definitive form will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Notes in book-entry form will be issued in multiples of those amounts. Notes will not be issued in bearer form.

2.5. Denominational exchanges of registered definitive Notes, exchanges of Notes between registered definitive and book-entry forms, and transfers will be permitted.

2.6. The Department of the Treasury's general regulations governing United States securities apply to the Notes offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Standard time, Wednesday, March 26, 1986. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, March 25, 1986, and received no later than Thursday, April 3, 1986.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all other must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.250. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the prices on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks

will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Thursday, April 3, 1986. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Tuesday, April 1, 1986. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes alloted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Thursday, April 3, 1986. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted are not required to be assigned if the new Notes are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new Notes are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (Notes offered by this circular) in the name of (name and taxpayer identifying number)". Specific instructions for the issuance and delivery of the new Notes, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment must be delivered at the expense and risk of the holder.

5.4. Registered definitive Notes will not be issued if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (e.g., an individual's social security number or an employer identification number) is not furnished. Delivery of the Notes in registered definitive form will be made after the requested form of registration has been validated, the registered interest account has been established, and the Notes have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, to issue and deliver the Notes on full-paid allotments, and to maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 86-6703 Filed 3-24-86; 11:29 am]

BILLING CODE 4810-40-M

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 587; Ref: ATF O 100.85B]

Delegation to the Associate Director (Compliance Operations) of Authorities of the Director in 27 CFR Part 170, Miscellaneous Liquor Regulations

1. *Purpose.* This order delegates certain authorities of the Director to the Associate Director (Compliance Operations) and permits redelegation to other Compliance Operations' personnel.

2. *Cancellation.* ATF O 1100.85A, Delegation Order—Delegation To The Associate Director (Compliance Operations) Of Authorities Of The Director In 27 CFR Part 170, Miscellaneous Liquor Regulations, dated April 30, 1984, and ATF O 1100.92, Delegation Order—Delegation To The Assistant Director (Regulatory Enforcement) Of Authorities Of The Director In 27 CFR Part 196, Stills, dated July 24, 1978, are canceled.

3. *Background.* Under current regulations, the Director has authority to take final action on matters relating to miscellaneous liquor provisions. We have determined that certain of these authorities should, in the interest of efficiency, be delegated to a lower organizational level.

4. *Delegations.* Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by the Treasury Department Order No. 221, dated June 6, 1972, and by 26 CFR 301.7701-9, authority to take final action on the following matters is delegated to the Associate Director (Compliance Operations):

a. To prescribe all forms required by Subpart B of 27 CFR Part 170, under 27 CFR 170.22.

b. To prescribe all forms required by Subpart C of 27 CFR Part 170, under 27 CFR 170.43.

c. To prescribe all forms required by Subpart O of 27 CFR Part 170, under 27 CFR 170.302.

d. To request manufacturers to submit, or to receive from manufacturers, formulas for and samples of products for examination to verify claims of exemption from qualification requirements, under 27 CFR 170.613(b).

e. To approve changes of formulas which render products unfit for beverage use, under 27 CFR 170.615.

f. To declare other products to be unfit for use for beverage purposes, under 27 CFR 170.617(a), and 27 CFR 170.618.

g. To approve formulas and processess described on ATF F 5120.29,

Formula and Process for Wine, and to require the submission of samples of the materials used in rendering wine or wine products unfit for beverage use, under 27 CFR 170.686.

5. *Coordination with other offices.* To complete the action in paragraphs 4d through 4g above, coordination will be made, as deemed necessary, with the Director, Office of Laboratory Services.

6. *Redelegation.*

a. The authorities in paragraphs 4a, 4b, and 4c above may be redelegated to personnel in Bureau Headquarters not lower than the position of branch chief.

b. The authorities in paragraphs 4d through 4g above may be redelegated to personnel in Bureau Headquarters not lower than the position of ATF specialist.

7 *For Information Contact.* Sharon K. Hendee, Procedures Branch, 1200 Pennsylvania Avenue, NW, Washington, DC 20226 (202) 566-7602.

8. *Effective Date.* This delegation order becomes effective on March 26, 1986.

Approved: March 18, 1986.

W.T. Drake,

Acting Director.

[FR Doc. 86-6567 Filed 3-25-86; 8:45 am]

BILLING CODE 4810-31-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 58
Wednesday, March 26, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
Federal Reserve System	1
Mississippi River Commission	2-5
National Commission on Libraries and Information Science	6
Nuclear Regulatory Commission	7

1

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, March 31, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 21, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-6647 Filed 3-21-86; 4:34 pm]

BILLING CODE 6210-01-M

2

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., April 21, 1986.

PLACE: On board MV MISSISSIPPI at foot of Eighth Street, Cairo, IL.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report by president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in Memphis District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601-634-5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 86-6674 Filed 3-24-86; 10:01 am]

BILLING CODE 3710-GX-M

3

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m, April 22, 1986.

PLACE: On board MV MISSISSIPPI at City Front, vicinity of Beale Street, Memphis, TN.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report by president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; and (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601-634-5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 86-6675 Filed 3-24-86; 10:02 am]

BILLING CODE 3710-GX-M

4

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 3:30 p.m., April 23, 1986.

PLACE: On board MV MISSISSIPPI at City Front, foot of Crawford Street, Vicksburg, MS.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report by president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in Vicksburg District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601-634-5766.

Rodger D. Harris,

Executive Assistant Mississippi River Commission.

[FR Doc. 86-6676 Filed 3-24-86; 10:03 am]

BILLING CODE 3710-GX-M

5

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., April 25, 1986.

PLACE: On board MV MISSISSIPPI at foot of Prytania Street, New Orleans, LA.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report by president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in New Orleans District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601-634-5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 86-6677 Filed 3-24-86; 10:04 am]

BILLING CODE 3710-GX-M

6

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

DATE AND TIME: April 9 and 10, 1986.

PLACE: State Plaza Hotel, Diplomat Room, 2117 E Street, NW., Washington, DC 20037.

Closed

STATUS:

April 9, 1986, 8:30 a.m. to 10:30 a.m.
Sec. 1703.202 (2) and (6) of the Code of Federal Regulations, 45 CFR, Part 1703

Open

April 9, 10:45 a.m. to 5:30 p.m.
April 10, 9:00 a.m. to 5:00 p.m.

MATTERS TO BE DISCUSSED:

Chairman's Report
Approval of Minutes
Executive Director's Report

—FY 1986 Progress Report
Committee Reports
—Bicentennial
—Public Affairs
—Budget
MOU/ACTION
COSLA
FY '88 Programs
Literacy
University of Michigan Archives
Presentation
Old Business
New Business

CONTACT: Toni Carbo Bearman, Executive Director (202) 382-0840.

Dated: March 20, 1986.

Jane McDuffie,

Staff Assistant.

[FR Doc. 86-6759 Filed 3-24-86; 3:15 pm]

BILLING CODE 7527-01-M

7

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of March 24, 31, April 7, and 14, 1986.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of March 24

Tuesday, March 25

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Wednesday, March 26

10:00 a.m.
Quarterly Source Term Briefing (Public Meeting)

2:00 p.m.
Periodic Briefing by Regional Administrators (Public Meeting)

Thursday, March 27

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, March 28

10:00 a.m.
Advisory Committee on Reactor Safeguards (ACRS) Meeting on Safety Goals (Public Meeting)

Week of March 31—Tentative

Tuesday, April 1

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

2:00 p.m.
Staff Briefing on TVA (Public Meeting

Wednesday, April 2

2:00 p.m.
Status of Pending Investigations (Closed—Ex. 5 & 7)

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of April 7—Tentative

Thursday, April 10

10:00 a.m.
Periodic Briefing on NTOLs (Open/Portion may be Closed—Ex. 5 & 7)

11:30 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, April 11

10:00 a.m.
Periodic Briefing by Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)

Week of April 14—Tentative

Tuesday, April 15

2:00 p.m.
Meeting with NARUC on Implementation of Nuclear Waste Policy Act (Public Meeting)

Wednesday, April 16

11:00 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Thursday, April 17

3:00 p.m.
Discussion/Possible Vote on Palo Verde—2 Full Power Operating License (Public Meeting)

ADDITIONAL INFORMATION: Affirmation of "TMIA Motion to Dismiss and for Stay of Husted Hearing" and "Responses to Commission Questions on Braidwood" (Public Meeting) was held on March 20.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634-1410.

Dated: March 20, 1986.

Julia Corrado,

Office of the Secretary.

[FR Doc. 86-6657 Filed 3-21-86; 4:47 pm]

BILLING CODE 7590-01-M

federal register

Wednesday
March 26, 1986

Part II

Department of State

Hague International Child Abduction Convention; Text and Legal Analysis

DEPARTMENT OF STATE

[Public Notice 957]

Hague International Child Abduction Convention; Text and Legal Analysis

On October 30, 1985 President Reagan sent the 1980 Hague Convention on the Civil Aspects of International Child Abduction to the U.S. Senate and recommended that the Senate give early and favorable consideration to the Convention and accord its advice and consent to U.S. ratification. The text of the Convention and the President's Letter of Transmittal, as well as the Secretary of State's Letter of Submittal to the President, were published shortly thereafter in Senate Treaty Doc. 99–11. On January 31, 1986 the Department of State sent to Senator Lugar, Chairman of the Senate Committee on Foreign Relations to which the Convention was referred, a detailed Legal Analysis of the Convention designed to assist the Committee and the full Senate in their consideration of the Convention. It is believed that broad availability of the Letters of Transmittal and Submittal, the English text of the Convention and the Legal Analysis will be of considerable help also to parents, the bench and the bar, as well as federal, State and local authorities, in understanding the Convention, and in resorting to or implementing it should the United States ultimately ratify it. Thus, these documents are reproduced below for the information of the general public.

Questions concerning the status of consideration of the Convention for U.S. ratification may be addressed to the Office of the Assistant Legal Adviser for Private International Law, Department of State, Washington, D.C. 20520 (telephone: (202) 653–9851). Inquiries on the action concerning the Convention taken by other countries may be addressed to the Office of the Assistant Legal Adviser for Treaty Affairs, Department of State (telephone: (202) 647–8135). Questions on the role of the federal government in the invocation and implementation of the Convention may be addressed to the Office of Citizens Consular Sevices, Department of State (telephone: (202) 647–3444).

Peter H. Pfund,

Assistant Legal Adviser for Private International Law.

Appendices:

A—Letters of Transmittal and Submittal from Senate Treaty Doc. 99–11

B—English text of Convention

C—Legal Analysis

BILLING CODE 4710-08-M

Appendix A

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *October 30, 1985.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith a certified copy of the Hague Convention on the Civil Aspects of International Child Abduction, adopted on October 24, 1980 by the Fourteenth Session of the Hague Conference on Private International Law and opened for signature on October 25, 1980.

The Convention is designed to secure the prompt return of children who have been abducted from their country of habitual residence or wrongfully retained outside that country. It also seeks to facilitate the exercise of visitation rights across international borders. The Convention reflects a worldwide concern about the harmful effects on children of parental kidnapping and a strong desire to fashion an effective deterrent to such conduct.

The Convention's approach to the problem of international child abduction is a simple one. The Convention is designed promptly to restore the factual situation that existed prior to a child's removal or retention. It does not seek to settle disputes about legal custody rights, nor does it depend upon the existence of court orders as a condition for returning children. The international abductor is denied legal advantage from the abduction to or retention in the country where the child is located, as resort to the Convention is to effect the child's swift return to his or her circumstances before the abduction or retention. In most cases this will mean return to the country of the child's habitual residence where any dispute about custody rights can be heard and settled.

The Convention calls for the establishment of a Central Authority in every Contracting State to assist applicants in securing the return of their children or in exercising their custody or visitation rights, and to cooperate and coordinate with their counterparts in other countries toward these ends. Moreover, the Convention establishes a judicial remedy in wrongful removal or retention cases which permits an aggrieved parent to seek a court order for the prompt return of the child when voluntary agreement cannot be achieved. An aggrieved parent may pursue both of these courses of action or seek a judicial remedy directly without involving the Central Authority of the country where the child is located.

The Convention would represent an important addition to the State and Federal laws currently in effect in the United States that are designed to combat parental kidnapping—specifically, the Uniform Child Custody Jurisdiction Act now in effect in every State in the country, the Parental Kidnapping Prevention Act of 1980, the 1982 Missing Children Act and the Missing Children's Assistance

Act. It would significantly improve the chances a parent in the United States has of recovering a child from a foreign Contracting State. It also provides a clear-cut method for parents abroad to apply for the return of children who have been wrongfully taken to or retained in this country. In short, by establishing a legal right and streamlined procedures for the prompt return of internationally abducted children, the Convention should remove many of the uncertainties and the legal difficulties that now confront parents in international child abduction cases.

Federal legislation will be submitted to provide for the smooth implementation of the Convention within the United States. This legislation will be consistent with the spirit and intent of recent congressional initiatives dealing with the problem of interstate child abduction and missing children.

United States ratification of the Convention is supported by the American Bar Association. The authorities of many States have indicated a willingness to do their part to assist the Federal government in carrying out the mandates of the Convention.

I recommend that the Senate give early and favorable consideration to the Convention and accord its advice and consent to ratification, subject to the reservations described in the accompanying report of the Secretary of State.

RONALD REAGAN.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, October 4, 1985.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you the Hague Convention on the Civil Aspects of International Child Abduction with the recommendation that it be transmitted to the Senate for its advice and consent to ratification.

The Convention was adopted on October 24, 1980 at the Fourteenth Session of the Hague Conference on Private International Law in Plenary Session by unanimous vote of twenty-three member states of that organization. The Convention was opened for signature on October 25, 1980, at which time it was signed by Canada, France, Greece and Switzerland. It was signed on behalf of the United States on December 23, 1981, and has also been signed by Belgium and Portugal. The Convention is in force for France, Portugal, Switzerland and most parts of Canada.

The Convention stemmed from a proposal first advanced at a Hague Conference Special Commission meeting in 1976 that the Conference prepare a treaty responsive to the global problem of international child abduction. The overriding objective was to spare children the detrimental emotional effects associated with transnational parental kidnapping.

The Convention establishes a system of administrative and legal procedures to bring about the prompt return of children who are wrongfully removed to or retained in a Contracting State. A removal or retention is wrongful within the meaning of the Convention if it violates custody rights that are defined in an agreement or court order, or that arise by operation of law, provided these rights are actually exercised (Article 3), i.e., custody has not in effect been abandoned. The Convention applies to abductions that occur both before and after issuance of custody decrees, as well as abductions by a joint custodian (Article 3). Thus, a custody decree is not a prerequisite to invoking the Convention with a view to securing the child's return. By promptly restoring the *status quo ante,* subject to express requirements and exceptions, the Convention seeks to deny the abductor legal advantage in the country to which the child has been taken, as the courts of that country are under a treaty obligation to return the child without conducting legal proceedings on the merits of the underlying conflicting custody claims.

Each country must establish at least one national Central Authority primarily to process incoming and outgoing requests for assistance in securing the return of a child or the exercise of visitation rights (Article 6). In the United States the Central Authority

is to be located in an existing agency of the federal government which will, however, need to rely on state and local facilities, including the Federal Parent Locator Service and the private bar, in carrying out the measures listed in Article 7 of the Convention. These measures include best efforts to locate abducted or retained children, explore possibilities for their voluntary return, facilitate provision of legal services in connection with judicial proceedings, and coordinate arrangements for the child's return travel (Article 7).

Articles 11-17 are the major provisions governing legal proceedings for the return of an abducted child. Under the Convention, if a proceeding is brought less than a year from the date of the removal or retention and the court finds that the conduct was wrongful, the court is under a treaty obligation to order the child returned. When proceedings are brought a year or more after the date of the removal or retention, the court is still obligated to order the child returned unless the person resisting return demonstrates that the child is settled in the new environment (Article 12).

Although the Convention ceases to apply as soon as a child reaches sixteen years of age (Article 4), it does not limit the power of appropriate authorities to order the return of an abducted or wrongfully retained child at any time pursuant to other laws or procedures that may make return in the absence of a treaty obligation possible (Article 18).

Articles 13 and 20 enumerate those exceptional circumstances under which the court is not obligated by the Convention to order the child returned. The person opposing return of the child bears the burden of proving that: (1) custody rights were not actually being exercised at the time of the removal or retention by the person seeking return or the person seeking return had consented to or subsequently acquiesced in the removal or retention; or (2) there is a grave risk that return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation. A court also has discretion to refuse to order a child returned if it finds that the child objects to being returned and has reached an age or degree of maturity making it appropriate to consider his or her views (Article 13). A court may also deny a request to return a child if the return would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms (Article 20). Unless one of the enumerated exceptions to the return obligation is deemed to apply, courts in Contracting States will be under a treaty obligation to order a child returned.

Visitation rights are also protected by the Convention, but to a lesser extent than custody rights (Article 21). The remedies for breach of the "access rights" of the non-custodial parent do not include the return remedy provided by Article 12. However, the non-custodial parent may apply to the Central Authority under Article 21 for "organizing or securing the effective exercise of rights of access." The Central Authority is to promote the peaceful enjoyment of these rights. The Convention is supportive of the exercise of visitation rights, i.e., visits of children with non-custodial parents, by providing for the prompt return of children if the non-custodial parent should seek to retain them beyond the end of the visi-

tation period. In this way the Convention seeks to address the major concern of a custodial parent about permitting a child to visit the non-custodial parent abroad.

If the Convention machinery succeeds in rapidly restoring children to their pre-abduction or pre-retention circumstances, it will have the desirable effect of deterring parental kidnapping, as the legal and other incentives for wrongful removal or retention will have been eliminated. Indeed, while it is hoped that the Convention will be effective in returning children in individual cases, the full extent of its success may never by quantifiable as an untold number of potential parental kidnappings may have been deterred.

This country's participation in the development of the Convention was a logical extension of U.S. membership in the Hague Conference on Private International Law and bipartisan domestic concern with interstate parental kidnapping, a phenomenon with roots in the high U.S. divorce rate and mobility of the population. In response to the public outcry over parental kidnapping, all states and the District of Columbia enacted the Uniform Child Custody Jurisdiction Act (UCCJA), and Congress has enacted the Parental Kidnapping Prevention Act (PKPA), the Missing Children Act, and the Missing Children's Assistance Act. These statutes address almost exclusively problems associated with inter-state parental kidnapping. The Convention will expand the remedies available to victims of parental kidnapping from or to the United States.

The Convention will be of great assistance to parents in the United States whose children are wrongfully taken to or retained in other Contracting States. Such persons now have no choice but to utilize laws and procedures applicable to recognition and enforcement of foreign custody decrees in the country in which the child is located. It is often necessary to retain a foreign lawyer and to apply or reapply for custody to a foreign court, which typically pits the U.S. petitioner against the abducting parent who may have his or her origins in that foreign country and may thus have the benefit of defending the custody suit in what may be a friendly forum. The Convention will be especially meaningful to parents whose children are abducted before U.S. custody orders have been issued because return proceedings under the Convention are not contingent upon the existence of such orders.

At any given time during the past several years, about half of the several hundred requests to the Department of State for assistance in recovering children taken out of the United States have involved abductions to countries which participated in the preparation and negotiation of the Hague Convention. This suggests that U.S. ratification of the Convention, and its ultimate ratification by many of those other countries, is likely to benefit a substantial number of future victim children and parents residing in the United States.

For parents residing outside the United States whose children have been wrongfully taken to or retained in this country, the Convention will likewise serve as a vehicle for prompt return. In such cases involving violations of existing foreign court orders, the victim parent outside the United States may either invoke the Convention or seek return of the child in connection with an action for recognition of the foreign custody decree pursuant to the UCCJA

or other available means. The Convention will be expecially advantageous in pre-decree abduction cases where no court order exists that may be enforced under the UCCJA.

The Convention has received widespread support. The Secretary of State's Advisory Committee on Private International Law—on which ten major national legal organizations interested in international efforts to unify private law are represented—has endorsed the Convention for U.S. ratification. The House of Delegates of the American Bar Association adopted a resolution in February, 1981 urging U.S. signature and ratification of the Convention. U.S. ratification is also supported by the Department of Justice and the Department of Health Services. In reply to a State Department letter inquiring whether and how the states of the United States could assist in implementing the Convention if it were ratified by the United States, officials of many states welcomed the Convention in principle and expressed general willingness to cooperate with the federal Central Authority in its implementation.

The Department believes that federal legislation will be needed fully to give effect to various provisions of the Convention. Draft legislation is being prepared for introduction in both houses of Congress. The United States instrument of ratification would be deposited only after satisfactory legislation has been enacted.

I recommend that the United States enter two reservations at the time of deposit of its instrument of ratification, both of which are specifically permitted by the Convention.

(1) The United States should enter a reservation to ensure that all documents sent to the U.S. Central Authority in a foreign language are accompanied by a translation into English. The reservation should read:

> Pursuant to the second paragraph of Article 24, and Article 42, the United States makes the following reservation: All applications, communications and other documents sent to the United States Central Authority should be accompanied by their translation into English.

(2) The second reservation should read:

> Pursuant to the third paragraph of Article 26, the United States declares that it will not be bound to assume any costs or expenses resulting from the participation of legal counsel or advisers or from court and legal proceedings in connection with efforts to return children from the United States pursuant to the Convention except insofar as those costs or expenses are covered by a legal aid program.

It is hoped that the Senate will promptly consider this Convention and give its advice and consent to its ratification by the United States.

Respectfully submitted,

GEORGE P. SHULTZ.

Appendix B

CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

The States signatory to the present Convention,

Firmly convinced that the interests of children are of paramount importance in matters relating to their custody,

Desiring to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access,

Have resolved to conclude a Convention to this effect, and have agreed upon the following provisions –

CHAPTER I – SCOPE OF THE CONVENTION

Article 1

The objects of the present Convention are –

a to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and

b to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.

Article 2

Contracting States shall take all appropriate measures to secure within their territories the implementation of the objects of the Convention. For this purpose they shall use the most expeditious procedures available.

Article 3

The removal or the retention of a child is to be considered wrongful where –

a it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

b at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph *a* above, may arise in particular by operation of law or by reason of a judicial or administative decision, or by reason of an agreement having legal effect under the law of that State.

Article 4

The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of 16 years.

Article 5

For the purposes of this Convention –

a 'rights of custody' shall include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence;

b 'rights of access' shall include the right to take a child for a limited period of time to a place other than the child's habitual residence.

CHAPTER II – CENTRAL AUTHORITIES

Article 6

A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.

Federal States, States with more than one system of law or States having autonomous territorial organizations shall be free to appoint more than one Central Authority and to specify the territorial extent of their powers. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which applications may be addressed for transmission to the appropriate Central Authority within that State.

Article 7

Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention.

In particular, either directly or through any intermediary, they shall take all appropriate measures –

a to discover the whereabouts of a child who has been wrongfully removed or retained;

b to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;

c to secure the voluntary return of the child or to bring about an amicable resolution of the issues;

d to exchange, where desirable, information relating to the social background of the child;

e to provide information of a general character as to the law of their State in connection with the application of the Convention;

f to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organizing or securing the effective exercise of rights of access;

g where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;

h to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;

i to keep each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application.

CHAPTER III – RETURN OF CHILDREN

Article 8

Any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may apply either to the Central Authority of the child's habitual residence or to the Central Authority of any other Contracting State for assistance in securing the return of the child.

The application shall contain –

a information concerning the identity of the applicant, of the child and of the person alleged to have removed or retained the child;

b where available, the date of birth of the child;

c the grounds on which the applicant's claim for return of the child is based;

d all available information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be.

The application may be accompanied or supplemented by –

e an authenticated copy of any relevant decision or agreement;

f a certificate or an affidavit emanating from a Central Authority, or other competent authority of the State of the child's habitual residence, or from a qualified person, concerning the relevant law of that State;

g any other relevant document.

Article 9

If the Central Authority which receives an application referred to in Article 8 has reason to believe that the child is in another Contracting State, it shall directly and without delay transmit the application to the Central Authority of that Contracting State and inform the requesting Central Authority, or the applicant, as the case may be.

Article 10

The Central Authority of the State where the child is shall take or cause to be taken all appropriate measures in order to obtain the voluntary return of the child.

Article 11

The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children.

If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own initiative or if asked by the Central Authority of the requesting State, shall have the right to request a statement of the reasons for the delay. If a reply is received by the Central Authority of the requested State, that Authority shall transmit the reply to the Central Authority of the requesting State, or to the applicant, as the case may be.

Article 12

Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.

Where the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child.

Article 13

Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that –

a the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or

b there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.

Article 14

In ascertaining whether there has been a wrongful removal or retention within the meaning of Article 3, the judicial or administrative authorities of the requested State may take notice directly of the law of, and of judicial or administrative decisions, formally recognized or not in the State of the habitual residence of the child, without recourse to the specific procedures for the proof of that law or for the recognition of foreign decisions which would otherwise be applicable.

Article 15

The judicial or administrative authorities of a Contracting State may, prior to the making of an order for the return of the child, request that the applicant obtain from the authorities of the State of the habitual residence of the child a decision or other determination that the removal or retention was wrongful within the meaning of Article 3 of the Convention, where such a decision or determination may be obtained in that State. The Central Authorities of the Contracting States shall so far as practicable assist applicants to obtain such a decision or determination.

Article 16

After receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under this Convention is not lodged within a reasonable time following receipt of the notice.

Article 17

The sole fact that a decision relating to custody has been given in or is entitled to recognition in the requested State shall not be a ground for refusing to return a child under this Convention, but the judicial or administrative authorities of the requested State may take account of the reasons for that decision in applying this Convention.

Article 18

The provisions of this Chapter do not limit the power of a judicial or administrative authority to order the return of the child at any time.

Article 19

A decision under this Convention concerning the return of the child shall not be taken to be a determination on the merits of any custody issue.

Article 20

The return of the child under the provisions of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.

CHAPTER IV — RIGHTS OF ACCESS

Article 21

An application to make arrangements for organizing or securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of a child.

The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfilment of any conditions to which the exercise of those rights may be subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights. The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organizing or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.

CHAPTER V — GENERAL PROVISIONS

Article 22

No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in the judicial or administrative proceedings falling within the scope of this Convention.

Article 23

No legalization or similar formality may be required in the context of this Convention.

Article 24

Any application, communication or other document sent to the Central Authority of the requested State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the requested State or, where that is not feasible, a translation into French or English.

However, a Contracting State may, by making a reservation in accordance with Article 42, object to the use of either French or English, but not both, in any application, communication or other document sent to its Central Authority.

Article 25

Nationals of the Contracting States and persons who are habitually resident within those States shall be entitled in matters concerned with the application of this Convention to legal aid and advice in any other Contracting State on the same conditions as if they themselves were nationals of and habitually resident in that State.

Article 26

Each Central Authority shall bear its own costs in applying this Convention.

Central Authorities and other public services of Contracting States shall not impose any charges in relation to applications submitted under this Convention. In particular, they may not require any payment from the applicant towards the costs and expenses of the proceedings or, where applicable, those arising from the participation of legal counsel or advisers. However, they may require the payment of the expenses incurred or to be incurred in implementing the return of the child.

However, a Contracting State may, by making a reservation in accordance with Article 42, declare that it shall not be bound to assume any costs referred to in the preceding paragraph resulting from the participation of legal counsel or advisers or from court proceedings, except insofar as those costs may be covered by its system of legal aid and advice.

Upon ordering the return of a child or issuing an order concerning rights of access under this Convention, the judicial or administrative authorities may, where appropriate, direct the person who removed or retained the child, or who prevented the exercise of rights of access, to pay necessary expenses incurred by or on behalf of the applicant, including travel expenses, any costs incurred or payments made for locating the child, the costs of legal representation of the applicant, and those of returning the child.

Article 27

When it is manifest that the requirements of this Convention are not fulfilled or that the application is otherwise not well founded, a Central Authority is not bound to accept the application. In that case, the Central Authority shall forthwith inform the applicant or the Central Authority through which the application was submitted, as the case may be, of its reasons.

Article 28

A Central Authority may require that the application be accompanied by a written authorization empowering it to act on behalf of the applicant, or to designate a representative so to act.

Article 29

This Convention shall not preclude any person, institution or body who claims that there has been a breach of custody or access rights within the meaning of Article 3 or 21 from applying directly to the judicial or administrative authorities of a Contracting State, whether or not under the provisions of this Convention.

Article 30

Any application submitted to the Central Authorities or directly to the judicial or administrative authorities of a Contracting State in accordance with the terms of this Convention, together with documents and any other information appended thereto or provided by a Central Authority, shall be admissible in the courts or administrative authorities of the Contracting States.

Article 31

In relation to a State which in matters of custody of children has two or more systems of law applicable in different territorial units –

a any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;

b any reference to the law of the State of habitual residence shall be construed as referring to the law of the territorial unit in that State where the child habitually resides.

Article 32

In relation to a State which in matters of custody of children has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

Article 33

A State within which different territorial units have their own rules of law in respect of custody of children shall not be bound to apply this Convention where a State with a unified system of law would not be bound to do so.

Article 34

This Convention shall take priority in matters within its scope over the *Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors*, as between Parties to both Conventions. Otherwise the present Convention shall not restrict the application of an international instrument in force between the State of origin and the State addressed or other law of the State addressed for the purposes of obtaining the return of a child who has been wrongfully removed or retained or of organizing access rights.

Article 35

This Convention shall apply as between Contracting States only to wrongful removals or retentions occurring after its entry into force in those States.

Where a declaration has been made under Article 39 or 40, the reference in the preceding paragraph to a Contracting State shall be taken to refer to the territorial unit or units in relation to which this Convention applies.

Article 36

Nothing in this Convention shall prevent two or more Contracting States, in order to limit the restrictions to which the return of the child may be subject, from agreeing among themselves to derogate from any provisions of this Convention which may imply such a restriction.

CHAPTER VI – FINAL CLAUSES

Article 37

The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Fourteenth Session.

It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 38

Any other State may accede to the Convention.

The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The Convention shall enter into force for a State acceding to it on the first day of the third calendar month after the deposit of its instrument of accession.

The accession will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of the accession. Such a declaration will also have to be made by any Member State ratifying, accepting or approving the Convention after an accession. Such declaration shall be deposited at the Ministry of Foreign Affairs of the Kingdom of the Netherlands; this Ministry shall forward, through diplomatic channels, a certified copy to each of the Contracting States.

The Convention will enter into force as between the acceding State and the State that has declared its acceptance of the accession on the first day of the third calendar month after the deposit of the declaration of acceptance.

Article 39

Any State may, at the time of signature, ratification, acceptance, approval or accession, declare that the Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect at the time the Convention enters into force for that State.

Such declaration, as well as any subsequent extension, shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 40

If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall entend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

Any such declaration shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands and shall state expressly the territorial units to which the Convention applies.

Article 41

Where a Contracting State has a system of government under which executive, judicial and legislative powers are distributed between central and other authorities within that State, its signature or ratification, acceptance or approval of, or accession to this Convention, or its making of any declaration in terms of Article 40 shall carry no implication as to the internal distribution of powers within that State.

Article 42

Any State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 39 or 40, make one or both of the reservations provided for in Article 24 and Article 26, third paragraph. No other reservation shall be permitted.

Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.
The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

Article 43

The Convention shall enter into force on the first day of the third calendar month after the deposit of the third instrument of ratification, acceptance, approval or accession referred to in Articles 37 and 38.
Thereafter the Convention shall enter into force –

1 for each State ratifying, accepting, approving or acceding to it subsequently, on the first day of the third calendar month after the deposit of its instrument of ratification, acceptance, approval or accession;

2 for any territory or territorial unit to which the Convention has been extended in conformity with Article 39 or 40, on the first day of the third calendar month after the notification referred to in that Article.

Article 44

The Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 43 even for States which subsequently have ratified, accepted, approved it or acceded to it.
If there has been no denunciation, it shall be renewed tacitly every five years.
Any denunciation shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands at least six months before the expiry of the five year period. It may be limited to certain of the territories or territorial units to which the Convention applies.
The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

Article 45

The Ministry of Foreign Affairs of the Kingdom of the Netherlands shall notify the States Members of the Conference, and the States which have acceded in accordance with Article 38, of the following –

1 the signatures and ratifications, acceptances and approvals referred to in Article 37;

2 the accessions referred to in Article 38;

3 the date on which the Convention enters into force in accordance with Article 43;

4 the extensions referred to in Article 39;

5 the declarations referred to in Articles 38 and 40;

6 the reservations referred to in Article 24 and Article 26, third paragraph, and the withdrawals referred to in Article 42;

7 the denunciations referred to in Article 44.

In witness whereof the undersigned, being duly authorized thereto, have signed this Convention.

Done at The Hague, on the 25th day of October, 1980, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Fourteenth Session.

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Appendix C—Legal Analysis of the Hague Convention on the Civil Aspects of International Child Abduction

Introduction

The Hague Convention on the Civil Aspects of International Child Abduction consists of six chapters containing forty-five articles. While not formally incorporated into the Convention, a model form was prepared when the Convention was adopted by the Hague Conference on Private International Law and was recommended for use in making application for the return of wrongfully removed or retained children. A copy of that form is annexed to this Legal Analysis. (The form to be used for the return of children from the United States may seek additional information.)

Table of Contents

To facilitate understanding of the Convention by the Senate and the use and interpretation of the Convention by parents, judges, lawyers and public and private agency personnel, the articles are analyzed and discussed in the following categories:

I. Children Protected by the Convention

(Preamble, Article 1)

A. Age (Articles 4, 36, 18, 29, 34, 13)
B. Residence (Article 4)
C. Timing/cases covered (Article 35)
D. Effect of custody order concerning the child
1. Existing custody orders (Articles 17, 3)
2. Pre-decree removals or retentions (Article 3)

II. Conduct Actionable Under the Convention

A. International "child abduction" not criminal: Hague Convention distinguished from extradition treaties (Article 12)
B. "Wrongful removal or retention" (Articles 1, 3, 5(a))
1. Holders of rights protected by the Convention (*i.e.*, with respect to whom the removal or retention is wrongful)
(a) "Person, institution or other body" (Article 3(a), (b))
(b) "Jointly or alone" (Article 3(a), (b))
2. Defined
(a) Breach of "custody rights" (Articles 3(a), 5(a))
(b) "Custody rights" determined by law of child's habitual residence (Articles 3(a), 31, 32, 33)
(c) Sources of "Custody rights" (Article 3, last paragraph)
i. Operation of law (Articles 3, 15)
ii. Judicial or administrative decision (Article 3)
iii. Agreement having legal effect (Article 3)
(d) "Actually exercised" (Articles 3(b), 5, 8(c), 13)

III Judicial Proceedings for Return of the Child

A. Right to seek return (Articles 29, 12, 34, 8)
B. Legal advice and costs (Articles 25, 26, 42)
C. Pleading requirements (Articles 8, 24)
D. Admissibility of evidence (Articles 30, 23)
E. Judicial promptitude/status report (Article 11)
F. Judicial notice (Article 14)
G. Court determination of "wrongfulness" (Articles 15, 3, 11, 12, 14)
H. Constraints upon courts in requested states in making substantive custody decisions (Article 16)
I. Duty to return not absolute
1. Temporal qualifications
(a) Article 4
(b) Article 35
(c) Article 12
2. Article 13 limitations on return obligation
(a) Legislative history (Articles 13, 20)
(b) Non-exercise of custody rights (Articles 13(a), 3(b))
(c) Grave risk of harm/intolerable situation (Article 13(b))
(d) Child's preference (Article 13)
(e) Role of social studies
3. Article 20
4. Custody order no defense to return (Article 17)
J. Return of the child (Article 12)
1. Return order not on custody merits (Article 19)
2. Costs, fees and expenses shifted to abductor (Article 26)

IV. Central Authority

(Articles 1, 10, 21)

A. Establishment of Central Authority (Article 6)
B. Duties (Article 7)
C. Other Tasks (Articles 8, 9, 10, 11, 15, 21, 26, 27, 28)
1. Processing applications (Articles 8, 9, 27, 28)
2. Assistance in connection with judicial proceedings
(a) Request for status report (Article 11)
(b) Social studies/background reports (Article 13)
(c) Determination of "wrongfulness" (Article 15)
(d) Costs (Article 26), reservation (Articles 42, 22)

V. Access Rights—Article 21

A. Remedies for breach (Articles 21, 12)
B. Defined (Article 5(b))
C. Procedure for obtaining relief (Articles 21, 8, 7)
D. Alternative remedies (Articles 18, 29, 34)

VI. Miscellaneous and Final Clauses

A. Article 36
B. Articles 37 and 38
C. Articles 42, 43 and 44
D. Articles 39 and 40
E. Article 41
F. Article 45

Annexes

—Recommended Return-Application Form
—Bibliography

Guide to Terminology Used in the Legal Analysis

"Abduction" as used in the Convention title is not intended in a criminal sense. That term is shorthand for the phrase "wrongful removal or retention" which appears throughout the text, beginning with the preambular language and Article 1. Generally speaking, "wrongful removal" refers to the taking of a child from the person who was actually exercising custody of the child. "Wrongful retention" refers to the act of keeping the child without the consent of the person who was actually exercising custody. The archetype of this conduct is the refusal by the noncustodial parent to return a child at the end of an authorized visitation period. "Wrongful retention" is not intended by this Convention to cover refusal by the custodial parent to permit visitation by the other parent. Such obstruction of visitation may be redressed in accordance with Article 21.

The term "abductor" as used in this analysis refers to the person alleged to have wrongfully removed or retained a child. This person is also referred to as the "alleged wrongdoer" or the "respondent."

The term "person" as used in this analysis includes the person, institution or other body who (or which) actually exercised custody prior to the abduction and is seeking the child's return. The "person" seeking the child's return is also referred to as "applicant" and "petitioner."

The terms "court" and "judicial authority" are used throughout the analysis to mean both judicial and administrative bodies empowered to make decisions on petitions made pursuant to this Convention. "Judicial decree" and "court order" likewise include decisions made by courts or administrative bodies.

"Country of origin" and "requesting country" refer to the child's country ("State") of habitual residence prior to the wrongful removal or retention. "Country addressed" refers to the country ("State") where the child is located or the country to which the child is believed to have been taken. It is in that country that a judicial or administrative proceeding for return would be brought.

"Access rights" correspond to "visitation rights."

References to the "reporter" are to Elisa Perez-Vera, the official Hague Conference reporter for the Convention. Her explanatory report is recognized by the Conference as the official history and commentary on the Convention and is a source of background on the meaning of the provisions of the Convention available to all States becoming parties to it. It is referred to herein as the "Perez-Vera Report." The Perez-Vera Report appears in *Actes et*

documents de la Quatorzieme Session (1980), Volume III, Child Abduction, edited by the Permanent Bureau of the Hague Conference on Private International Law, The Hague, Netherlands. (The volume may be ordered from the Netherlands Government Printing and Publishing Office, 1 Christoffel Plantijnstraat, Postbox 20014, 2500 EA The Hague, Netherlands.)

I. Children Protected by the Convention

A fundamental purpose of the Hague Convention is to protect children from wrongful international removals or retentions by persons bent on obtaining their physical and/or legal custody. Children who are wrongfully moved from country to country are deprived of the stable relationships which the Convention is designed promptly to restore. Contracting States are obliged by Article 2 to take all appropriate measures to implement the objectives of the Convention as set forth in Article 1: (1) To secure the prompt return of children wrongfully removed to or retained in any Contracting State; and (2) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in other Contracting States. While these objectives are universal in their appeal, the Convention does not cover all children who might be victims of wrongful takings or retentions. A threshold inquiry, therefore, is whether the child who has been abducted or retained is subject to the Convention's provisions. Only if the child falls within the scope of the Convention will the administrative and judicial mechanisms of the Convention apply.

A. Age

The Convention applies only to children under the age of sixteen (16). Even if a child is under sixteen at the time of the wrongful removal or retention as well as when the Convention is invoked, the Convention ceases to apply when the child reaches sixteen. Article 4.

Absent action by governments to expand coverage of the Convention to children aged sixteen and above pursuant to Article 36, the Convention itself is unavailable as the legal vehicle for securing return of a child sixteen or older. However, it does not bar return of such child by other means.

Articles 18, 29 and 34 make clear that the Convention is a nonexclusive remedy in cases of international child abduction. Article 18 provides that the Convention does not limit the power of a judicial authority to order return of a child at any time, presumably under other laws, procedures or comity, irrespective of the child's age. Article 29 permits the person who claims a breach of custody or access rights, as defined by Articles 3 and 21, to bypass the Convention completely by invoking any applicable laws or procedures to secure the child's return. Likewise, Article 34 provides that the Convention shall not restrict the application of any law in the State addressed for purposes of obtaining the child's return or for organizing visitation rights. Assuming such laws are not restricted to children under sixteen, a child sixteen or over may be returned pursuant to their provisions.

Notwithstanding the general application of the Convention to children under sixteen, it should be noted that the wishes of mature children regarding their return are not ignored by the Convention. Article 13 permits, but does not require, the judicial authority to refuse to order the child returned if the child "objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views." The role of the child's preference in return proceedings is discussed further at III.I(2)(d), *infra.*

B. Residence

In order for the Convention to apply the child must have been "habitually resident in a Contracting State immediately before any breach of custody or access rights." Article 4. In practical terms, the Convention may be invoked only where the child was habitually resident in a Contracting State and taken to or retained in another Contracting State. Accordingly, child abduction and retention cases are actionable under the Convention if they are international in nature (as opposed to interstate), and provided the Convention has entered into force for both countries involved. *See* discussion of Article 38, VI.B, *infra.*

To illustrate, take the case of a child abducted to California from his home in New York. The Convention could not be invoked to secure the return of such child. This is true even if one of the child's parents is an American citizen and the other a foreign national. The Uniform Child Custody Jurisdiction Act (UCCJA) and/or the Parental Kidnapping Prevention Act (PKPA), domestic state and federal law, respectively, would govern the return of the child in question. If the same child were removed from New York to Canada, application under the Convention could be made to secure the child's return provided the Convention had entered into force both for the United States and the Canadian province to which the child was taken. An alternative remedy might also lie under other Canadian law. If the child had been removed from Canada and taken to the United States, the aggrieved custodial parent in Canada could seek to secure the child's return by petitioning for enforcement of a Canadian custody order pursuant to the UCCJA, or by invoking the Convention, or both.

C. Timing/Cases Covered

Article 35 states that the Convention shall apply as between Contracting States only to wrongful removals or retentions occurring after its entry into force in those States. Following a strict interpretation of that Article, the Convention will not apply to a child who is wrongfully shifted from one Contracting State to another if the wrongful removal or retention occurred before the Convention's entry into force in those States. However, under a liberal interpretation Article 35 could be construed to cover wrongful removal or retention cases which began before the Convention took effect but which continued and were ongoing after its entry into force.

D. Effect of Custody Order Concerning the Child

1. Existing Custody Orders

Children who otherwise fall within the scope of the Convention are not automatically removed from its protections by virtue of a judicial decision awarding custody to the alleged wrongdoer. This is true whether the decision as to custody was made, or is entitled to recognition, in the State to which the child has been taken. Under Article 17 that State cannot refuse to return a child solely on the basis of a court order awarding custody to the alleged wrongdoer made by one of its own courts or by the courts of another country. This provision is intended to ensure, *inter alia,* that the Convention takes precedence over decrees made in favor of abductors before the court had notice of the wrongful removal or retention.

Thus, under Article 17 the person who wrongfully removes or retains the child in a Contracting State cannot insulate the child from the Convention's return provisions merely by obtaining a custody order in the country of new residence, or by seeking there to enforce another country's order. Nor may the alleged wrongdoer rely upon a stale decree awarding him or her custody, the provisions of which have been

derogated from subsequently by agreement or acquiescence of the parties, to prevent the child's return under the Convention. Article 3.

It should be noted that Article 17 does permit a court to take into account the reasons underlying an existing custody decree when it applies the Convention.

II. Pre-Decree Removals or Retentions

Children who are wrongfully removed or retained prior to the entry of a custody order are protected by the Convention. There need not be a custody order in effect in order to invoke the Convention's return provisions. Accordingly, under the Convention a child will be ordered returned to the person with whom he or she was habitually resident in pre-decree abduction cases as well as in cases involving violations of existing custody orders.

Application of the Convention to pre-decree cases comes to grips with the reality that many children are abducted or retained long before custody actions have been initiated. In this manner a child is not prejudiced by the legal inaction of his or her physical custodian, who may not have anticipated the abduction, and the abductor is denied any legal advantage since the child is subject to the return provisions of the Convention.

The Convention's treatment of pre-decree abduction cases is distinguishable from the Council of Europe's Convention on Recognition and Enorcement of Decisions Relating to the Custody of Children, adopted in Strasbourg, France in November 1979 ("Strasbourg Convention"), and from domestic law in the United States, specifically the UCCJA and the PKPA, all of which provide for enforcement of custody decrees. Although the UCCJA and PKPA permit enforcement of a decree obtained by a parent in the home state after the child has been removed from that state, in the absence of such decree the enforcement provisions of those laws are inoperative. In contrast to the restoration of the *legal* status quo ante brought about by application of the UCCJA, the PKPA, and the Strasbourg Convention, the Hague Convention seeks restoration of the *factual* status quo ante and is not contingent on the existence of a custody decree. The Convention is premised upon the notion that the child should be promptly restored to his or her country of habitual residence so that a court there can examine the merits of the custody dispute and award custody in the child's best interests.

Pre-decree abductions are discussed in greater detail in the section dealing with actionable conduct. *See* II.B(2)(c)(i).

II. Conduct Actionable Under the Convention

A. "International Child Abduction" not Criminal: Hague Convention Distinguished From Extradition Treaties

Despite the use of the term "abduction" in its title, the Hague Convention is not an extradition treaty. The conduct made actionable by the Convention—the wrongful removal or retention of children—is wrongful not in a criminal sense but in a civil sense.

The Hague Convention establishes civil procedures to secure the return of so-called "abducted" children. Article 12. In this manner the Hague Convention seeks to satisfy the overriding concern of the aggrieved parent. The Convention is not concerned with the question of whether the person found to have wrongfully removed or retained the child returns to the child's country of habitual residence once the child has been returned pursuant to the Convention. This is in contrast to the criminal extradition process which is designed to secure the return of the fugitive wrong-doer. Indeed, when the fugitive-parent is extradited for trial or to serve a criminal sentence, there is no guarantee that the abducted child will also be returned.

While it is uncertain whether criminal extradition treaties will be routinely invoked in international custody cases between countries for which the Hague Convention is in force, nothing in the Convention bars their application or use.

B. Wrongful Removal or Retention

The Convention's first stated objective is to secure the prompt return of children who are wrongfully removed from or retained in any Contracting State. Article 1(a). (The second stated objective, i.e., to ensure that rights of custody and of access under the law of one Contracting State are effectively exercised in other Contracting States (Article 1(b)), is discussed under the heading "Access Rights," V., *infra.*) The removal or retention must be wrongful within the meaning of Article 3, as further clarified by Article 5(a), in order to trigger the return procedures established by the Convention. Article 3 provides that the removal or retention of a child is to be considered wrongful where:

(a) it is in breach of custody rights attributed to a person, an institution or another body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and (b) at the time of the removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

This Article is a cornerstone of the Convention. It is analyzed by examining two questions:

1. Who holds rights protected by the Convention (or, with respect to whom is the removal or retention deemed to be wrongful?); and

2. What are the factual and legal elements of a wrongful removal or retention?

1. Holders of Rights Protected by the Convention

(a) *"Person, institution or other body".* While the child is the ultimate beneficiary of the Convention's judicial and administrative machinery, the child's role under the Convention is passive. In contrast, it is up to the "person, institution or other body" (hereinafter referred to simply as "the person") who "actually exercised" custody of the child prior to the abduction, or who would have exercised custody but for the abduction, to invoke the Convention to secure the child's return. Article 3 (a), (b). It is this person who holds the rights protected by the Convention and who has the right to seek relief pursuant to its terms.

Since the vast majority of abduction cases arises in the context of divorce or separation, the person envisioned by Article 3(a) most often will be the child's parent. The typical scenario would involve one parent taking a child from one Contracting State to another Contracting State over objections of the parent with whom the child had been living.

However, there may be situations in which a person other than a biological parent has actually been exercising custody of the child and is therefore eligible to seek the child's return pursuant to the Convention. An example would be a grandparent who has had physical custody of a child following the death of the parent with whom the child had been residing. If the child is subsequently removed from the custody of the grandparent by the surviving parent, the aggrieved grandparent could invoke the Convention to secure the child's return. In another situation, the child may be in the care of foster parents. If custody rights exercised by the foster parents are breached, for instance, by abduction of the child by its biological pa. ent, the foster parents

could invoke the Convention to secure the child's return.

In the two foregoing examples (not intended to be exhaustive) a family relationship existed between the victim-child and the person who had the right to seek the child's return. However, institutions such as public or private child care agencies also may have custody rights the breach of which would be remediable under the Convention. If a natural parent relinquishes parental rights to a child and the child is subsequently placed in the care of an adoption agency, that agency may invoke the Convention to recover the child if the child is abducted by its parent(s).

(b) *"Jointly or alone".* Article 3 (a) and (b) recognize that custody rights may be held either jointly or alone. Two persons, typically mother and father, can exercise joint custody, either by court order following a custody adjudication, or by operation of law prior to the entry of a decree. The Convention does not distinguish between these two situations, as the commentary of the Convention reporter indicates:

> Now, from the Convention's standpoint, the removal of a child by one of the joint holders without the consent of the other, is wrongful, and this wrongfulness derives in this particular case, not from some action in breach of a particular law, but from the fact that such action has disregarded the rights of the other parent which are also protected by law, and has interfered with their normal exercise. The Convention's true nature is revealed most clearly in these situations: it is not concerned with establishing the person to whom custody of the child will belong at some point in the future, nor with the situations in which it may prove necessary to modify a decision awarding joint custody on the basis of facts which have subsequently changed. It seeks, more simply, to prevent a later decision on the matter being influenced by a change of circumstances brought about through unilateral action by one of the parties. Perez-Vera Report, paragraph 71 at 447–448.

Article 3(a) ensures the application of the Convention to pre-decree abductions, since it protects the rights of a parent who was exercising custody of the child jointly with the abductor at the time of the abduction, before the issuance of a custody decree.

2. "Wrongful Removal or Retention" Defined

The obligation to return an abducted child to the person entitled to custody arises only if the removal or the retention is wrongful within the meaning of the Convention. To be considered wrongful, certain factual and legal elements must be present.

(a) *Breach of "custody rights".* The removal or retention must be in breach of "custody rights," defined in Article 5(a) as "rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence."

Accordingly, a parent who sends his or her child to live with a caretaker has not relinquished custody rights but rather has exercised them within the meaning of the Convention. Likewise, a parent hospitalized for a protracted period who places the child with grandparents or other relatives for the duration of the illness has effectively exercised custody.

(b) *"Custody rights" determined by law of child's habitual residence.* In addition to including the right to determine the child's residence (Article 5(a)), the term "custody rights" covers a collection of rights which take on more specific meaning by reference to the law of the country in which the child was habitually resident immediately before the removal or retention. Article 3(a). Nothing in the Convention limits this "law" to the internal law of the State of the child's habitual residence. Consequently, it could include the laws of another State if the choice of law rules in the State of habitual residence so indicate.

If a country has more than one territorial unit, the habitual residence refers to the particular territorial unit in which the child was resident, and the applicable laws are those in effect in that territorial unit. Article 31. In the United States, the law in force in the state in which a child was habitually resident (as possibly preempted by federal legislation enacted in connection with U.S. ratification of the Convention) would be applicable for the determination as to whether a removal or retention is wrongful.

Articles 32 and 33 also control, respectively, how and whether the Convention applies in States with more than one legal system. Perez-Vera Report, paragraphs 141 and 142 at 470.

(c) *Sources of "custody rights".* Although the Convention does not exhaustively list all possible sources from which custody rights may derive, it does identify three sources. According to the final paragraph of Article 3, custody rights may arise: (1) by operation of law; (2) by reason of a judicial or administrative decision; or (3) by reason of an agreement having legal effect under the law of that State.

i. *Custody rights arising by operation of law.* Custody rights which arise by operation of law in the State of habitual residence are protected; they need not be conferred by court order to fall within the scope of the Convention. Article 3. Thus, a person whose child is abducted prior to the entry of a custody order is not required to obtain a custody order in the State of the child's habitual residence as a prerequisite to invoking the Convention's return provisions.

In the United States, as a general proposition both parents have equal rights of custody of their children prior to the issuance of a court order allocating rights between them. If one parent interferes with the other's equal rights by unilaterally removing or retaining the child abroad without consent of the other parent, such interference could constitute wrongful conduct within the meaning of the Convention. (See excerpts from Perez-Vera Report quoted at II.B.1(b), *supra.*) Thus, a parent left in the United States after a pre-decree abduction could seek return of a child from a Contracting State abroad pursuant to the Convention. In cases involving children wrongfully brought to or retained in the United States from a Contracting State abroad prior to the entry of a decree, in the absence of an agreement between the parties the question of wrongfulness would be resolved by looking to the law of the child's country of habitual residence.

Although a custody decree is not needed to invoke the Convention, there are two situations in which the aggrieved parent may nevertheless benefit by securing a custody order, assuming the courts can hear swiftly a petition for custody. First, to the extent that an award of custody to the left-behind parent (or other person) is based in part upon an express finding by the court that the child's removal or retention was wrongful within the meaning of Article 3, the applicant anticipates a possible request by the judicial authority applying the Convention, pursuant to Article 15, for a court determination of wrongfulness. This may accelerate disposition of a return petition under the Convention. Second, a person outside the United States who obtains a custody decree from a foreign court subsequent to the child's abduction, after notice and opportunity to be heard have been accorded to the absconding parent, may be able to invoke either the Convention or the UCCJA. or both, to secure the child's return from the United States. The UCCJA may be preferable inasmuch as its enforcement provisions are not subject to the exceptions contained in the Convention.

ii. *Custody rights arising by reason of judicial or administrative decision.* Custody rights embodied in judicial or

administrative decisions fall within the Convention's scope. While custody determinations in the United States are made by state courts, in some Contracting States, notably the Scandinavian countries, administrative bodies are empowered to decide matters relating to child custody including the allocation of custody and visitation rights. Hence the reference to "administrative decisions" in Article 3.

The language used in this part of the Convention can be misleading. Even when custody rights are conferred by court decree, technically speaking the Convention does not mandate recognition and enforcement of that decree. Instead, it seeks only to restore the factual custody arrangements that existed prior to the wrongful removal or retention (which incidentally in many cases will be the same as those specified by court order).

Finally, the court order need not have been made by a court in the State of the child's habitual residence. It could be one originating from a third country. As the reporter points out, when custody rights were exercised in the State of the child's habitual residence on the basis of a foreign decree, the Convention does not require that the decree have been formally recognized. Perez-Vera Report, paragraph 69 at 447.

iii. *Custody rights arising by reason of agreement having legal effect.* Parties who enter into a private agreement concerning a child's custody have recourse under the Convention if those custody rights are breached. Article 3. The only limitation is that the agreement have legal effect under the law of the child's habitual residence.

Comments of the United States with respect to language contained in an earlier draft of the Convention (*i.e.*, that the agreement "have the force of law") shed some light on the meaning of the expression "an agreement having legal effect". In the U.S. view, the provision should be interpreted expansively to cover more than only those agreements that have been incorporated in or referred to in a custody judgment. *Actes et documents de la Quatorzieme Session, (1980) Volume III. Child Abduction,* Comments of Governments at 240. The reporter's observations affirm a broad interpretation of this provision:

> As regards the definition of an agreement which has "legal effect" in terms of a particular law, it seems that there must be included within it any sort of agreement which is not prohibited by such a law and which may provide a basis for presenting a legal claim to the competent authorities. Perez-Vera Report, paragraph 70 at 447.

(d) *"Actually exercised".* The most predictable fact pattern under the Convention will involve the abduction of a child directly from the parent who was actually exercising physical custody at the time of the abduction.

To invoke the Convention, the holder of custody rights must allege that he or she actually exercised those rights at the time of the breach or would have exercised them but for the breach. Article 3(b). Under Article 5, custody rights are defined to include the right to determine the child's place of residence. Thus, if a child is abducted from the physical custody of the person in whose care the child has been entrusted by the custodial parent who was "actually exercising" custody, it is the parent who placed the child who may make application under the Convention for the child's return.

Very little is required of the applicant in support of the allegation that custody rights have actually been or would have been exercised. The applicant need only provide some preliminary evidence that he or she actually exercised custody of the child, for instance, took physical care of the child. Perez-Vera Report, paragraph 73 at 448. The Report points out the informal nature of the pleading and proof requirements; Article 8(c) merely requires a statement in the application to the Central Authority as to "the grounds on which the applicant's claim for return of the child is based." *Id.*

In the scheme of the Convention it is presumed that the person who has custody actually exercised it. Article 13 places on the alleged abductor the burden of proving the nonexercise of custody rights by the applicant as an exception to the return obligation. Here, again, the reporter's comments are insightful:

> Thus, we may conclude that the Convention, taken as a whole, is built upon the tacit presumption that the person who has care of the child actually exercises custody over it. This idea has to be overcome by discharging the burden of proof which has shifted, as is normal with any presumption (*i.e.* discharged by the "abductor" if he wishes to prevent the return of the child.) Perez-Vera Report paragraph 73 at 449.

III. Judicial Proceedings for Return of Child

A. Right To Seek Return

When a person's custody rights have been breached by the wrongful removal or retention of the child by another, he or she can seek return of the child pursuant to the Convention. This right of return is the core of the Convention. The Convention establishes two means by which the child may be returned. One is through direct application by the aggrieved person to a court in the Contracting State to which the child has been taken or in which the child is being kept. Articles 12, 29. The other is through application to the Central Authority to be established by every Contracting State. Article 8. These remedies are not mutually exclusive; the aggrieved person may invoke either or both of them. Moreover, the aggrieved person may also pursue remedies outside the Convention. Articles 18, 29 and 34. This part of the report describes the Convention's judicial remedy in detail. The administrative remedy is discussed in IV, *infra.*

Articles 12 and 29 authorize any person who claims a breach of custody rights within the meaning of Article 3 to apply for the child's return directly to the judicial authorities of the Contracting State where the child is located.

A petition for return pursuant to the Convention may be filed any time after the child has been removed or retained up until the child reaches sixteen. While the window of time for filing may be wide in a particular case without threat of technically losing rights under the Convention, there are numerous reasons to commence a return proceeding promptly if the likelihood of a voluntary return is remote. The two most crucial reasons are to preclude adjudication of custody on the merits in a country other than the child's habitual residence (see discussion of Article 16, *infra*) and to maximize the chances for the child's return by reducing the alleged abductor's opportunity to establish that the child is settled in a new environment (see discussion of Article 12, *infra*).

A petition for return would be made directly to the appropriate court in the Contracting State where the child is located. If the return proceedings are commenced less than one year from the date of the wrongful removal or retention, Article 12 requires the court to order the return of the child forthwith. If the return proceedings are commenced a year or more after the alleged wrongful removal or retention, the court remains obligated by Article 12 to order the child returned unless it is demonstrated that the child is settled in its new environment.

Under Article 29 a person is not precluded from seeking judicially-ordered return of a child pursuant to laws and procedures other than the Convention. Indeed, Articles 18 and 34 make clear that nothing in the Convention limits the power of a court to return a child at any time by applying

other laws and procedures conducive to that end.

Accordingly, a parent seeking return of a child from the United States could petition for return pursuant to the Convention, or in the alternative or additionally, for enforcement of a foreign court order pursuant to the UCCJA. For instance, an English father could petition courts in New York either for return of his child under the Convention and/or for recognition and enforcement of his British custody decree pursuant to the UCCJA. If he prevailed in either situation, the respective court could order the child returned to him in England. The father in this illustration may find the UCCJA remedy swifter than invoking the Convention for the child's return because it is not subject to the exceptions set forth in the Convention, discussed at III.I., *infra*.

B. Legal Advice and Costs

Article 25 provides for the extension of legal aid and advice to foreign applicants on the same basis and subject only to the same eligibility requirements as for nationals of the country in which that aid is sought.

Article 26 prohibits Central Authorities from charging applicants for the cost and expenses of the proceedings or, where applicable, those arising from the participation of legal counsel or advisers. This provision will be of no help to an applicant, however, if the Contracting State in question has made a reservation in accordance with Articles 26 and 42 declaring that it shall not be bound to assume any costs resulting from the participation of legal counsel or advisers or from court proceedings, except insofar as those costs may be covered by its system of legal aid and advice.

It is expected that the United States will enter a reservation in accordance with Articles 26 and 42. This will place at least the initial burden of paying for counsel and legal proceedings on the applicant rather than on the federal government. Because the reservation is nonreciprocal, use of it will not automatically operate to deny applicants from the United States free legal services and judicial proceedings in other Contracting States. However, if the Contracting State in which the child is located has itself made use of the reservation in question, the U.S. applicant will not be eligible for cost-free legal representation and court proceedings. For more information on costs, including the possibility that the petitioner's costs may be levied on the abductor if the child is ordered returned, see III.J 2 and IV.C (d) of this analysis.

C. Pleading Requirements

The Convention does not expressly set forth pleading requirements that must be satisfied by an applicant who commences a judicial return proceeding. In contrast, Article 8 sets forth the basic requirements for an application placed before a Central Authority (discussed IV.C(1), *infra*) for the return of the child. Since the objective is identical—the child's return—whether relief is sought through the courts or through intercession of the Central Authority, it follows that a court should be provided with at least as much information as a Central Authority is to be provided in a return application filed in compliance with Article 8. To ensure that all necessary information is provided, the applicant may wish to append to the petition to the court a completed copy of the recommended model form for return of a child (see Annex A to this analysis).

In addition to providing the information set forth in Article 8, the petition for return should allege that the child was wrongfully removed or retained by the defendant in violation of custody rights that were actually being exercised by the petitioner. The petition should state the source of the custody rights, the date of the wrongful conduct, and the child's age at that time. In the prayer for relief, the petitioner should request the child's return and an order for payment by the abducting or retaining parent of all fees and expenses incurred to secure the child's return.

Any return petition filed in a court in the United States pursuant to the Convention must be in English. Any person in the United States who seeks return of a child from a foreign court must likewise follow the requirements of the foreign state regarding translation of legal documents. See Perez-Vera Report, paragraph 132 at page 467.

D. Admissibility of Evidence

Under Article 30, any application submitted to the Central Authority or petition submitted to the judicial authorities of a Contracting State, and any documents or information appended thereto, are admissible in the courts of the State. Moreover, under Article 23, no legalization or similar formalities may be required. However, authentication of private documents may be required. According to the official report, "any requirement of the internal law of the authorities in question that copies or private documents be authenticated remains outside the scope of this provision." Perez-Vera Report, paragraph 131 at page 467.

E. Judicial Promptitude/Status Report

Once an application for return has been filed, the court is required by Article 11 "to act expeditiously in proceedings for the return of children." To keep matters on the fast track, Article 11 gives the applicant or the Central Authority of the requested State the right to request a statement from the court of the reasons for delay if a decision on the application has not been made within six weeks from the commencement of the proceedings.

F. Judicial Notice

In ascertaining whether there has been a wrongful removal or retention of a child within the meaning of Article 3, Article 14 empowers the court of the requested State to take notice directly of the law and decisions in the State of the child's habitual residence. Standard procedures for the proof of foreign law and for recognition of foreign decisions would not need to be followed and compliance with such procedures is not to be required.

G. Court Determination of "Wrongfulness"

Prior to ordering a child returned pursuant to Article 12, Article 15 permits the court to request the applicant to obtain from the authorities of the child's State of habitual residence a decision or other determination that the alleged removal or retention was wrongful within the meaning of Article 3. Article 15 does not specify which "authorities" may render such a determination. It therefore could include agencies of government (*e.g.*, state attorneys general) and courts. Central Authorities shall assist applicants to obtain such a decision or determination. This request may only be made where such a decision or determination is obtainable in that State.

This latter point is particularly important because in some countries the absence of the defendant-abductor and child from the forum makes it legally impossible to proceed with an action for custody brought by the left-behind parent. If an adjudication in such an action were a prerequisite to obtaining a determination of wrongfulness, it would be impossible for the petitioner to comply with an Article 15 request. For this reason a request for a decision or determination on wrongfulness can not be made in such circumstances consistent with the limitation in Article 15. Even if local law permits an adjudication of custody in the absence of the child and defendant (*i.e.*, post-abduction) or would otherwise allow a petitioner to obtain a determination of

wrongfulness, the provisions of Article 15 will probably not be resorted to routinely. That is so because doing so would convert the purpose of the Convention from seeking to restore the *factual* status quo prior to an abduction to emphasizing substantive legal relationships.

A further consideration in deciding whether to request an applicant to comply with Article 15 is the length of time it will take to obtain the required determination. In countries where such a determination can be made only by a court, if judicial dockets are seriously backlogged, compliance with an Article 15 order could significantly prolong disposition of the return petition, which in turn would extend the time that the child is kept in a state of legal and emotional limbo. If "wrongfulness" can be established some other way, for instance by taking judicial notice of the law of the child's habitual residence as permitted by Article 14, the objective of Article 15 can be satisfied without further prejudice to the child's welfare or undue delay of the return proceeding. This would also be consistent with the Convention's desire for expeditious judicial proceedings as evidenced by Article 11.

In the United States, a left-behind parent or other claimant can petition for custody after the child has been removed from the forum. The right of action is conferred by the UCCJA, which in many states also directs courts to hear such petitions expeditiously. The result of such proceeding is a temporary or permanent custody determination allocating custody and visitation rights, or joint custody rights, between the parties. However, a custody determination on the merits that makes no reference to the Convention may not by itself satisfy an Article 15 request by a foreign court for a determination as to the wrongfulness of the conduct within the meaning of Article 3. Therefore, to ensure compliance with a possible Article 15 request the parent in the United States would be well-advised to request an explicit finding as to the wrongfulness of the alleged removal or retention within the meaning of Article 3 in addition to seeking custody.

H. Constraints Upon Courts in Requested States in Making Substantive Custody Decisions

Article 16 bars a court in the country to which the child has been taken or in which the child has been retained from considering the merits of custody claims once it has received notice of the removal or retention of the child. The constraints continue either until it is determined that the child is not to be returned under the Convention, or it becomes evident that an application under the Convention will not be forthcoming within a reasonable time following receipt of the notice.

A court may get notice of a wrongful removal or retention in some manner other than the filing of a petition for return, for instance by communication from a Central Authority, from the aggrieved party (either directly or through counsel), or from a court in a Contracting State which has stayed or dismissed return proceedings upon removal of the child from that State.

No matter how notice may be given, once the tribunal has received notice, a formal application for the child's return pursuant to the Convention will normally be filed promptly to avoid a decision on the merits from being made. If circumstances warrant a delay in filing a return petition, for instance pending the outcome of private negotiations for the child's return or interventions toward that end by the Central Authority, or pending determination of the location of the child and alleged abductor, the aggrieved party may nevertheless wish to notify the court as to the reason(s) for the delay so that inaction is not viewed as a failure to proceed under the Convention.

I. Duty To Return not Absolute

The judicial duty to order return of a wrongfully removed or retained child is not absolute. Temporal qualifications on this duty are set forth in Articles 12, 4 and 35. Additionally, Articles 13 and 20 set forth grounds upon which return may be denied.

1. Temporal Qualifications

Articles 4, 35 and 12 place time limitations on the return obligation.

(a) *Article 4.* Pursuant to Article 4, the Convention ceases to apply once the child reaches age sixteen. This is true regardless of when return proceedings were commenced and irrespective of their status at the time of the child's sixteenth birthday. *See* I.A., *supra.*

(b) *Article 35.* Article 35 limits application of the Convention to wrongful removals or retentions occurring after its entry into force between the two relevant Contracting States. *But see* I.C., *supra.*

(c) *Article 12.* Under Article 12, the court is not obligated to return a child when return proceedings pursuant to the Convention are commenced a year or more after the alleged removal or retention *and* it is demonstrated that the child is settled in its new environment. The reporter indicates that "(T)he provision does not state how this fact is to be proved, but it would seem logical to regard such a task as falling upon the abductor or upon the person who opposes the return of the child . . ." Perez-Vera Report, paragraph 109 at page 459.

If the Convention is to succeed in deterring abductions, the alleged abductor must not be accorded preferential treatment by courts in his or her country of origin, which, in the absence of the Convention, might be prone to favor "home forum" litigants. To this end, nothing less than substantial evidence of the child's significant connections to the new country is intended to suffice to meet the respondent's burden of proof. Moreover, any claims made by the person resisting the child's return will be considered in light of evidence presented by the applicant concerning the child's contacts with and ties to his or her State of habitual residence. The reason for the passage of time, which may have made it possible for the child to form ties to the new country, is also relevant to the ultimate disposition of the return petition. If the alleged wrongdoer concealed the child's whereabouts from the custodian necessitating a long search for the child and thereby delayed the commencement of a return proceeding by the applicant, it is highly questionable whether the respondent should be permitted to benefit from such conduct absent strong countervailing considerations.

2. Article 13 Limitations on the Return Obligation

(a) *Legislative history.* In drafting Articles 13 and 20, the representatives of countries participating in negotiations on the Convention were aware that any exceptions had to be drawn very narrowly lest their application undermine the express purposes of the Convention—to effect the prompt return of abducted children. Further, it was generally believed that courts would understand and fulfill the objectives of the Convention by narrowly interpreting the exceptions and allowing their use only in clearly meritorious cases, and only when the person opposing return had met the burden of proof. Importantly, a finding that one or more of the exceptions provided by Articles 13 and 20 are applicable does not make refusal of a return order mandatory. The courts retain the discretion to order the child returned even if they consider that one or more of the exceptions applies. Finally, the wording of each exception represents a compromise to accommodate the different legal systems and tenets of family law in effect in the

countries negotiating the Convention, the basic purpose in each case being to provide for an exception that is narrowly construed.

(b) *Non-exercise of custody rights.* Under Article 13(a), the judicial authority may deny an application for the return of a child if the person having the care of the child was not actually exercising the custody rights at the time of the removal or retention, or had consented to or acquiesced in the removal or retention. This exception derives from Article 3(b) which makes the Convention applicable to the breach of custody rights that were actually exercised at the time of the removal or retention, or which would have been exercised but for the removal or retention.

The person opposing return has the burden of proving that custody rights were not actually exercised at the time of the removal or retention, or that the applicant had consented to or acquiesced in the removal or retention. The reporter points out that proof that custody was not actually exercised does not form an exception to the duty to return if the dispossessed guardian was unable to exercise his rights precisely because of the action of the abductor. Perez-Vera Report, paragraph 115 at page 461.

The applicant seeking return need only allege that he or she was actually exercising custody rights conferred by the law of the country in which the child was habitually resident immediately before the removal or retention. The statement would normally include a recitation of the circumstances under which physical custody had been exercised, *i.e.*, whether by the holder of these rights, or by a third person on behalf of the actual holder of the custody rights. The applicant would append copies of any relevant legal documents or court orders to the return application. *See* III. C., *supra*, and Article 8.

(c) *Grave risk of harm/intolerable situation.* Under Article 13(b), a court in its discretion need not order a child returned if there is a grave risk that return would expose the child to physical harm or otherwise place the child in an intolerable situation.

This provision was not intended to be used by defendants as a vehicle to litigate (or relitigate) the child's best interests. Only evidence directly establishing the existence of a grave risk that would expose the child to physical or emotional harm or otherwise place the child in an intolerable situation is material to the court's determination. The person opposing the child's return must show that the risk to the child is grave, not merely serious.

A review of deliberations on the Convention reveals that "intolerable situation" was not intended to encompass return to a home where money is in short supply, or where educational or other opportunities are more limited than in the requested State. An example of an "intolerable situation" is one in which a custodial parent sexually abuses the child. If the other parent removes or retains the child to safeguard it against further victimization, and the abusive parent then petitions for the child's return under the Convention, the court may deny the petition. Such action would protect the child from being returned to an "intolerable situation" and subjected to a grave risk of psychological harm.

(d) *Child's preference.* The third, unlettered paragraph of Article 13 permits the court to decline to order the child returned if the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of the child's views. As with the other Article 13 exceptions to the return obligation, the application of this exception is not mandatory. This discretionery aspect of Article 13 is especially important because of the potential for brainwashing of the child by the alleged abductor. A child's objection to being returned may be accorded little if any weight if the court believes that the child's preference is the product of the abductor parent's undue influence over the child.

(e) *Role of social studies.* The final paragraph of Article 13 requires the court, in considering a respondent's assertion that the child should not be returned, to take into account information relating to the child's social background provided by the Central Authority or other competent authority in the child's State of habitual residence. This provision has the dual purpose of ensuring that the court has a balanced record upon which to determine whether the child is to be returned, and preventing the abductor from obtaining an unfair advantage through his or her own forum selection with resulting ready access to evidence of the child's living conditions in that forum.

3. Article 20

Article 20 limits the return obligation of Article 12. It states: "The return of the child under the provisions of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms."

The best explanation for this unique formulation is that the Convention might never have been adopted without it. The negotiating countries were divided on the inclusion of a public policy exception in the Convention. Those favoring a public policy exception believed that under some extreme circumstances not covered by the exceptions of Article 13 a court should be excused from returning a child to the country of habitual residence. In contrast, opponents of a public policy exception felt that such an exception could be interpreted so broadly as to undermine the fabric of the entire Convention.

A public policy clause was nevertheless adopted at one point by a margin of one vote. That clause provided: "Contracting States may reserve the right not to return the child when such return would be manifestly incompatible with the fundamental principles of the law relating to the family and children in the State addressed." To prevent imminent collapse of the negotiating process engendered by the adoption of this clause, there was a swift and determined move to devise a different provision that could be invoked on the rare occasion that return of a child would utterly shock the conscience of the court or offend all notions of due process.

The resulting language of Article 20 has no known precedent in other international agreements to serve as a guide in its interpretation. However, it should be emphasized that this exception, like the others, was intended to be restrictively interpreted and applied, and is not to be used, for example, as a vehicle for litigating custody on the merits or for passing judgment on the political system of the country from which the child was removed. Two characterizations of the effect to be given Article 20 are recited below for illumination.

The following explanation of Article 20 is excerpted from paragraph 118 of the Perez-Vera Report at pages 461–2:

> It is significant that the possibility, acknowledged in *article 20*, that the child may not be returned when its return 'would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms' has been placed in the last article of the chapter: it was thus intended to emphasize the always clearly exceptional nature of this provision's application. As for the substance of this provision, two comments only are required. Firstly, even if its literal meaning is strongly reminiscent of the terminology used in international texts concerning the protection

of human rights, this particular rule is not directed at developments which have occurred on the international level, but is concerned only with the principles accepted by the law of the requested State, either through general international law and treaty law, or through internal legislation. Consequently, so as to be able to refuse to return a child on the basis of this article, it will be necessary to show that the fundamental principles of the requested State concerning the subject-matter of the Convention do not permit it; it will not be sufficient to show merely that its return would be incompatible, even manifestly incompatible, with these principles. Secondly, such principles must not be invoked any more frequently, nor must their invocation be more readily admissible than they would be in their application to purely internal matters. Otherwise, the provision would be discriminatory in itself, and opposed to one of the most widely recognized fundamental principles in internal laws. A study of the case law of different countries shows that the application by ordinary judges of the laws on human rights and fundamental freedoms is undertaken with a care which one must expect to see maintained in the international situations which the Convention has in view.

A.E. Anton, Chairman of the Commission on the Hague Conference on Private International Law that drafted the Convention, explained Article 20 in his article, "The Hague Convention on International Child Abduction," 30 I.C.L.Q. 537, 551–2 (July, 1981), as follows:

Its acceptance may in part have been due to the fact that it states a rule whch many States would have been bound to apply in any event, for example, by reason of the terms of their constitutions. The reference in this provision to "the fundamental principles of the requested State" make it clear that the reference is not one to international conventions or declarations concerned with the protection of human rights and fundamental freedoms which have been ratified or accepted by Contracting States. It is rather to the fundamental provisions of the law of the requested State in such matters . . . If the United Kingdom decides to ratify the Hague Covention, it will, of course, be for the implementing legislation or the courts to specify what provisions of United kingdom law come within the scope of Article 20. The Article, however, is merely permissive and it is to be hoped that States will exercise restraint in availing themselves of it.

4. Custody Order no Defense to Return

See I.D.1, *supra, for discussion of Article 17.*

J. Return of the Child

Assuming the court has determined that the removal or retention of the child was wrongful within the meaning of the Convention and that no exceptions to the return obligation have been satisfactorily established by the respondent, Article 12 provides that "the authority concerned shall order the return of the child forthwith." The Convention does not technically require that the child be returned to his or her State of habitual residence, although in the classic abduction case this will occur. If the petitioner has moved from the child's State of habitual residence the child will be returned to the petitioner, not the State of habitual residence.

1. Return Order not on Custody merits

Under Article 19, a decision under the Convention concerning the return of the child shall not be taken to be a determination on the merits of any custody issue. It follows that once the factual status quo ante has been restored, litigation concerning custody or visitation issues could proceed. Typically this will occur in the child's State of habitual residence.

2. Costs, Fees and Expenses Shifted to Abductor

In connection with the return order, Article 26 permits the court to direct the person who removed or retained the child to pay necessary expenses incurred by or on behalf of the applicant to secure the child's return, including expenses, costs incurred or payments made for locating the child, costs of legal representation of the applicant, and those of returing the child. The purposes underlying Article 26 are to restore the applicant to the financial position he or she would have been in had there been no removal or retention, as well as to deter such conduct from happening in the first place. This fee shifting provision has counterparts in the UCCJA (sections 7(g), 8(c), 15(b)) and the PKPA (28 U.S.C. 1738A note).

IV. Central Authority

In addition to creating a judicial remedy for cases of wrongful removal and retention, the Convention requires each Contracting State to establish a Centeral Authority (hereinafter "CA") with the broad mandate of assisting applicants to secure the return of their children or the effective excercise of their visitation rights. Articles 1, 10, 21. The CA is expressly directed by Article 10 to take all appropriate measures to obtain the voluntary return of children. The role of the CA with respect to visitation rights is discussed in V., *infra.*

A. Establishment of Central Authoirty

Article 6 requires each Contracting State to designate a Central Authority to discharge the duties enumerated in Articles 7, 9, 10, 11, 15, 21, 26, 27, and 28.

In France, the Central Authority is located within the Ministry of Justice. Switzerland has designated its Federal Justice Office as CA, and Canada has designated its Department of Justice. However, each Canadian province and territory in which the Convention has come into force has directed its Attorney General to serve as local CA for cases involving that jurisdiction.

In the United States it is very unlikely that the volume of cases will warrant the establishment of a new agency or office to fulfill Convention responsibilities. Rather, the duties of the CA will be carried out by an existing agency of the federal government with experience in dealing with authorities of other countries.

The Department of State's Office of Citizens Consular Services (CCS) within its Bureau of Consular Affairs will most likely serve as CA under the Hague Convention. CCS presently assists parents here and abroad with child custody-related problems within the framework of existing laws and procedures. The Convention should systematize and expedite CCS handling of requests from abroad for assistance in securing the return of children wrongfully abducted to or retained in the United States, and will provide additional tools with which CCS can help parents in the United States who are seeking return of their children from abroad.

The establishment of an interagency coordinating body is envisioned to assist the State Department in executing its functions as CA. This body is to include representatives of the Departments of State, Justice, and Health and Human Services.

In addition to the mandatory establishment of a CA in the national government, Contracting States are free to appoint similar entities in political subdivisions throughout the country. Rather than mandating the establishment of a CA in every state, it is expected that state governments in the United States will be requested on a case-by-case basis to render specified assistance, consistent with the Convention, aimed at resolving international custody and visitation disputes with regard to children located within their jurisdiction.

B. Duties

Article 7 enumerates the majority of the tasks to be carried out either directly by the CA or through an intermediary. The CA is to take "all appropriate measures" to execute these responsibilities. Although they are free to do so, the Convention does not obligate Contracting States to amend their internal laws to discharge

Convention tasks more efficaciously. *See* Perez-Vera Report, paragraph 63 at page 444.

The following paragraphs of subsections of Article 7 of the Convention are couched in terms of the tasks and functions of the United States CA. The corresponding tasks and functions of the CA's in other States party to the Convention will be carried out somewhat differently in the context of each country's legal system.

Article 7(a). When the CA in the United States is asked to locate a child abducted from a foreign contracting State to this country, it would utilize all existing tools for determining the whereabouts of missing persons. Federal resources available for locating missing persons include the FBI-operated National Crime Information Center (NCIC) computer (pursuant to Pub. L. No. 97-292, the Missing Children Act), the Federal Parent Locator Service (pursuant to section 9 of Pub. L. No. 96-611, the Parental Kidnapping Prevention Act) and the National Center for Missing and Exploited Children. If the abductor's location is known or suspected, the relevant state's Parent Locator Service or Motor Vehicle Bureau and the Internal Revenue Service, Attorney General and Secretary of Education may be requested to conduct field and/or record searches. Also at the state level, public or private welfare agencies can be called upon to verify discreetly any address information about the abductor that may be discovered.

Article 7(b). To prevent further harm to the child, the CA would normally call upon the state welfare agency to take whatever protective measures are appropriate and available consistent with that state's child abuse and neglect laws. The CA, either directly or with the help of state authorities, may seek a written agreement from the abductor (and possibly from the applicant as well) not to remove the child from the jurisdiction pending procedures aimed at return of the child. Bonds or other forms of security may be required.

Article 7(c). The CA, either directly or through local public or private mediators, attorneys, social workers, or other professionals, would attempt to develop an agreement for the child's voluntary return and/or resolution of other outstanding issues. The obligation of the CA to take or cause to be taken all appropriate measures to obtain the voluntary return of the child is so fundamental a purpose of this Convention that it is restated in Article 10. However, overtures to secure the voluntary return of a child may not be advisable if advance awareness by the abductor that the Convention has been invoked is likely to prompt further flight and concealment of the child. If the CA and state authorities are successful in facilitating a voluntary agreement between the parties, the applicant would have no need to invoke or pursue the Convention's judicial remedy.

Article 7(d). The CA in the United States would rely upon court personnel or social service agencies in the child's state of habitual residence to compile information on the child's social background for the use of courts considering exceptions to a return petition in another country in which an abducted or retained child is located. *See* Article 13.

Article 7(e). The CA in the United States would call upon U.S. state authorities to prepare (or have prepared) general statements about the law of the state of the child's habitual residence for purposes of application of the Convention in the country where the child is located, *i.e.*, to determine whether a removal or retention was wrongful.

Articles 7 (f) and (g). In the United States the federal CA will not act as legal advocate for the applicant. Rather, in concert with state authorities and interested family law attorneys, the CA, through state or local bodies, will assist the applicant in identifying competent private legal counsel or, if eligible, in securing representation by a Legal Aid or Legal Services lawyer. In some states, however, the Attorney General or local District Attorney may be empowered under state law to intervene on behalf of the applicant-parent to secure the child's return.

In some foreign Contracting States, the CA may act as the legal representative of the applicant for all purposes under the Convention.

Article 28 permits the CA to require written authorization empowering it to act on behalf of the applicant, or to designate a representative to act in such capacity.

Article 7(h). Travel arrangements for the return of a child from the United States would be made by the CA or by state authorities closest to the case in cooperation with the petitioner and/or interested foreign authorities. If it is necessary to provide short-term care for the child pending his or her return, the CA presumably will arrange for the temporary placement of the child in the care of the person designated for that purpose by the applicant, or, failing that, request local authorities to appoint a guardian, foster parent, etc. The costs of transporting the child are borne by the applicant unless the court, pursuant to Article 26, orders the wrongdoer to pay.

Article 7(i). The CA will monitor all cases in which its assistance has been sought. It will maintain files on the procedures followed in each case and the ultimate disposition thereof. Complete records will aid in determining how frequently the Convention is invoked and how well it is working.

C. Other Tasks

1. Processing Applications

Article 8 sets forth the required contents of a return application submitted to a CA, all of which are incorporated into the model form recommended for use when seeking a child's return pursuant to the Convention (see Annex A of this analysis). Article 8 further provides that an application for assistance in securing the return of a child may be submitted to a CA in either the country of the child's habitual residence or in any other Contracting State. If a CA receives an application with respect to a child whom it believes to be located in another Contracting State, pursuant to Article 9 it is to transmit the application directly to the appropriate CA and inform the requesting CA or applicant of the transmittal.

It is likely that an applicant who knows the child's whereabouts can expedite the return process by electing to file a return application with the CA in the country in which the child is located. The applicant who pursues this course of action may also choose to file a duplicate copy of the application for information purposes with the CA in his or her own country . Of course, the applicant may prefer to apply directly to the CA in his or her own country even when the abductor's location is known, and rely upon the CA to transfer documents and communicate with the foreign CA on his or her behalf. An applicant who does not know the whereabouts of the child will most likely file the return application with the CA in the child's State of habitual residence.

Under Article 27, a CA may reject an application if "it is manifest that the requirements of the Convention are not fulfilled or that the application is otherwise not well founded." The CA must promptly inform the CA in the requesting State, or the applicant directly, of its reasons for such rejection. Consistent with the spirit of the Convention and in the absence of any prohibition on doing so, the applicant should be allowed to correct the defects and refile the application.

Under Article 28, a CA may require the applicant to furnish a written

authorization empowering it to act on behalf of the applicant, or designating a representative so to act.

2. Assistance in Connection With Judicial Proceedings

(a) *Request for status report.* When an action has been commenced in court for the return of a child and no decision has been reached by the end of six weeks, Article 11 authorizes the applicant or the CA of the requested State to ask the judge for a statement of the reasons for the delay. The CA in the country where the child is located may make such a request on its own initiative, or upon request of the CA of another Contracting State. Replies received by the CA in the requested State are to be transmitted to the CA in the requesting State or directly to the applicant, depending upon who initiated the request.

(b) *Social studies/background reports.* Information relating to the child's social background collected by the CA in the child's State of habitual residence pursuant to Article 7(d) may be submitted for consideration by the court in connection with a judicial return proceeding. Under the last paragraph of Article 13, the court must consider home studies and other social background reports provided by the CA or other competent authorities in the child's State of habitual residence.

(c) *Determination of "wrongfulness".* If a court requests an applicant to obtain a determination from the authorities of the child's State of habitual residence that the removal or retention was wrongful, Central Authorities are to assist applicants, so far as practicable, to obtain such a determination. Article 15.

(d) *Costs.* Under Article 26, each CA bears its own costs in applying the Convention. The actual operating expenses under the Convention will vary from one Contracting State to the next depending upon the volume of incoming and outgoing requests and the number and nature of the procedures available under internal law to carry out specified Convention tasks.

Subject to limited exceptions noted in the next paragraph, the Central Authority and other public services are prohibited from imposing any charges in relation to applications submitted under the Convention. Neither the applicant nor the CA in the requesting State may be required to pay for the services rendered directly or indirectly by the CA of the requested State.

The exceptions relate to transportation and legal expenses to secure the child's return. With respect to transportation, the CA in the requested State is under no obligation to pay for the child's return. The applicant can therefore be required to pay the costs of transporting the child. With respect to legal expenses, if the requested State enters a reservation in accordance with Articles 26 and 42, the applicant can be required to pay all costs and expenses of the legal proceedings, and those arising from the participation of legal counsel or advisers. However, see III. J 2 of this analysis discussing the possibility that the court ordering the child's return will levy these and other costs upon the abductor. Even if the reservation under Articles 26 and 42 is entered, under Article 22 no security, bond or deposit can be required to guarantee the payment of costs and expenses of the judicial or administrative proceedings falling within the Convention.

Under the last paragraph of Article 26 the CA may be able to recover some of its expenses from the person who engaged in the wrongful conduct. For instance, a court that orders a child returned may also order the person who removed or retained the child to pay the expenses incurred by or on behalf of the petitioner, including costs of court proceedings and legal fees of the petitioner. Likewise, a court that issues an order concerning visitation may direct the person who prevented the exercise of visitation rights to pay necessary expenses incurred by or on behalf of the petitioner. In such cases, the petitioner could recover his or her expenses, and the CA could recover its outlays on behalf of the petitioner, including costs associated with, or payments made for, locating the child and the legal representation of the petitioner.

V. Access Rights—Article 21

A. Remedies for Breach

Up to this point this analysis has focussed on judicial and administrative remedies for the removal or retention of children in breach of custody rights. "Access rights," which are synonymous with "visitation rights", are also protected by the Convention, but to a lesser extent than custody rights. While the Convention preamble and Article 1(b) articulate the Convention objective of ensuring that rights of access under the law of one state are respected in other Contracting States, the remedies for breach of access rights are those enunciated in Article 21 and do not include the return remedy provided by Article 12.

B. Defined

Article 5(b) defines "access rights" as including "the right to take a child for a limited period of time to a place other than the child's habitual residence."

A parent who takes a child from the country of its habitual residence to another country party to the Convention for a summer visit pursuant to either a tacit agreement between the parents or a court order is thus exercising his or her access rights. Should that parent fail to return the child at the end of the agreed upon visitation period, the retention would be wrongful and could give rise to a petition for return under Article 12. If, on the other hand, a custodial parent resists permitting the child to travel abroad to visit the noncustodial parent, perhaps out of fear that the child will not be returned at the end of the visit, this interference with access rights does not constitute a wrongful retention within the meaning of Article 3 of the Convention. The parent whose access rights have been infringed is not entitled under the Convention to the child's "return," but may request the Central Authority to assist in securing the exercise of his or her access rights pursuant to Article 21.

Article 21 may also be invoked as a precautionary measure by a custodial parent who anticipates a problem in getting the child back at the end of a visit abroad. That parent may apply to the CA of the country where the child is to visit the noncustodial parent for steps to ensure the return of the child at the end of the visit—for example, through appropriate imposition of a performance bond or other security.

C. Procedure for Obtaining Relief

Procedurally Article 21 authorizes a person complaining of, or seeking to prevent, a breach of access rights to apply to the CA of a Contracting State in the same way as a person seeking return of the child. The application would contain the information described in Article 8, except that information provided under paragraph (c) would be the grounds upon which the claim is made for assistance in organizing or securing the effective exercise of rights of access.

Once the CA receives such application, it is to take all appropriate measures pursuant to Article 7 to promote the peaceful enjoyment of access rights and the fulfillment of any conditions to which the exercise of those rights is subject. This includes initiating or facilitating the institution of proceedings, either directly or through intermediaries, to organize or protect access rights and to secure respect for conditions to which these rights are subject.

If legal proceedings are instituted in the Contracting State in which the noncustodial parent resides, Article 21 may not be used by the noncustodial parent to evade the jurisdiction of the courts of the child's habitual residence, which retain authority to define and/or condition the exercise of visitation rights. A parent who has a child abroad for a visit is not to be allowed to exploit the presence of the child as a means for securing from the CA (or court) in that country more liberal visitation rights than those set forth in a court order agreed upon in advance of the visit. Such result would be tantamount to sanctioning forum-shopping contrary to the intent of the Convention. Any such application should be denied and the parent directed back to the appropriate authorities in the State of the child's habitual residence for consideration of the desired modification. Pending any such modification, once the lawful visitation period has expired, the custodial parent would have the right to seek the child's return under Article 3.

The Perez-Vera Report gives some limited guidance as to how CA's are to cooperate to secure the exercise of access rights:

. . . it would be advisable that the child's name not appear on the passport of the holder of the right of access, whilst in 'transfrontier' access cases it would be sensible for the holder of the access rights to give an undertaking to the Central Authority of the child's habitual residence to return the child on a particular date and to indicate also the places where he intends to stay with the child. A copy of such an undertaking would then be sent to the Central Authority of the habitual residence of the holder of the access rights, as well as to the Central Authority of the State in which he has stated his intention of staying with the child. This would enable the authorities to know the whereabouts of the child at any time and to set in motion proceedings for bringing about its return, as soon as the stated time-limit has expired. Of course, none of the measures could by itself ensure that access rights are exercised properly, but in any event we believe that this Report can go no further: the specific measures which the Central Authorities concerned are able to take will depend on the circumstances of each case and on the capacity to act enjoyed by each Central Authority. Perez-Vera Report, paragraph 128 at page 466.

D. Alternative Remedies

In addition to or in lieu of invoking Article 21 to resolve visitation-related problems, under Articles 18, 29 and 34 an aggrieved parent whose access rights have been violated may bypass the CA and the Convention and apply directly to the judicial authorities of a Contracting State for relief under other applicable laws.

In at least one case it is foreseeable that a parent abroad will opt in favor of local U.S. law instead of the Convention. A noncustodial parent abroad whose visitation rights are being thwarted by the custodial parent resident in the United States could invoke the UCCJA to seek enforcement of an existing foreign court order conferring visitation rights. Pursuant to section 23 of the UCCJA, a state court in the United States could order the custodial parent to comply with the prescribed visitation period by sending the child to the parent outside the United States. This remedy is potentially broader and more meaningful than the Convention remedy, since the latter does not include the right of return when a custodial parent obstructs the noncustodial parent's visitation rights, *i.e.*, by refusing to allow the other parent to exercise those rights. It is possible that a parent in the United States seeking to exercise access rights with regard to a child habitually resident abroad may similarly find greater relief under foreign law than under the Convention.

VI. Miscellaneous and Final Clauses

A. Article 36

Article 36 permits Contracting States to limit the restrictions to which a child's return may be subject under the Convention, *i.e.*, expand the return obligation or cases to which the Convention will apply. For instance, two or more countries may agree to extend coverage of the Convention to children beyond their sixteenth birthdays, thus expanding upon Article 4. Or, countries may agree to apply the Convention retroactively to wrongful removal and retention cases arising prior to its entry into force for those countries. Such agreement would remove any ambiguity concerning the scope of Article 35. The Department of State is not proposing that the United States make use of this Article.

B. Articles 37 and 38

Chapter VI of the Hague Convention consists of nine final clauses concerned with procedural aspects of the treaty, most of which are self-explanatory. Article 37 provides that states which were members of the Hague Conference on Private International Law at the time of the Fourteenth Session (October 1980) may sign and become parties to the Convention by ratification, acceptance or approval. Significantly, under Article 38 the Convention is open to accession by non-member States, but enters into force only between those States and member Contracting States which specifically accept their accession to the Convention. Article 38.

C. Articles 43 and 44

In Article 43 the Convention provides that it enters into force on the first day of the third calendar month after the third country has deposited its instrument of ratification, acceptance, approval or accession. For countries that become parties to the Convention subsequently, the Convention enters into force on the first day of the third calendar month following the deposit of the instrument of ratification. Pursuant to Article 43, the Convention entered into force on December 1, 1983 among France, Portugal and five provinces of Canada, and on January 1, 1984 for Switzerland. As of January, 1986 it is in force for all provinces and territories of Canada with the exception of Alberta, the Northwest Territories, Prince Edward Island and Sasketchewan.

The Convention enters into force in ratifying countries subject to such declarations or reservations pursuant to Articles 39, 40, 24 and 26 (third paragraph) as may be made by each ratifying country in accordance with Article 42.

The Convention remains in force for five years from the date it first entered into force (*i.e.*, December 1, 1983), and is renewed tacitly every five years absent denunciations notified in accordance with Article 44.

D. Articles 39 and 40

Article 39 authorizes a Contracting State to declare that the Convention extends to some or all of the territories for the conduct of whose international relations it is responsible.

Under Article 40, countries with two or more territorial units having different systems of law relative to custody and visitation rights may declare that the Convention extends to all or some of them. This federal state clause was included at the request of Canada to take account of Canada's special constitutional situation. The Department of State is not proposing that the United States make use of this provision. Thus, if the United States ratifies the Convention, it would come into force throughout the United States as the supreme law of the land in every state and other jurisdiction.

E. Article 41

Article 41 is another provision inserted at the request of one country, and is best understood by reciting the reporter's explanatory comments:

Finally a word should be said on Article 41, since it contains a wholly novel provision in

Hague Conventions. It also appears in the other Conventions adopted at the Fourteenth Session, *i.e.*, the *Convention on International Access to Justice*, at the express request of the Australian delegation.

This article seeks to make it clear that ratification of the Convention by a State will carry no implication as to the internal distribution of executive, judicial and legislative powers in that State.

This may seem self-evident, and this is the point which the head of the Canadian delegation made during the debates of the Fourth Commission where it was decided to insert such a provision in both Conventions (see P.-v. No. 4 of the Plenary Session). The Canadian delegation, openly expressing the opinion of a large number of delegations, regarded the insertion of this article in the two Conventions as unnecessary. Nevertheless, Article 41 was adopted, largely to satisfy the Australian delegation, for which the absence of such a provision would apparently have created insuperable constitutional difficulties. Perez-Vera Report, paragraph 149 at page 472.

F. Article 45

Article 45 vests the Ministry of Foreign Affairs of the Kingdom of the Netherlands, as depository for the Convention, with the responsibility to notify Hague Conference member States and other States party to the Convention of all actions material to the operation of the Convention.

Annex A

The following model form was recommended by the Fourteenth Session of the Hague Conference on Private International Law (1980) for use in making applications pursuant to the 1980 Hague Convention on the Civil Aspects of International Child Abduction for the return of wrongfully removed or retained children. The version of the form to be used for requesting the return of such children from the United States will probably seek additional information, in particular to help authorities in the United States in efforts to find a child whose whereabouts are not known to the applicant.

Request for Return

Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction.

Requesting Central Authority or Applicant

Requested Authority

Concerns the following child: ———— who will attain the age of 16 on ————, 19—.

Note.—The following particulars should be completed insofar as possible.

I—Identity of the Child and its Parents
1 Child
Name and first names.....
Date and place of birth.....
Passport or identity card No., if any.....
Description and photo, if possible (see annexes).....
2 Parents
2.1 Mother:
Name and first names.....
Date and place of birth.....
Nationality.....
Occupation.....
Habitual residence.....
Passport or identity card No., if any.....
2.2 Father:
Name and first names.....
Date and place of birth.....
Nationality.....
Occupation.....
Habitual residence.....
Passport or identity card No., if any.....
2.3 Date and place of marriage.....
II—Requesting Individual or Institution (who actually exercised custody before the removal or retention)
3 Name and first names
Nationality of individual applicant.....
Occupation of individual applicant.....
Address.....
Passport or identity card No., if any.....
Relation to the child.....
Name and address of legal adviser, if any.....
III—Place Where the Child Is Thought To Be
4.1 Information concerning the person alleged to have removed or retained the child
Name and first names.....
Date and place of birth, if known.....
Nationality, if known.....
Occupation.....
Last known address.....
Passport or identity card No., if any.....
Description and photo, if possible (see annexes).....
4.2 Address of the child.....
4.3 Other persons who might be able to supply additional information relating to the whereabouts of the child.....
IV—Time, Place, Date and Circumstances of the Wrongful Removal or Retention
.....
V—Factual or Legal Grounds Justifying the Request
.....
VI—Civil Proceedings in Progress
.....
VII—Child Is To Be Returned To:
a. Name and first names.....
Date and place of birth.....
Address.....
Telephone number.....
b. Proposed arrangements for return of the child.....
VIII—Other Remarks
.....
IX—List of Documents Attached*
.....
Date.....
Place.....
Signature and/or stamp of the requesting Central Authority or applicant
.....

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*E.g. Certified copy of relevant decision or agreement concerning custody or access; certificate or affidavit as to the applicable law; information relating to the social background of the child; authorization empowering the Central Authority to act on behalf of applicant.

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federal register

Wednesday
March 26, 1986

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Achyranthes Rotundata and Erythronium Propullans (Minnesota Trout Lily); Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Achyranthes Rotundata

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service determines *Achyranthes rotundata* to be an endangered species, under the authority contained in the Endangered Species Act of 1973, as amended. This plant is known from only two populations, one located at Kaena Point and the second at Barbers Point, island of Oahu, Hawaii. The Kaena Point population consists of only two individuals and is believed to be near extirpation. The Barbers Point population is vulnerable to any substantial habitat alteration and faces the potential threat of complete habitat destruction during conversion of existing sites to industrial use.

DATE: The effective date of this rule is April 25, 1986.

ADDRESS: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, at the above address (503/231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

Achyranthes rotundata was first recorded in 1819 by C. Gaudichaud during the voyage of the *Uranie*. It was later formally described by W. Hillebrand in 1888 as a variety of *Achyranthes splendens*. The species is a low shrub, 1 1/2 to 6 1/2 feet in height and is covered with short, silvery hairs. Small inconspicuous flowers are borne in terminal spikes with prominent floral and rachis bracts.

Harold St. John (1976) first recognized this taxon as a species endemic to the island of Oahu, and described it as abundant in the seaward portions of the 'Ewa Coral Plain. He concluded that it may have once been distributed all along the arid and semi-arid coastal lowlands of the island, from Barbers Point to Kaena Point. *Achyranthes rotundata* is now unknown except for two populations. One population is found on the Military Reserve at Kaena Point and consists of only two individuals; these may now be gone. Approximately 400 plants are known from the Barbers Point population at the other extreme of the historical range. This population consists of four sub-populations, one of which contains about 50 percent of the known individuals of the species and occurs on lands owned by the Federal Government and managed by the Coast Guard. The remaining three small colonies are on Federal lands managed by the Navy and on private lands owned by the Estate of James Campbell and the Cook Inlet Region, Inc. *Achyranthes rotundata* has been extirpated from the remainder of its historic range by habitat conversion for mostly industrial and agricultural developments and habitat degradation by invading exotic shrubs and trees.

Research now in progress indicates that two additional species of *Achyranthes*, now believed to be extinct, may in fact be synonymous with *A. rotundata*. Should this prove true, the species would originally have been found on Lanai and Molokai, as well as Oahu, emphasizing its historic decline in range.

Section 12 of the Endangered Species Act of 1973 (Act) directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of this report as a petition within the context of section 4(c)(2) of the Act (petitions acceptance is now governed by section 4(b)(3) of the Act, as amended), and of its intention to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species. This list was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the July 1, 1975, **Federal Register** publication. *Achyranthes rotundata* was included in the July 1, 1975, notice and the June 16, 1976, proposal as *Achyranthes splendens* var. *rotundata*. General comments on the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909).

The Endangered Species Act Amendments of 1978 required that all proposals over two years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. Subsequently, on December 10, 1979, the Service published a notice of the withdrawal of the portion of the June 16, 1976, proposal that had not been made final, along with other proposals that had expired (44 FR 70796); this notice of withdrawal included *Achyranthes rotundata*. *Achyranthes rotundata* (as *Achyranthes splendens* var. *rotundata*) was included in an updated notice of review for native plants on December 15, 1980 (45 FR 82485), as a candidate species. On February 15, 1983, the Service published a notice (48 FR 6752) of its finding that the petitioned listing of this species may be warranted, in accordance with section 4(b)(3)(A) of the Act, as amended in 1982. On October 13, 1983, and again on October 13, 1984, a petition finding was made that listing of this species was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii). A reproposal was published on April 22, 1985 (50 FR 15764), based on information available at the time of the 1976 proposal and information gathered after that time and summarized in a detailed status report prepared under contract by a University of Hawaii botanist (Nagata 1981). The Service now determines *Achyranthes rotundata* to be an endangered species with the publication of this final rule.

Summary of Comments and Recommendations

In the April 22, 1985, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice that invited general public comment was published in the *Honolulu Star Bulletin* and the *Honolulu Advertiser* on May 31, 1985. Eight letters of comment were received and are discussed below. A public hearing was requested by the Governor of Hawaii and held in 'Ewa Beach, Hawaii on August 5, 1985. A single observer attended the hearing; no testimony was received.

Comments were received from the Governor of the State of Hawaii, the Chairperson of the State Board of Land and Natural Resources, the Administrator of the State Division of Forestry and Wildlife, the Director of the Waimea Arboretum and Botanical

Garden, the Chairman of the Department of Botany at the Bishop Museum, the Estate of James Campbell, the Department of the Navy, and the United States Coast Guard. All comments received have been considered in formulating this final rule.

The Governor supported the listing of the taxon because "the number of these plants has declined over time and their habitat has been modified." He also requested the the Service conduct a public hearing because private lands were involved. Mr. Libert Landgraf, Administrator of the State Division of Forestry and Wildlife, referred to the Governor's letter and asked that we ". . .consider his comments as the official position of my Division." Mr. Susumu Ono, Chairperson of the Board of Land and Natural Resources offered additional information, chiefly a plant census update. The Department of the Navy also provided additional census information. During a biological survey of the Barbers Point Naval Air Station in 1985, a botanist rediscovered a colony of about sixty plants. This population had last been seen in 1969. The Navy assured that all necessary steps are being taken to protect the plant and to ensure its continued existence in this location. The Coast Guard stated that it did not have additional information regarding *Achyranthes* and did not expect any Coast Guard activity to be detrimental to the plant. The Coast Guard also stated that it would assist in protecting the population growing on its property. Mr. Keith Woolliams, Director of the Waimea Arboretum and Botanical Garden, and Dr. S.H. Sohmer, Chairman of the Botany Department, Bernice Pauahi Bishop Museum, both supported the listing of this *Achyranthes* as an endangered species.

The Estate of James Campbell is one of two private landowners upon whose property *Achyranthes rotundata* grows. The Estate noted that the proposed rule indicates that 80 percent of the world's population of *Achyranthes* is located on its land and stated that, according to a recent survey by The Nature Conservancy, only about 9 percent of known *Achyranthes* plants presently remain on this property. Both figures are correct for their respective times. The final rule has been modified to reflect this change in the number of individual plants. The Estate stated that two of the three populations on its land have been surveyed within the past year, but that the third population has not been surveyed since 1969. Technically, the existence of that population has not been documented since 1969; attempts have been made to relocate it, but none have been successful. The Estate recommended that as the species is highly susceptible to human intervention, the Service should consider transplanting it to a more appropriate location. It continued, "According to the Nature Conservancy survey, there are currently fourteen various sitings of *Achyranthes rotundata* (including three populations on Campbell Estate property). Given the type of use of the property at the Industrial Park, we recommend your consideration of either relocating the populations to other more appropriate areas, or removing *Achyranthes* from the endangered species listing based on the number of populations currently surveyed." Although the Service believes there is no area more appropriate for the plant than that area where it occurs naturally, relocating the populations could be considered in the development of the recovery plan for this species. The fourteen sitings listed by The Nature Conservancy are historic sitings; only four remain. Given the present threats to and recent decline of the four extant small patches of this species, comprising only about 400 plants in all, the Service believes that there is no basis for failing to list it as proposed.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Achyranthes rotundata* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Achyranthes rotundata* Hbd.) St. John are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitate or range.* Approximately 88 percent of the historic range of *Achyranthes rotundata* has been developed for industrial, agricultural, residential, and recreational uses. The remaining 12 percent of its range has been degraded by the intrusion of exotic shrub and tree species (Nagata 1981) and faces the threat of development. Dense thickets of an introduced species of *Leucaena* at Kaena Point threaten the remaining two plants by competing with them for space. On the Ewa Plains at Barbers Point, thickets of *Pluchea*, also exotic, are competing with the remaining *Achyranthes rotundata* individuals, and encroaching forests of kiawe, or mesquite (*Prosopis pallida*), another introduced species, are altering the open sunny habitat of the species. One sub-population near Barbers Point lighthouse was partially destroyed when habitat was converted for industrial uses in 1980 and 1981, resulting in the loss of 75 percent of the sub-population. The remaining individuals were on Federal land, which was later bulldozed, resulting in a loss of about 50 percent of these individuals. The largest sub-population of the species formerly was on privately owned land. Most of these were destroyed some time between 1981 and 1984. The total number of *Achyranthes* individuals decreased from an estimated 2,000 to an estimated 400 between 1981 and 1985; the decline of the species has been due to human activities.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Inflorescences and leaves of *Achyranthes rotundata* have been used for making leis (flower garlands). The grey foliage has been valued for traditional lei making.

C. *Disease or predation.* At one colony on Barbers Point the parasitic vine, *Cassytha filiformis*, forms a dense covering over shrubs it has parasitized and may threaten *Achyranthes rotundata* (Nagata 1981).

D. *The inadequacy of existing regulatory mechanisms.* No regulatory mechanisms exist at the present time. Federal listing would require permits for taking of *Achyranthes rotundata* on Federal lands. Federal listing would also invoke listing under Hawaiian State law, which prohibits taking and encourages conservation by State government agencies.

E. *Other natural or manmade factors affecting its continued existence.* None are known at this time, but further reductions of population size could reduce the reproductive capabilities and genetic potential of the species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determinig to make this rule final. Based on this evaluation, the preferred action is to list *Achyranthes rotundata* as endangered. Threatened status would not reflect the decline of the species, which is in danger of extinction through the loss of historical range due to past development, the threats of further development, and degradation of suitable habitat. A discussion of why critical habitat is not

being designated is included in the "Critical Habitat" section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. As discussed under Factor "B" in the "Summary of Factors Affecting the Species." *Achyranthes rotundata* is threatened by taking for the making of leis, an activity not regulated by the Endangered Species Act with respect to plants, except for a prohibition against removal and reduction to possession of endangered plants from lands under Federal jurisdiction. Publication of critical habitat descriptions would make this species even more vulnerable. Therefore, it would not be prudent to designate critical habitat for *Achyranthes rotundata* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. *Achyranthes rotundata* occurs on Federal lands at the Kaena Military Reserve, Barbers Point Naval Air Station, and Barbers Point Lighthouse grounds. Two of these areas in whole or in part are being considered for, or are in the process of being declared excess. Cooperation between the U.S. Fish and Wildlife Service and the Federal agencies involved will be necessary to ensure the protection of *Achyranthes rotundata* during this process.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Achyranthes rotundata*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few, if any, trade permits would be requested for *Achyranthes rotundata*, as no trade in the species is known.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. This prohibition now applies to *Achyranthes rotundata*. Permits for exceptions to this prohibition are available through regulations published September 30, 1985 (50 FR 39681, to be codified at 50 CFR 17.62). The species is found on Federal lands, and a few requests for collecting permtis are anticipated for lei-making activities. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1903).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Nagata, K.M. 1981. Status report on *Achyranthes rotundata*. Research Corporation of the University of Hawaii, under contract 14-16-001-79096, toi the U.S. Fish and Wildlife Service, Honolulu, Hawaii.

St. John, H. 1979. Monograph of the Hawaiian species of *Achyranthes* (Amaranthaceae). Hawaiian Plant Studies 56. Pacific Science 33(4):333-350.

Author

The primary author of this final rule is Dr. Derral R. Herbst, U.S. Fish and Wildlife Service, 300 Ala Moana Blvd., P.O. Box 50167, Honolulu, Hawaii 96850 (808/546-7530 or FTS 546-7530).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

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

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) by adding the following, in alphabetical order, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
•	•	•	•	•		
Amaranthaceae—Amaranth family:						
Achyranthes rotundata	None	U.S.A. (HI)	E	220	NA	NA
•	•	•	•	•		

Dated: February 28, 1986.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-6557 Filed 3-25-86; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Erythronium Propullans (Minnesota Trout Lily)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines endangered status for *Erythronium propullans* (Minnesota trout lily), the only plant species known to be endemic to Minnesota. It is found at only 26 small sites in Rice and Goodhue Counties, and is jeopardized by its small numbers and limited reproductive capabilities, and by development, collectors, and recreationists. This measure implements the protection provided by the Endangered Species Act of 1973, as amended, for this plant.

DATE: The effective date of this rule is April 25, 1986.

ADDRESS: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Service's Regional Office of Endangered Species, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.

FOR FURTHER INFORMATION CONTACT: James M. Engel at the above address (612/725-3276 or FTS 725-3276).

SUPPLEMENTARY INFORMATION:

Background

Erythronium propullans Gray (Minnesota trout lily) is a member of the Liliaceae (lily family). It was first discovered near St. Mary's College in Faribault, Minnesota, in 1870, and was described by Gray (1871). There have been no revisions of its taxonomic status since that time. It has now been found to occur in two counties of southeastern Minnesota, and is the only species of plant known to be endemic to that State.

This lilylike plant is about 6 inches (15 centimeters) tall, with one pair of mottled green, pointed leaves arising from near the base. A single nodding, bell-shaped flower, with recurved petals, is at the end of a slender, leafless stalk. Perianth parts usually number four or five, rather than six as in other species of *Erythronium*. The flowers are generally distinguishable from those of *E. albidum*, the only other *Erythronium* found in the same habitat. According to Thomas Morley (University of Minnesota, pers. comm., May 19, 1985), the flowers of *E. propullans* vary in color from pink to pale violet to gray-white. Those of *E. albidum* are similar in color, but generally whiter. Measuring about a half inch (8-15 millimeters) in length, the flowers of *E. propullans* are smaller than those of any other *Erythronium*. Morley (1982) found the average proportion of flowering plants to be 28.3 percent (range 7.8-50.9 percent) in colonies of *E. propullans*, but only 3.8 percent (range 1.1-9.9 percent) in colonies of *E. albidum*. The fruits of *E. propullans* are smaller than those of *E. albidum* and remain in a nodding or horizontal position at maturity, while those of the latter species become erect (Morley 1978).

The outstanding feature of *E. propullans* is vegetative reproduction through production of a single bulblet from a lateral stem offset below the leaves (Morley 1982). The other two species of *Erythronium* in Minnesota increase vegetatively by multiple basal offsets from the deeply buried bulbs (Banks 1980). Because *E. propullans* seems to depend entirely upon an inefficient means of vegetative reproduction, Morley (pers. comm.) questioned the ability of this species to reproduce successfully over the long term.

Erythronium propullans is a spring ephemeral in deciduous forest, blooming in April or May. The aerial parts of the plant completely disintegrate after the forest canopy fills out in early June. The species is usually associated with other spring ephemerals such as *Dicentra cucullaria* (Dutchman's breeches), *Erythronium albidum* (white dog-tooth violet), and *Trillium nivale* (snow trillium).

Erythronium propullans occurs in the wooded valleys along the Cannon, Straight, and Zumbro Rivers in Rice and Goodhue Counties, Minnesota. The plant grows on north-facing slopes, rising 50-90 feet (15-27 meters) above the stream beds, but usually occupies the lower part of the slope, and sometimes extends onto the floodplain (Morley 1978). The plant usually occurs in moderate to heavy shade. Plant colonies or clones are 8-20 inches (2-5 decimeters) or larger in diameter. Morley (1978) estimated the total number of colonies within the 26 known sites to be about 400, with an average of 20 plants per colony.

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. In the **Federal Register** July 1, 1975 (40 FR 27823), the Service published a notice of its acceptance of this report as a petition within the context of section 4(c)(2) of the Act (petition acceptance is now governed by section 4(b)(3) of the Act, as amended), and of its intention to review the status of the plant taxa named therein. *Erythronium propullans* was named in the Smithsonian Report as threatened and was included in the Service's 1975 notice of review.

Erythronium propullans was also included as a category-1 species in an updated notice of review for plants published in the **Federal Register** of December 15, 1980 (45 FR 82480). Category 1 comprises taxa for which the Service presently has sufficient biological information to support their being proposed for listing as endangered or threatened.

The Endangered Species Act Amendments of 1982 required that petitions, such as that comprised by the Smithsonian report, which were still pending as of October 13, 1982, be treated as having been received on that date. Section 4(b)(3) of the Act, as amended, requires that, within 12 months of the receipt of such a petition, a finding be made as to whether the requested action is warranted, not warranted, or warranted but precluded

by other activity involving additions to or removals from the Federal Lists of Endangered and Threatened Wildlife and Plants. Therefore, on October 13, 1983, the Service made the finding that listing of *E. propullans* was warranted but precluded by other pending listing activity. This finding was published in the **Federal Register** of January 20, 1984 (40 FR 2485). In case of such a finding, the petition is recycled and another finding becomes due within 12 months. On October 12, 1984, another finding of warranted but precluded was made with respect to the listing of *E. propullans*. This finding was published in the **Federal Register** of May 10, 1985 (50 FR 19761). Still another finding was due by October 12, 1985, and that finding, to the effect that the petitioned action was warranted, was incorporated in a proposed rule to determine endangered status for *E. propullans*, issued in the **Federal Register** of May 3, 1985 (50 FR 18893).

Summary of Comments and Recommendations

In the proposed rule of May 3, 1985, and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice, inviting general public comment, was published in the *Minneapolis Star and Tribune* on May 22, 1985. No public hearing was requested or held.

Five supportive comments were received, one from the Environmental Defense Fund, which also encouraged the Service and the State of Minnesota to commence conservation measures critical to the continued existence of *E. propullans*. The Service intends to coordinate with the State on recovery activities for this species. The International Union for Conservation of Nature and Natural Resources and three private individuals also supported the proposal. One of these, a University of Minnesota professor with considerable expertise concerning *E. propullans*, noted that the species probably occurs at more than 14 sites, possibly as many as 25, depending on the definition of "site." He identified one additional population on the north side of the Straight River, southeast of Faribault, Minnesota. He further advised that two sites are publicly owned, one at Nerstrand Woods State Park and another within the River Bend Nature Center, southeast of Faribault, Minnesota. This new information has been incorporated into the appropriate sections of this rule.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Erythronium propullans* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Erythronium propullans* Gray (Minnesota trout lily) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* There are no historical data to indicate that the range of *E. propullans* was larger at one time than it is now. Morley (1978) reported that road construction near the city of Faribault eliminated several colonies. Several large colonies located 1.5 miles (2.5 kilometers) northeast of Faribault were destroyed by conversion of pastureland to cropland. Motorbikes destroyed one colony within the city of Faribault (Morley 1978). Existing urban sites also are jeopardized by off-road vehicles and by overutilization of foot paths. Remaining rural sites face destruction from the conversion of woodland to cropland.

Twenty-six populations are now known to exist. Twenty-two of these are on privately owned property and currently receive no protection or management. Of the four other populations, one is found within a State park, one within a nature center, and two on land owned and managed by The Nature Conservancy. Although these four populations are on protected land, they could still be lost through inadvertent human alteration of the habitat or natural population fluctuations.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There is significant threat from wildflower collectors who may reduce populations at more accessible sites. One site was severely damaged in the early 1970's, when a large number of plants were removed and replanted in the University of Minnesota Landscape Arboretum (Smith 1981).

C. *Disease or predation.* None known.

D. *The inadequacy of existing regulatory mechanisms. E. propullans* is officially listed as endangered by the State of Minnesota, and is afforded limited protection under the State law that prohibits taking, transporting, and sale of State endangered and threatened plants from all lands, except ditches, roadways, and certain types of agricultural and forest lands. This law does not prohibit the loss and disturbance of habitat, which is the main problem for *E. propullans*.

E. *Other natural or manmade factors affecting its continued existence.* As there are relatively few remaining populations of *E. propullans*, and these are small in size, the species could be jeopardized simply by natural fluctuation in numbers. Also, since the species has an apparently inefficient means of vegetative, rather than sexual, reproduction, there is concern about its ability to maintain itself.

In determining to make this rule final, the Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by *E. propullans*. Based on this evaluation, the preferred action is to list the species as endangered. The few remaining populations are small in size, mostly unprotected, and subject to a variety of human-caused and natural problems. Critical habitat is not being designated for reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The designation of critical habitat is not considered to be prudent when such designation would not be of net benefit to the species involved (50 CFR 424.12). In the present case, the Service considers that designation of critical habitat would not be prudent, because no benefit to the taxon can be identified that would outweigh the potential threat of vandalism or collection, which might be exacerbated by the publication of a detailed critical habitat description and map.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species

Act provides for land acquisition and cooperation with the States, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required by Federal agencies and applicable prohibitions are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. There are no known Federal activities, current or planned, that would affect *E. propullans*.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *E. propullans*, all trade prohibitions of section 9(a)(2) of the Act, as implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce, or to remove this species from areas under Federal jurisdiction and reduce it to possession. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. International and interstate commerce in *E. propullans* is not known to exist. It is anticipated that few trade permits would ever be sought or issued, since this plant is not common in cultivation or in the wild. Requests for copies of the regulations on plants, and inquiries regarding them, may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235-1903).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. The reasons for this determination were published in the **Federal Register** of October 25, 1983 (48 FR 49244).

References Cited

Banks, J. 1980. The reproductive biology of *Erythronium propullans* Gray and sympatric populations of *E. albidum* Nutt. (Liliaceae). Bull. Torrey Bot. Club 107:181-188.

Gray, A. 1871. A new species of *Erythronium*. Amer. Nat. 5:298-300.

Johnson, A.G., and M.K. Smithberg. 1968. A wildflower unique to Minnesota. Minnesota Horticulturalist 96:38-39.

Morley, T. 1978. Distribution and rarity of *Erythronium propullans*. Phytologia 40:381-389.

———. 1982. Flowering frequency and vegetative reproduction in *Erythronium albidum* and *E. propullans*, and related observations. Bull. Torrey Bot. Club 109:169-176.

Smith, W.R. 1981. Status report on *Erythronium propullans*. Unpubl. ms., Minnesota Dept. Natural Resources, 9 pp.

Author

The primary author of this final rule is William F. Harrison (see **"ADDRESSES"** section) (612/725-3276 or FTS 725-3276).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

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

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911. Pub. L 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Liliaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Liliaceae—Lily family:						
Erythronium propullans	Minnesota trout lily	U.S.A. (MN)	E	221	NA	NA

Dated: February 28, 1986.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-6558 Filed 3-25-86; 8:45 am]

BILLING CODE 4310-55-M

federal register

Wednesday
March 26, 1986

Part IV

Office of Management and Budget

Budget Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith report two revised rescission proposals totaling $54,920,475, two new deferrals of budget authority totaling $2,026,462, and one revised deferral of budget authority totaling $10,238,000.

The rescissions affect programs in Funds Appropriated to the President and in the Departments of Energy.

The deferrals affect programs in the Departments of Commerce, Interior, and Transportation.

The details of these rescission proposals and deferrals are contained in the attached report.

Ronald Reagan,
The White House
March 20, 1986.

BILLING CODE 3110-01-M

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

RESCISSION NO.	ITEM	BUDGET AUTHORITY
	Funds Appropriated to the President	
	Multilateral Economic Assistance	
R86-1A	International organizations and programs.....	39,760
	Department of Energy	
	Energy Programs	
R86-77A	Energy conservation.....	15,160
	Total, rescissions.....	54,920

DEFERRAL NO.	ITEM	BUDGET AUTHORITY
	Department of Commerce	
	Patent and Trademark Office	
D86-65	Salaries and expenses.....	1,977
	Department of the Interior	
	Bureau of Land Management	
D86-66	Payments for proceeds, Sale of Mineral Leasing Act of 1920, Section 40(d).....	49
	Department of Transportation	
	Maritime Administration	
D86-53A	Operations and training.....	10,238
	Total, deferrals.....	12,264

SUMMARY OF SPECIAL MESSAGES FOR FY 1986
(in thousands of dollars)

	RESCISSIONS	DEFERRALS
Fifth special message:		
New items.....	---	2,026
Revisions to previous special messages.....	5,344	888
Effects of fifth special message.....	5,344	2,914
Amounts from previous special messages that are changed by this message (changes noted above).....	49,576	9,350
Subtotal, rescissions and deferrals.....	54,920	12,264
Amounts from previous special messages that are not changed by this message.....	9,957,472	24,708,463
Total amount proposed to date in all special messages.....	10,012,392	24,720,727

R86-1A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Rescission No. R86-1 transmitted to the Congress on February 5, 1986.

This report revises proposed rescission language for Funds Appropriated to the President International organizations and programs account to specify amounts available by organization. No further changes have been made.

R86-1A

FUNDS APPROPRIATED TO THE PRESIDENT

Multilateral Economic Assistance

International organizations and programs

*Of the amounts made available under this head in Public Law 99-190, $39,760,475 are rescinded: Provided, that the total amount of funds that remain available after this rescission shall be available only as follows: $109,388,000 for the United Nations Development Program; $36,033,000 for the United Nations Children's Fund; $20,500,000 for the International Atomic Energy Agency; $15,500,000 for the Organization of American States; $6,500,000 for the United Nations Environment Program; $2,000,000 for the World Meteorological Organization Voluntary Cooperation Program; $2,000,000 for the United Nations Capital Development Fund; $900,000 for the United Nations Educational and Training Program for South Africa; $450,000 for the United Nations Voluntary Fund for the Decade for Women; $200,000 for the Convention on the International Trade in Endangered Species; $300,000 for the UNIDO Investment Promotion Service; $1,430,000 for the United Nations Development Program Trust Fund to Combat Poverty and Hunger in Africa; $28,710,000 for the International Fund for Agricultural Development in accordance with the restrictions concerning this organization contained in such Act; and $2,300,000 for the International Convention and Scientific Organization Contributions.

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* Revised from previous report.

Rescission Proposal No: R86-1A

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Funds Appropriated to the President	**New budget authority**.....$247,922,475 1/ (P.L. 99-190)
Bureau: Multilateral Assistance	**Other budgetary resources** _____
Appropriation title and symbol: International organizations and programs 1161005	**Total budgetary resources** 247,922,475
	Amount proposed for rescission $ 51,711,475
OMB identification code: 11-1005-0-1-151	**Legal authority** (in addition to sec. 1012): [ ] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other_____
Type of account or fund:	**Type of budget authority:**
[X] Annual	[X] Appropriation
[ ] Multiple-year _____ (expiration date)	[ ] Contract authority
[ ] No-Year	[ ] Other_____

Justification: This account funds voluntary contributions by the United States to selected multilateral developmental, humanitarian, and scientific programs, most of which are associated with the United Nations. A rescission of $51,711,475 is proposed because, useful as some of these programs may be, a higher priority must be afforded other foreign assistance activities accomplishing the same objectives. The proposed rescission would reduce the 1986 program to the original 1986 request level.

Estimated Program Effect: None

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
326,660	299,831	26,829	12,931	---	---	--	---

1/ Does not include $30,000,000 for the International Fund for Agricultural Development, the availability of which is contingent upon receipt of a budget request by the Congress and the United States entering into an agreement to participate in the second replenishment of the organization.

Note - $11,951,000 of the amount originally withheld for rescission is sequestered pursuant to P.L. 99-177. The current proposed rescission is $39,760,475.

R86-77A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Rescission No. R86-77 transmitted to Congress on March 12, 1986.

This increases by $5,344,000 the previous rescission proposal of $9,816,000 in the Department of Energy's Energy conservation account, resulting in a total rescission proposal of $15,160,000. The additional amount proposed for rescission was provided to subsidize proprietary commercial development of an automobile engine.

R86-77A

DEPARTMENT OF ENERGY

Energy Programs

Energy conservation

Of the funds made available under this head in Public Law 99-190, $15,160,000 are rescinded.

Rescission Proposal No: R86-77A

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Energy	**New budget authority.....** $ 446,721,492 (P.L. 99-190)
Bureau: Energy Programs	**Other budgetary resources** 23,059,807
Appropriation title and symbol: Energy conservation 1/ 89X0215	**Total budgetary resources** 469,781,299
	Amount proposed for rescission $ 15,160,000*
OMB identification code: 89-0215-0-1-999	**Legal authority** (in addition to sec. 1012): [ ] Antideficiency Act [ ] Other
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multiple-year (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other

Justification: *This account funds a variety of energy conservation research and development activities including buildings and community systems, industry, transportation, and multi-sector research. It also funds assistance to State and local governments for the weatherization of schools, hospitals, and low-income dwellings. The rescission consists of previously deferred construction, development, and demonstration funds that were added by the Congress. The addition of construction projects through legislative action bypasses the normal, and important, peer-review process for such funding. It also is not part of the research program to which the funds were added. The development and demonstration funds were provided to continue a contract that subsidizes proprietary commercial development of an automobile engine. This is not appropriate for public funding. As non-priority activities, these projects are also inconsistent with the Administration's effort to reduce the Federal deficit pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985. The President's Budget assumed these funds would be used for other purposes in 1987. The Department of Energy will identify other unobligated balances in order to maintain the 1987 program at the program levels estimated in the President's 1987 Budget.

Estimated Program Effect: None

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate Without Rescission	1986 Outlay Estimate With Rescission	Outlay Savings 1986	1987	1988	1989	1990	1991
436,818	434,146	2,672	9,543	2,945	---	---	---

* Revised from previous report.

1/ This account is also the subject of a deferral in 1986 (D86-9A) and was the subject of a deferral in 1985 (D85-30B) and a rescission proposal in 1985 (R85-87).

Deferral No: D85-65

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Commerce	**New budget authority**..... $ 84,700,000 (P.L. 99-180)
Bureau: Patent and Trademark Office	**Other budgetary resources** 137,073,741
Appropriation title and symbol: Salaries and expenses 1/ 13X1006	**Total budgetary resources** 221,773,741
	Amount to be deferred: Part of year $ ____ Entire year 1,977,000
OMB identification code: 13-1006-0-1-376	**Legal authority** (in addition to sec. 1013): [X] Antideficiency Act [ ] Other ____
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multiple-year ____ (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other ____

Justification: The Patent and Trademark Office (PTO) administers laws governing the granting of patents for inventions and the registration of trademarks. The 1986 budget of the PTO includes funding for the compensation costs of 200 new patent examiners hired at the end of fiscal year 1985. Due to increased patent examiner productivity and changing patterns of attritions, it proved unnecessary to fill 25 of the anticipated new examiner positions. The deferred funds in 1986 from the unfilled positions total $1,191,000. The 1986 budget also included funds for the leasing of space to house the central computer equipment of the Automated Patent System. The budget assumed acquisition of the space on October 1, 1985. Delays in construction of the privately-owned office building resulted in a revised acquisition date of July 1, 1986. The deferred funds from the delayed space acquisition total $786,000. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512). Funds will be utilized as needed in 1987.

Estimated Program Effect: Neither the patent pendency reduction program nor the automation program will be adversely affected by the deferral of $1,977,000 of program funds in 1986. The deferred funds are unobligated balances to be brought forward into 1987 and are not excess fee collections.

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1985 (D85-41).

Deferral No: D86-66

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of the Interior	**New budget authority**..... $ ____ (P.L. ____)
Bureau: Bureau of Land Management	**Other budgetary resources** 49,462
Appropriation title and symbol: Payments for Proceeds, Sale of Mineral Leasing Act of 1920, Section 40(d) 1/ 14X5662	**Total budgetary resources** 49,462
	Amount to be deferred: Part of year $ ____ Entire year 49,462
OMB identification code: 14-5662-0-2-301	**Legal authority** (in addition to sec. 1013): [X] Antideficiency Act [ ] Other ____
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multiple-year ____ (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other ____

Justification: Section 40(d) of the Mineral Leasing Act of 1920 (30 U.S.C. 229(a)) provides that when lessees or operators drilling for oil or gas on public lands strike water, water wells may be developed by the Department from the proceeds from sale of water from existing wells. Receipts have been accruing to this permanent account at the rate of about $3,000 per year. None of these receipts have been obligated over the past 11 years and none are planned for obligation in FY 86 because the total available is too small to be put to practical use for the purpose designated by law. This deferral action is taken pursuant to the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1985 (D85-10).

D86-53A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D86-53 transmitted to the Congress on February 5, 1986.

This increases by $888,000 the previous deferral of $9,350,000 in the Department of Transportation, Maritime Administration Operations and training account, resulting in a total deferral of $10,238,000. This increase is attributed to additional unobligated balances carried over from 1985 for activities proposed for termination.

Deferral No: D86-53A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Transportation	**New budget authority** (P.L. 99-180) ..... $ 69,700,000
Bureau: Maritime Administration	**Other budgetary resources** 30,250,935*
Appropriation title and symbol: Operations and training 1/ 69X1750	**Total budgetary resources** 99,950,935*
	Amount to be deferred: Part of year $ ____ Entire year 10,238,000*
OMB identification code: 69-1750-0-1-403	**Legal authority** (in addition to sec. 1013): [ ] Antideficiency Act [ ] Other ____
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multiple-year ____ (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other ____

Justification: *The Operations and training appropriation funds all the administrative expenses and most program expenses of the Maritime Administration. Included are three programs of Federal financial support to state maritime schools: (1) direct payments to the schools, (2) student incentive payments, and (3) maintenance and repair of training ships.

Operations and training has unobligated balances that are no longer needed for the originally intended purposes of (1) replacing the training vessel for the State University of New York Maritime College ($8,500,000), (2) fuel for operating training vessels at five State maritime schools ($850,000), and (3) additional work on the Massachusetts Maritime Academy training ship Patriot State ($888,000). The $8,500,000 was proposed for deferral and reprogramming in the 1986 Budget on the basis that the existing training vessel for the New York State maritime school is adequate. Congress denied the deferral. The 1987 Budget proposes to discontinue all financial support for State maritime schools, except for honoring student incentive payments already awarded to enrolled students. Accordingly, the $8,500,000 for the replacement training vessel for the New York maritime school is deferred. The necessary supplemental language permitting the use of the $8,500,000 for other purposes in 1987 is pending.

The $850,000 is left over from $3,000,000 of fuel funds added by Congress in 1984. In that year, the State maritime schools consumed only $2,150,000 of their fuel allotment and the residual $850,000 has not been obligated since.

In response to the Deficit Reduction Act of 1984, $888,000 was proposed for rescission in 1985. The Congress denied the proposed rescission and directed that these funds be used for additional work on the Massachusetts Maritime Academy training ship Patriot State. These funds were carried over to 1986 as work could not be put in place in 1985. The 1987 Budget proposes that direct Federal financial support for the State maritime schools program be discontinued. The additional work for which these funds were provided is not required for the 1986 training voyage and further investment in this program is not warranted. The deferral will be used to offset 1987 costs of discontinuing the State maritime schools program.

Estimated Program Effect: None

Outlay Effect *(in thousands of dollars):

1986 Outlay Estimate		Outlay Change					
Without Deferral	With Deferral	1986	1987	1988	1989	1990	1991
89,140	79,752	-9,388	9,388	---	---	---	---

* Revised from previous report.

1/ This account was the subject of a similar deferral (D85-54) and a rescission proposal (R85-193) in 1985.

[FR Doc. 86-6630 Filed 3-25-86; 8:45 am]

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Federal Register

Vol. 51, No. 58

Wednesday, March 26, 1986

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General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual	523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, MARCH

7237-7420 3
7421-7542 4
7543-7732 5
7733-7912 6
7913-8182 7
8183-8310 10
8311-8474 11
8475-8640 12
8641-8788 13
8789-8994 14
8995-9170 17
9171-9434 18
9435-9624 19
9625-9762 20
9763-9942 21
9943-10178 24
10179-10352 25
10353-10534 26

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

326 7543

Proposed Rules:

Ch. III 8328, 9215, 10213

3 CFR

Proclamations:

5445 7421
5446 7733
5447 9171
5448 9435
5449 9947
5450 10179
5451 10181

Executive Orders:

386 Executive orders revoked by EO 12553 7237
12553 7237
12554 7423
12555 8475

Administrative Orders:

Memorandums:

March 16, 1986 9437

Presidential Determinations:

No. 86-6 of March 13, 1986 9945
No. 86-7 of March 11, 1986 9943

4 CFR

28 7735

5 CFR

Ch. XIV 9173
293 8396
300 8396
335 8396
430 8396
431 8396
451 8396
531 8396
532 8396
551 7425
771 8396
890 7428
1201 7913
1411 7543
1701 7543

Proposed Rules:

293 8422
430 8422
591 ..... 7799, 8686
1501 8329

7 CFR

2 7543
3 8995
6 8998
51 8477
301 ..... 9625, 10183
318 9949
354 7544
414 7545
416 ..... 7545, 7546
418 7545
419 7545
420 7545
421 7545
423 7545
424 7545
425 7545
426 7545
427 7545
428 7545
431 7545
432 7545
433 7545
435 7545
437 7545
438 7545
442 8789
443 8183
447 7545
448 7545
704 8780
713 8428
770 8428
795 8428
796 8428
905 8789
907 ..... 7245, 7547, 7913, 8789
908 ..... 8789, 9626
912 8789
913 8789
916 8789
917 8789
928 8789
932 8789
959 7547
981 ..... 7741, 9763
989 9628
1106 7245
1124 7742
1136 8641
1139 8642
1421 8428
1425 8428
1427 8428
1430 7913
1468 9173
1822 9174
1872 9174
1900 9174
1903 9174
1924 9174
1927 9174
1942 10185
1943 9174
1945 9174
1951 9174
1955 9174
1962 9174
1965 9174

Proposed Rules:
Ch. X ... 9669
1 ... 7799
26 ... 8330, 9940
235 ... 10214
275 ... 9821
276 ... 9821
400 ... 7576, 9826
908 ... 10217
917 ... 9827
925 ... 10218
927 ... 9663
930 ... 7578
944 ... 10218
979 ... 7279
982 ... 8201
989 ... 9968
999 ... 8201
1006 ... 7579
1051 ... 7282
1065 ... 7280
1068 ... 7280
1079 ... 7280
1131 ... 7579
1135 ... 9677
1136 ... 7579
1137 ... 7581
1230 ... 9602
1260 ... 8984
1403 ... 10222
1421 ... 9970
1435 ... 9760
1901 ... 9014
1924 ... 9014
1944 ... 9014

8 CFR
103 ... 8183
238 ... 8643
245 ... 7431

9 CFR
92 ... 7549
Proposed Rules:
1 ... 7950
2 ... 7950
3 ... 7950
71 ... 9059
166 ... 9682
317 ... 7293
318 ... 7283
381 ... 7283, 7582

10 CFR
2 ... 7744
40 ... 9763
50 ... 7744
51 ... 9763
74 ... 9763
150 ... 9763
216 ... 8311
430 ... 7549
1040 ... 7543
1046 ... 7247
1535 ... 7543
Proposed Rules:
0 ... 10393
2 ... 10393
30 ... 8842
32 ... 8842
50 ... 9829
61 ... 7806
70 ... 8842
150 ... 8842
430 ... 7582
762 ... 8509

12 CFR
Ch. XII ... 9767
204 ... 9629
217 ... 8478, 9636
308 ... 8643
352 ... 9638
410 ... 7543
500 ... 8790
512 ... 8790
545 ... 9177
563d ... 7248
563g ... 8184
602 ... 8644
611 ... 8665, 10353
620 ... 8644
621 ... 8644
701 ... 10353
Proposed Rules:
227 ... 9684
708 ... 7447

13 CFR
105 ... 7550
115 ... 10362
120 ... 10362

14 CFR
33 ... 10344
39 ... 7249, 7250, 7432–7435, 7767, 7921, 7922, 8192, 8479, 8480, 8791, 8792, 9646, 9647, 10363, 10364
71 ... 7250, 7769, 8193–8195, 8284, 9648, 10365
73 ... 8999
75 ... 8195, 9000
93 ... 8632, 9767
97 ... 8793
375 ... 7251
1215 ... 7261
Proposed Rules:
Ch. I ... 9458
21 ... 10402
36 ... 7878
39 ... 7447, 8332, 8333, 8509, 8842, 10406
71 ... 7284, 7448, 7950–7954, 8334, 8510, 9835, 9971, 10224–10228, 10407, 10409
73 ... 7284
75 ... 10409
91 ... 9432
121 ... 9432
135 ... 9432
250 ... 9459

15 CFR
373 ... 8482, 9648
374 ... 10365
375 ... 10365
376 ... 8482, 9648
385 ... 8482, 9648
801 ... 7770
Proposed Rules:
960 ... 9971

16 CFR
13 ... 8312–8314, 8485, 9768
306 ... 10186
803 ... 10368
1033 ... 7543
Proposed Rules:
Ch. II ... 8686
13 ... 8335, 9060, 9215, 9836, 10229, 10231
424 ... 7811

17 CFR
200 ... 9769
240 ... 8795, 8801
250 ... 9001
270 ... 9773
Proposed Rules:
1 ... 7285
230 ... 9838

18 CFR
2 ... 9179
35 ... 7774, 8486
37 ... 7261
157 ... 9179
225 ... 7923
277 ... 7923
284 ... 9179
292 ... 8486
381 ... 8488
389 ... 8804
1302 ... 9649
Proposed Rules:
271 ... 7583

19 CFR
4 ... 10189
6 ... 8488
12 ... 8314
101 ... 9780
141 ... 7783
152 ... 7783
162 ... 8488
201 ... 7543
Proposed Rules:
134 ... 7285
175 ... 8338
213 ... 7955

20 CFR
10 ... 8276
404 ... 7933, 8805
416 ... 7436, 8805
Proposed Rules:
404 ... 7452, 9217
416 ... 9462

21 CFR
74 ... 7933, 9780
81 ... 7933
82 ... 7933, 9780
178 ... 7437, 7438, 7551
201 ... 8180
207 ... 7382
210 ... 7382
225 ... 7382
226 ... 7382
510 ... 7382, 8315
514 ... 7382
520 ... 8315, 9004
556 ... 9004
558 ... 7261, 7382, 7784, 8811, 9004, 9005, 9189
561 ... 9439
579 ... 8315
610 ... 10410
1308 ... 9440, 10190
Proposed Rules:
Ch. I ... 9842
74 ... 9843
150 ... 9063
510 ... 8202
606 ... 7958, 9217
610 ... 7958, 9217
640 ... 7958, 9217
868 ... 8843
884 ... 7404

22 CFR
219 ... 7543
504 ... 10192
607 ... 7543
1103 ... 7543
1304 ... 7543
Proposed Rules:
7 ... 7958
71 ... 9465

23 CFR
1208 ... 10376
Proposed Rules:
630 ... 9217
658 ... 8511, 10234

24 CFR
16 ... 10195
200 ... 7439
201 ... 9785
203 ... 7439
207 ... 7439
213 ... 7439
220 ... 7439
221 ... 7439
231 ... 7439
232 ... 7439, 8316
235 ... 8316
241 ... 7439
242 ... 7439
245 ... 10196
511 ... 7439
571 ... 7439
800 ... 9786
813 ... 9786
900 ... 9786
913 ... 9786
965 ... 10196
970 ... 7439
Proposed Rules:
390 ... 9845

25 CFR
Proposed Rules:
273 ... 9624

26 CFR
1 ... 7262, 8490, 8671, 9005, 9787, 10381
301 ... 7439, 9949, 9950, 10348
601 ... 7441
602 ... 7439, 8671, 9787, 10348, 10381
Proposed Rules:
1 ... 8339, 8517, 9978, 10024, 10411
301 ... 7454
602 ... 7454, 8517, 9978, 10024

27 CFR
7 ... 7666, 8490
25 ... 7666, 8490, 9190
245 ... 7666
252 ... 7666, 9190
Proposed Rules:
9 ... 9846
24 ... 8098
170 ... 8098
231 ... 8098
240 ... 8098

28 CFR
0 ... 7443
3 ... 8817

8....8817
9a....8817
544....9614
551....9614

29 CFR

56....9440
1952....8819
2619....8821
2640....10300, 10314
2647....10300
2648....10314
2676....10322
Proposed Rules:
102....9467
1910....7584, 8844
1915....8844
2619....10335

30 CFR

216....8168
252....10381
785....9006
884....9441
886....9441
914....8823, 9006
917....7262, 9008
938....7785
948....9649
Proposed Rules:
202....7811
203....7811
206....7811
207....7811
210....7811
212....7811
241....7811
250....7584, 7811, 9316
256....9316
731....8466
732....8466
761....8466
772....8466
773....8466
779....8466
780....8466
783....8466
784....8466
906....10235
915....9219

31 CFR

128....9788
Proposed Rules:
357....8846

32 CFR

43....7552
276....7552
513....7268, 8824
706....9651
807....8671

33 CFR

80....7785
110....10197
117....7788
165....8195–8198, 9652
Proposed Rules:
100....7286, 9069
110....7287, 7288, 7812, 8687, 9069
117....7813, 9072, 9688
165....9069
166....7814, 7959
183....9689
323....9691
326....9691

34 CFR

Proposed Rules:
280....8294
400....7908
401....7908
415....7908
668....8946
690....8946

36 CFR

1....8976
2....8976
7....8493
50....7556
211....9010
291....10382
406....7543
1275....8671
Proposed Rules:
223....9072

38 CFR

17....8671
18....10383
18a....10383
18b....10383
21....9952–9955
36....7789

39 CFR

3....9791
111....8493, 9652
265....8824
3001....8827
Proposed Rules:
111....8857, 9220
310....9852
320....9852

40 CFR

52....8495, 9445, 9653, 10198, 10387
57....10211
58....9582
60....8673, 9190
61....7715, 7719, 8199, 8673, 9190
62....8674, 8827
65....7790, 9956
81....8828
154....10391
180....7566, 7567, 8497, 9445–9449
260....7722, 10146
261....7722, 10146
262....7722, 10146
263....10146
264....7722
265....7722
266....7722
270....7722, 10146
271....7540, 7722, 10146, 10211
280....7722
300....7934
468....7568
721....9450
Proposed Rules:
52....7959, 7960, 8203, 8517, 8518
60....7289, 7585
61....8205
81....7962, 7963
89....7292
123....10236
180....8519, 9468, 10411
260....7723, 7832, 8744, 9072
261....7455, 7723, 7815, 7832, 8206, 9076
262....7723, 7832, 8744, 9072, 10177
263....8744
264....7723, 7832, 9072
265....7723, 7832, 9072
266....7723
268....7593, 7832
270....7723, 7832, 9072
271....7723, 7832, 8744
280....7723
418....8520
467....9618
721....9221, 10024, 10027
765....9469
796....7593
797....7593
799....7593

41 CFR

101–25....9654
101–26....7571, 9654
101–43....8674
201–2....9957
201–8....8317, 10392
201–11....9957
201–23....9957
201–24....9957
201–30....9957
201–32....9957
201–33....9957

42 CFR

51a....7726
53....7935
124....7935
400....9792
405....9792
455....9793
Proposed Rules:
405....10033
412....8208, 8211
418....7292
435....7520
442....7520

43 CFR

2720....9655
3140....7275
4700....7410
Proposed Rules:
431....7833, 10237
Public Land Orders:
6605 (Corrected by PLO 6614)....9793
6614....9793

44 CFR

67....9191
Proposed Rules:
67....9228

45 CFR

201....9191
205....9191
206....9191
224....9440
225....9191
232....9191
233....9191
234....9191
235....9191
237....9191
801....9793
1175....7543
1181....7543
1706....7543
2001....8300
Proposed Rules:
1177....9228

46 CFR

42....9960
47....9960
221....9207
298....7790
Proposed Rules:
Ch. II....9230
252....8214
580....7295, 10034
581....7295, 10034

47 CFR

Ch. I....9794
0....7443
1....7443
31....8498
67....7445, 7942
69....7942, 8498, 8499, 9010
73....7796, 8501, 8675, 9210, 9453, 9963
74....9796, 9963
76....9963
78....9963
97....7797, 9012
Proposed Rules:
Ch. I....9470
67....7462
73....7463–7468, 7835, 9076, 9077
76....8339
90....9853

48 CFR

508....8677
546....8678
552....8678
553....8678
1414....8829
1433....8829
1452....8829
2401....7947
2403....7947
2407....7947
2414....7947
2415....7947
2416....7947
Proposed Rules:
1....9429
31....7379
207....7295
209....7837
215....7295, 7296, 9854
234....7295
244....7295
252....7295, 7296, 7837, 8522, 9854
401....10034
406....10034
413....10034
414....10034
415....10034
422....10034
433....10034
436....10034
970....7469

49 CFR

391 8199
541 8831
571 ..... 9454, 9800
585 9800
807 7543
845 7277
1312 9814

Proposed Rules:

171 9079
172 9079
174 9079
571 ..... 7298, 10237
604 7892
1039 7964
1063 7838

50 CFR

17 ..... 8681, 9814, 10518
25 7571
28 7571
29 7571
255 9213
258 8840
285 8324
550 7543
611 ..... 7446, 9658, 9966
642 ..... 8325, 9012, 9659, 10212
652 ..... 8326, 10392
655 9966
663 8683
672 ..... 7446, 8502, 9658
681 8506

Proposed Rules:

17 ..... 7965, 8215, 8217, 8340, 9081, 10412
18 10243
20 ..... 9854, 10415
23 9867
36 7593
80 7597
630 9869
649 ..... 8220, 8860
661 9869

LIST OF PUBLIC LAWS

Last List March 25, 1986

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

S.J. Res. 205/Pub. L. 99-261

To designate March 21, 1986, as "National Energy Education Day." (Mar. 21, 1986; 100 Stat. 56; 1 page) Price: $1.00

S.J. Res. 272/Pub. L. 99-262

To authorize and request the President to issue a proclamation designating March 21, 1986, as "Afghanistan Day", a day to commemorate the struggle of the people of Afghanistan against the occupation of their country by Soviet forces. (Mar. 21, 1986; 100 Stat. 57: 2 pages) Price: $1.00