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Wednesday
September 19, 1990

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

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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 3 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: September 25, at 9:00 a.m.
WHERE: Federal Office Building, 1100 Commerce Street, Room 7A23-175, Dallas, TX.
RESERVATIONS: 1-800-366-2998.

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 90-179]

Mediterranean Fruit Fly; Removal From the Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the Mediterranean fruit fly regulations by removing the remaining quarantined area in Santa Clara County, California, from the list of quarantined areas in California. We have determined that the Mediterranean fruit fly has been eradicated from this area and that the restrictions are no longer necessary. This action relieves unnecessary restrictions on the interstate movement of regulated articles from this area.

DATES: Interim rule effective September 14, 1990. Consideration will be given only to comments received on or before November 20, 1990.

ADDRESSES: To help ensure that your comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 90-179. Comments received may be inspected at USDA, room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Milton C. Holmes, Senior Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, room 642, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8247.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables, especially citrus fruits. The Mediterranean fruit fly can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

We established the Mediterranean fruit fly regulations and quarantined an area in Los Angeles County, California (7 CFR 301.78 *et seq.*; referred to below as the regulations), in a document effective August 23, 1989, and published in the **Federal Register** on August 29, 1989 (54 FR 35629-35635, Docket Number 89-146). We have published a series of interim rules amending these regulations by adding or removing certain portions of Los Angeles, Orange, San Bernardino, and Santa Clara Counties, California, from the list of quarantined areas. Amendments affecting California were made effective on September 14, October 11, November 17, and December 7, 1989; and on January 3, January 25, February 16, March 9, May 9, June 1, August 3, and September 6, 1990 (54 FR 38643-38645, Docket No. 89-169; 54 FR 42478-42480, Docket No. 89-182; 54 FR 48571-48572, Docket No. 89-202; 54 FR 51189-51191, Docket No. 89-206; 55 FR 712-715, Docket No. 89-212; 55 FR 3037-3039; Docket No. 89-227; 55 FR 6353-6355, Docket No. 90-014; 55 FR 9719-9721, Docket No. 90-031, 55 FR 19241-19243, Docket No. 90-050, 55 FR 22320-22323, Docket No. 90-081, 55 FR 32236-32238, Docket No. 90-151, and 55 FR 37697-37699, Docket No. 90-175).

Based on insect trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS), we have determined that the Mediterranean fruit fly has been eradicated from the quarantined area in Santa Clara County near Mountain View. The last finding of the Mediterranean fruit fly was made in this area on September 15, 1989. Since then, no evidence of infestations has been found in this area. We have determined that the Mediterranean fruit fly no longer exists in this area, and we are therefore removing it from the list of areas in § 301.78.3(c) quarantined because of the Mediterranean fruit fly. No quarantined areas remain in Santa Clara County as a result of this action, the Mediterranean fruit fly has been eradicated from this county. Portions of Los Angeles, Orange, and San Bernardino Counties in California remain infested with the Mediterranean fruit fly.

Emergency Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that an emergency situation exists that warrants publication of this interim rule without prior opportunity for public comment. The area in California affected by this document was quarantined due to the possibility that the Mediterranean fruit fly could spread to noninfested areas of the United States. Since this situation no longer exists, and the continued quarantined status of these areas would impose unnecessary regulatory restrictions on the public, we have taken immediate action to remove restrictions from the noninfested areas.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**, including a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a

significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This regulation affects the interstate movement of certain articles from a portion of Santa Clara County in California. Within this area there are approximately 140 entities that could be affected, including 12 fruit/produce markets; 93 nurseries; 5 commercial growers of cucumbers, tomatoes, green peppers, and persimmons; 9 community gardens; 14 commercial growers of apricots, cherries, and avocados; 1 commercial fruit dryer; 2 farmers markets, and 2 flea markets.

The effect of this rule on these entities should be insignificant since most of these small entities handle regulated aricles primarily for local intrastate movement, not interstate movement, and the distribution of these articles was not affected by the regulatory provisions we are removing.

Many of these entities also handle other items in addition to the previously regulated articles so that the effect, if any, on these entities is minimal. Further, the conditions in the Mediterranean fruit fly regulations and treatments in the Plant Protection and Quarantine Treatment Manual, incorporated by reference in the regulations, allowed interstate movement of most articles without significant added costs.

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

Paperwork Reduction Act

The regulations in this subpart contain no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980. (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

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

List of Subjects in 7 CFR Part 301

Agricultural commodities, Incorporation by reference, Mediterranean fruit fly, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

Accordingly, 7 CFR part 301 is amended to read as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for 7 CFR part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

§ 301.78–3 [Amended]

2. In § 301.78–3, paragraph (c) is amended by removing the entry for Santa Clara County.

Done in Washington, DC, this 14th day of September 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–22173 Filed 9–18–90; 8:45 am]

BILLING CODE 3410–34–M

Farmers Home Administration

7 CFR Part 1948

Intermediary Relending Program

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration is amending the regulations for the Intermediary Relending Program (IRP). This action is needed to correct miscellaneous problems that have been observed during initial implementation of the program. The intended effect is to help distribute limited funds among applicants in a more equitable manner and allow loan processing to proceed more smoothly.

EFFECTIVE DATE: October 1, 1990.

FOR MORE INFORMATION CONTACT: M. Wayne Stansbery, Business and Industry Loan Specialist, Farmers Home Administration, USDA, Room 6327, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250, Telephone (202) 475–3819.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be non-major. The annual effect on the economy will be less than $100 million. There will be no significant increase in costs or prices for consumers, individual industries, organizations, governmental agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete in domestic or export markets.

Intergovernmental Review

This program will be listed in the Catalog of Federal Domestic Assistance under number 10.439, Intermediary Relending Program. It is subject to intergovernmental consultation in accordance with Executive Order 12372, and as stated in FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities."

Environmental Impact Statement

This action has been reviewed in accordance with FmHA Instruction 1940–G, Environmental Program. FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Background

The Intermediary Relending Program was placed in operation on August 15, 1988, when the regulations were published as a final rule in the **Federal Register** (53 FR 30643). FmHA is now making some revisions, based on its experience with implementation of the program, to enhance the program. The primary changes include the following:

1. The limitation on maximum loans to one intermediary is reduced from $3 million to $2 million.

2. The type of loans used to compute the limitation on maximum loans to one intermediary and the limitation on maximum loans to one ultimate recipient are revised to include IRP loans only, rather than all FmHA loans.

3. The requirements for financial projections from applicant intermediaries are revised to clarify that there should be one set of projections for the intermediary relenting fund alone and another set of projections for all of the intermediary's operations combined.

4. New loan priorities are provided, with a point system for establishing a priority score. Items to be considered in

awarding points include non-Federal funding to supplement the IRP funds, low income service areas, high unemployment service areas, jobs for low income people, intermediary contribution to the IRP revolving funds, lending experience of the intermediaries and local community representation in the intermediaries.

5. The previous time limitations for application processing are removed and applications will be reviewed and ranked quarterly.

6. The discontinuing of loan processing due to failure of the applicant to meet conditions promptly will be a matter of FmHA discretion, rather than automatic.

7. A requirement is added for post closing review by the Office of the General Counsel (OGC).

8. A requirement for intermediaries to report opportunities provided to farm families is removed.

Comments

This action was published as a proposed rule for public comment on October 11, 1989, in the **Federal Register** (51 FR 41626). Eight letters of comment were received, each with several points.

Two writers felt that the $2,000,000 loan limit would limit some of the most skilled intermediaries from continuing their work. They suggested that initial loans be limited to $2,000,000 but subsequent loans up to a total of $5,000,000 be allowed after the initial funds are all used. Another writer specifically endorsed the reduction of the limit to $2,000,000 as proposed.

In light of the large number of applications on hand relative to the available funds and the length of time that some intermediaries are taking to reloan the funds that have been approved, FmHA believes that the $2,000,000 limit is needed. The limit is on outstanding IRP loans, so an intermediary that has received a $2,000,000 loan and then repaid a significant portion of the loan could apply for a subsequent loan to bring the total IRP loans back up to the limit. No change is made from the proposed rule.

One writer objected to the requirement for applications to include projected balance sheets and income statements for the intermediary's total operations.

This requirement is intended to clarify what FmHA has expected from the beginning of the program. Analysis of financial projections is one tool in analysis of credit worthiness. Although the successful operation of the IRP revolving fund is of primary importance, it is the intermediary organization as a whole that is making application for the IRP loan. If the loan is made, it is the intermediary organization as a whole that will be responsible for repaying it. When an organization has more than one purpose or part, the financial success or failure of one part can have significant impact on the other parts. FmHA believes that it needs at least some indication from the intermediary of the future overall financial condition that can be expected. No change is made from the proposed rule in this regard.

One writer wanted a change in eligible loan purposes to allow IRP loan funds to be used to fund a loan loss reserve.

This rule does not make any changes in the sections of the regulation that deal with loan purposes. It is FmHA's desire and a requirement of the existing regulation that 100 percent of the IRP funds loaned to intermediaries be reloaned to ultimate recipients. There appears to be a sufficient number of eligible intermediary applicants that can provide for administrative costs and appropriate loan loss reserves from their own resources and/or interest and fees. No change is made.

One writer expressed concern about the requirement for post loan closing review by the Regional Attorney. The concern appeared to be that the activities of the intermediary would be delayed while waiting for the Regional Attorney review to be completed.

No change from the proposed rule has been made. However, the concern appeared to be based on a misunderstanding of the requirement. The review required is of the closing of the loan from FmHA to the intermediary, not of loans made by the intermediary to ultimate recipients. Also, it is intended that the intermediary will be able to proceed with its normal activities while the review is being conducted.

The remaining comments all deal with the establishing of a priority point system to score and rank applications. No one objected to the concept and four of the eight letters expressed the writers' approval of the concept. However, all of the writers expressed concern or suggestions about specific aspects of the system proposed by FmHA.

One writer questioned the provision that applications that are reviewed and ranked but not funded would not be carried over for consideration in another fiscal year. The writer suggested that unsuccessful applications be held through 4 quarterly funding periods, without regard to fiscal year.

This suggestion has been adopted.

Three writers were concerned about when the new system would go into effect and how it will impact the applications on hand. Two of the writers suggested that applications already on hand should be processed and funded before the regulation changes go into effect. The other writer suggested it should be made clear that the applications already on hand will be processed under the new regulations.

The large number of applications on hand and the need for procedures to deal with them more appropriately are FmHA's primary reasons for this action. It was originally FmHA's intention that the amendments to the regulations be effective upon publishing in the **Federal Register**. The effective date has been changed to coincide with the beginning of the fiscal year. Any application not selected for funding prior to the effective date will be scored and ranked before receiving further consideration for funding. Applicants will be given opportunity to update or amend their applications.

One writer felt that paragraph 1948.123(c)(1)(i) on priority points for the intermediary obtaining other funds for ultimate recipients should require the applicant to demonstrate that it has a history of using such funds and that the funds are available.

The proposed rule stated that points will be allowed only for well documented, reasonable plans which provide assurance that the items have a high probability to be accomplished and that points for other funds should be based on documented successful history or written evidence that the funds are available. FmHA believes that language is sufficient. No change is made from the proposed rule.

Three writers suggested that the reference in paragraph 1948.123(c)(1)(i) to "non-Federal or grant funds" should be changed to "non-Federal loan or grant funds."

FmHA intended the reference to be "non-Federal loan or grant funds" but the word "loan" was inadvertently omitted. This has been corrected in the final rule and in a proposed rule correction published in the **Federal Register** on November 13, 1989 (54 FR 47216).

Two writers indicated that it is not clear what was meant by the intermediary's "own funds" in paragraph 1948.123(c)(1)(i). Each writer suggested changes in the parenthetical phrase "loan or grant funds."

FmHA believes the paragraph is clearer as proposed than it would be if revised according to either of the suggestions. If an intermediary will obtain non-Federal loan or grant funds to pay part of the cost of ultimate

recipients projects, priority points will be awarded under paragraph 1948.123 (c)(1)(i). Paragraph (c)(1)(ii) is not intended to duplicate paragraph (c)(1)(i). Paragraph (c)(1)(ii) provides for priority points when the intermediary will provide funds to ultimate recipients, not by obtaining loans or grants from some other source, but by using funds the intermediary already has. No change is made.

Two writers objected to the awarding of priority points based on the intermediary providing funds or obtaining funds from other sources to supplement the IRP funds. One apparently felt this is too much of a burden on the intermediary. The other indicated that it takes away the flexibility to fund borrowers with the most limited access to other funding. One suggested that the points be awarded for sharing the funds among more recipients by making more smaller loans.

Three other writers indicated that they approved of the concept of priority for providing or obtaining other funds. FmHA believes that this is an important way to stretch the limited IRP funds so that some assistance can be provided to more rural communities and businesses. No change has been made from the proposed rule.

Two writers objected to awarding priority points based on a comparison of service area income to the national proverty line, on the grounds that it favors States where prices and costs are generally lower. The writers suggested using an index that takes into account the relative cost of living in each community or State.

FmHA prefers to use the proverty line because it is a well recognized, widely used and easily obtainable index and can be applied consistently to all prospective IRP intermediaries. Since some intermediaries have service areas larger than one State, a series of State indexes would not be suitable. No change is made.

One writer suggested that the points based on the unemployment rate under paragraph 1948.123(c)(1)(ii) should be based on a comparison to the State unemployment rate instead of the National unemployment rate.

FmHA prefers to use the National rate so it can be applied to all prospective intermediaries, including those that have multi-state service areas. No change is made.

One writer objected to paragraph 1948.123(c)(2)(iii), which awards priority points to intermediaries that will require ultimate recipients to certify that they will hire a percentage of their workforce from families with income below the proverty line. The writer indicated that the provision would introduce distortions into the employment market and create disincentives to hiring the most qualified persons. Another writer wanted points given for "targeting" jobs to low income persons, but apparently did not want a specific definition of "targeting."

FmHA believes that the provision as proposed is a valid way to direct the IRP funds to ultimate recipients that will hire the people that most need the jobs. No change is made.

One writer requested an expansion of paragraph 1948.123(c)(4), to allow priority points for experience in guaranteeing commercial loans as well as for making and servicing commercial loans.

Although the financial analysis is similar, the actual making and servicing of loans involves some additional actions not required from someone only issuing guarantees. Since Intermediaries must use the IRP funds to make and service (not guarantee) loans, it is consistent to require actual loan making and servicing experience for awarding priority points. No change has been made.

Two writers wanted the number of points shifted to give more relative priority to the proverty, low income workers and unemployment factors and less to the equity, experience, and other funding factors.

Although FmHA intends for benefits to extend to low income people, FmHA is also very concerned that FmHA's loans be sound. The contribution of funds by the intermediary into the IRP revolving fund (equity) will provide financial strength to the fund and increase collateral. Management experience and financial history are major factors in evaluating the repayment ability for any commercial loan. The amount of successful experience and the amount of contribution to the revolving fund (equity) are the only factors in the priority system that tend to increase the credit quality or collectability of the loans to be made by FmHA. FmHA has tried to balance these two factors against the others, to ensure that credit quality receives significant consideration in the establishment of priorities. No change is made.

One writer requested that priority points be awarded to applications from regions that are not already served by an approved intermediary.

FmHA believes this suggestion would be too difficult to administer in an equitable manner, because of the vast differences in service area size. Service areas vary from intermediary to intermediary, from as small as one county to as large as the entire United States. The $2 million limit will fund more intermediaries and tend to give a wider distribution of the funds. No change is made.

Four writers (three applicants with very large service areas and one consulting firm) objected to a provision in paragraph 1948.123(c)(5) that limits priority points for community representation to intermediaries with service areas of not more than 10 counties.

The theory of the community representation factor is that intermediaries that have small service areas and are made up of people who live in the service area will be more familiar with and responsive to local conditions and needs. The effect is lost if the service area is too large to have common community characteristics or for a resident to be thoroughly familiar with the entire area. The 10 county limit will include many of the sub-State regional planning and development organizations and exclude groups that serve large areas with multiple communities without common characteristics. No change is made.

This final rule also contains internal management changes to 7 CFR 1948–C that were not published in the proposed rule.

List of Subjects in 7 CFR Part 1948

Business and industry, Community development, Community facilities, Loan programs—Business, Loan programs—Housig and Community development, Rural areas.

Accordingly, FmHA amends chapter XVIII, title 7, of the Code of Federal Regulations as follows:

PART 1948—RURAL DEVELOPMENT

1. The authority citation for part 1948 continues to read as follows:

Authority: 7 U.S.C. 1932 note; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart C—Intermediary Relending Program (IRP)

§ 1948.101 [Amended]

2. Section 1948.101 is amended by removing the last sentence of paragraph (b).

3. Section 1948.103 is amended by revising paragraph (c)(4) to read as follows:

§ 1948.103 Eligibility requirements.

* * * * *

(c) * * *

(4) The total amount of FmHA loan funds requested by the intermediary plus the outstanding balance of existing IRP loan(s) will not exceed $2,000,000 per intermediary.

* * * * *

4. Section 1948.110 is amended by revising paragraphs (a)(7) and (a)(9) to read as follows:

§ 1948.110 Ineligible loan purposes.

(a) * * *

(7) For a loan to an ultimate recipient which has an application pending or has received a loan from another intermediary unless FmHA provides prior written approval for such loan.

* * * * *

(9) To finance more than 75 percent of the total cost of a project by the ultimate recipient. The total amount of FmHA loan funds requested by the ultimate recipient plus the total outstanding balance of any existing loans from IRP funds will not exceed $150,000. Other loans, grants, and/or intermediary or ultimate recipient contributions or funds from other sources must be used to make up the difference between the total cost and the assistance provided by FmHA.

* * * * *

5. Section 1948.118 is amended by revising paragraph (b)(4)(iii) to read as follows:

§ 1948.118 Loan agreements between FmHA and the intermediary.

* * * * *

(b) * * *

(4) * * *

(iii) An annual report on the extent to which increased employment, income and ownership opportunities are provided to low-income persons, for each loan made by such intermediary.

* * * * *

6. Section 1948.122 is amended by revising paragraph (f) to read as follows:

§ 1948.122 Application.

* * * * *

(f) A pro forma balance sheet at startup and for at least 3 additional projected years; financial statements for the last 3 years, or from inception of the operations of the intermediary if less than 3 years; and projected cash flow and earnings statements for at least 3 years supported by a list of assumptions showing the basis for the projections. The projected earnings statement and balance sheet must include one set of projections that shows the IRP fund only and a separate set of projections that shows the applicant organization's total operations.

* * * * *

7. Section 1948.123 is amended by removing paragraph (d) and revising paragraphs (b) and (c), to read as follows:

§ 1948.123 Filing and processing applications for loans.

* * * * *

(b) *Filing applications.* Intermediaries must file the complete application, in one package. Applications received by FmHA will be reviewed and ranked quarterly and funded in the order of priority ranking. At the intermediary's direction FmHA may retain unsuccesful applications for consideration in subsequent reviews, through a total of 4 quarterly reviews.

(c) *Loan priorities.* Priority consideration will be given to proposed intermediaries based on the following factors. Points will be allowed only for factors indicated by well documented, reasonable plans which, in the opinion of FmHA, provide assurance that the items have a high probability of being accomplished. The points awarded will be as specified in each paragraph or subparagraph. If an application does not fit one of the categories listed, it receives no points for that paragraph or subparagraph.

(1) *Other funds.* Points allowed under this paragraph should be based on documented successful history or written evidence that the funds are available.

(i) The intermediary will obtain non-Federal loan or grant funds to pay part of the cost of the ultimate recipients' projects. The amount of funds from other sources will average:

(A) At least 10% but less than 25% of the total project cost—10 points.

(B) At least 25% but less than 50% of the total project cost—20 points.

(C) 50% or more of the total project cost—30 points.

(ii) The intermediary will provide loans to the ultimate recipient from its own funds (not loan or grant) to pay part of the costs of the ultimate recipients' projects. The amount of non-FmHA derived intermediary funds will average:

(A) At least 10% but less than 25% of the total project costs—10 points.

(B) At least 25% but less than 50% of total project costs—20 points.

(C) 50% or more of total project costs—30 points.

(2) *Employment.* For computations under this paragraph, income data should be from the latest decennial census of the United States, updated according to changes in consumer price index (CPIU). The poverty line used will be as defined in section 673 (2) of the Community Services Block Grant Act (42 U.S.C. 9902 (2)). Unemployment data used will be that published by The Bureau of Labor Statistics, U.S. Department of Labor.

(i) The median household income in the service area of the proposed intermediary equals the following percentage of the poverty line for a family of 4:

(A) At least 100% but not more than 110%—5 points.

(B) At least 80% but less than 100%—10 points.

(C) below 80%—15 points.

(ii) The unemployment rate in the intermediary's service area equals the following percentage of the national unemployment rate:

(A) At least 100% but less than 125%—5 points.

(B) At least 125% but less than 150%—10 points.

(C) 150% or more—15 points.

(iii) The intermediary will require as a condition of eligibility for a loan to an ultimate recipient that the ultimate recipient certify in writing that it will employ the following percentage of its workforce from members of families with income below the poverty line.

(A) At least 10% but less than 20% of the workforce—5 points.

(B) At least 20% but less than 30% of the workforce—10 points.

(C) 30% of the workforce or more—15 points.

(3) *Equity.* All assets of the IRP fund will serve as security for the IRP loan and the intermediary will contribute funds not derived from FmHA into the IRP fund along with the proceeds of the IRP loan. The amount of non-FmHA derived funds contributed to the IRP fund will equal the following percentage of the FmHA IRP loan:

(i) At least 5% but less than 15%—15 points.

(ii) At least 15% but less than 25%—30 points.

(iii) 25% or more—50 points.

(4) *Experience.* The intermediary has actual experience in making and servicing commercial loans, with a successful record, for the following number of full years:

(i) At least 1 but less than 3 years—5 points.

(ii) At least 3 but less than 5 years—10 points.

(iii) At least 5 but less than 10 years—20 points.

(iv) 10 or more years—30 points.

(5) *Community representation.* The service area is not more than 10 counties and the intermediary utilizes local opinions and experience by including community representatives on its Board of Directors or equivalent oversight board. For purposes of this section,

community representatives are people, such as civic leaders, business representatives or bankers, who reside in the service area and are not employees of the intermediary.

(i) At least 10% but less than 40% of the board members are community representatives—5 points.

(ii) At least 40% but less than 75% of the board members are community representatives—10 points.

(iii) At least 75% of the board members are community representatives—15 points.

(6) *Administrative.* The Administrator may assign up to 35 additional points to an application to account for items such as geographic distribution of funds and emergency conditions caused by economic problems or natural disasters. An assignment of points by the Administrator will be by memorandum stating the Administrator's reasons, and that memorandum will be appended to the calculation of the project score maintained in the case file.

§ 1948.124 [Amended]

8. Section 1948.124(c) is amended by adding the words "Complete Form FmHA 1948–2, IRP Project Summary," following the word "will" in the introductory text.

9. Section 1948.124 is amended by revising paragraph (a) and the last 2 paragraphs of (c)(2) to read as follows:

§ 1948.124 FmHA evaluation of application.

(a) FmHA will input the necessary data via terminal screens into the Rural Community Facility Tracking System (RCFTS). If FmHA so desires, a Form FmHA 2033–34, "Management System Card—Business and Industry," may be prepared in accordance with FmHA Instruction 2033–F.

* * * * *

(c) * * *

(2) * * *

Please complete and return the attached Form FmHA 1942–46, "Letter of Intent to Meet Conditions," if you desire that further consideration be given your application.

If the conditions set forth in this letter are not met within _____ days from the date hereof, FmHA reserves the right to discontinue the processing of the application. The intermediary will be notified, in writing, by the Administrator or designee of any such discontinuances.

* * * * *

10. Section 1948.126 is amended by adding a new paragraph (f) to read as follows:

§ 1948.126 Loan closing.

* * * * *

(f) When the loan has been closed, the administrator or designee will submit the security instruments, other documents used in closing, and a statement that administrative requirements have been met to the Regional Attorney. The Regional Attorney will review the submitted material and determine whether all legal requirements have been met.

11. Section 1948.149 is amended by adding paragraph (d) to read as follows:

§ 1948.149 Exhibits.

* * * * *

(d) Exhibit IV, "Priority Scoresheet".

Dated: July 3, 1990.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 90–22176 Filed 9–18–90; 8:45 am]

BILLING CODE 3410-07-M

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 90-181]

Tuberculosis in Cattle and Bison; State Designation

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the regulations concerning the interstate movement of cattle and bison because of tuberculosis by raising the designation of Ohio from a modified accredited State to an accredited-free State. We have determined that Ohio meets the criteria for designation as an accredited-free State.

DATES: Interim rule effective September 19, 1990. Consideration will be given only to comments received on or before November 20, 1990.

ADDRESSES: To help ensure that your comments are considered, send an original and three copies of written comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 90–181. Comments received may be inspected at USDA, room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Mitchell A. Essey, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8715.

SUPPLEMENTARY INFORMATION:

Background

The "Tuberculosis" regulations contained in 9 CFR part 77 (referred to below as the regulations) regulate the interstate movement of cattle and bison because of tuberculosis. Bovine tuberculosis is the contagious, infectious, and communicable disease caused by *Mycobacterium bovis*. The requirements of the regulations concerning the interstate movement of cattle and bison not known to be affected with, or exposed to, tuberculosis are based on whether the cattle and bison are moved from jurisdictions designated as accredited-free States, modified accredited States, or nonmodified accredited States.

The criteria for determining the status of States (the term State is defined to mean any State, territory, the District of Columbia, or Puerto Rico) are contained in a document captioned "Uniform Methods and Rules—Bovine Tuberculosis Eradication," 1985 edition, which has been made part of the regulations via incorporation by reference. The status of States is based on the rate of tuberculosis infection present and the effectiveness of a tuberculosis eradication program.

Before publication of this interim rule, Ohio was designated in § 77.1 of the regulations as a modified accredited State. However, Ohio now meets the requirements for designation as an accredited-free State. Therefore, we are amending the regulations by removing Ohio from the list of modified accredited States in § 77.1 and adding it to the list of accredited-free States in that section.

Immediate Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. It is necessary to change the regulations so that they accurately reflect the current tuberculosis status of Ohio as an accredited-free State. This will provide prospective cattle and bison buyers with accurate and up-to-date information, which may affect the marketability of cattle and bison since some prospective buyers prefer to buy cattle and bison from accredited-free States.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5

U.S.C. 553 to make it effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**, including a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle and bison moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of Ohio may affect the marketability of cattle and bison from the State, since some prospective cattle and bison buyers prefer to buy cattle and bison from accredited-free States. This may result in some beneficial economic impact on some small entities. However, based on our experience in similar designations of other States, the impact should not be significant.

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

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Transportation, Tuberculosis.

Accordingly, we are amending 9 CFR part 77 as follows:

PART 77—TUBERCULOSIS

1. The authority citation for part 77 continues to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 77.1 [Amended]

2. Section 77.1, paragraph (2) of the definition for "Modified accredited state" is amended by removing "Ohio,".

§ 77.1 [Amended]

3. Section 77.1, paragraph (2) of the definition for "Accredited-free state" is amended by adding "Ohio," immediately before "Oklahoma,".

Done in Washington, DC, this 14th day of September 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–22174 Filed 9–18–90; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 075CE, Notice No. 23–ACE–47A]

Special Conditions; Beech Model 55 Series Airplanes, Electronic Flight Instrument System (EFIS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special condition amendment No. 1 to special conditions No. 23–ACE–47.

SUMMARY: This amended special condition is being issued to delete the requirement to protect the electronic flight instrument system (EFIS) from high energy radiated electromagnetic fields (HERF) in the Beech Model 55 series airplanes. The deletion of the HERF requirement for this program is needed to make this special condition consistent with current FAA policy. This amendment will permit timely issuance of the Supplemental Type Certificate.

EFFECTIVE DATE: October 19, 1990.

FOR FURTHER INFORMATION CONTACT: Ervin E. Dvorak, Aerospace Engineer, Standards Office (ACE–110), Aircraft Certification Service, Central Region, Federal Aviation Administration, room 1544, 601 East 12th Street, Federal Office Building, Kansas City, Missouri 64106, telephone (816) 426–5688.

SUPPLEMENTARY INFORMATION:

Background

On March 23, 1989, King Radio Corporation, Olathe, Kansas submitted an application for supplemental type certificate (STC) approval of the design changes necessary to install a King EFS-40 Electronic Flight Instrument System (EFIS) on the Beech Model 55 airplane. This installation incorporates an electronic attitude director indicator (EADI) and electronic horizontal situation indicator (EHSI) in lieu of the traditional mechanical or electromechanical displays providing similar information to the flight crew.

Special conditions No. 23–ACE–47 were issued on December 14, 1989, and contain the airworthiness standards for the installation of EFIS and the protection of it from high energy radiated electromagnetic fields (HERF) for the Beech Model 55 series airplanes. They were published in the **Federal Register** on January 4, 1990 [55 FR 270].

On January 30, 1990, the Aircraft Engineering Division (AIR–100), Federal Aviation Administration, issued a memorandum stating that the HERF requirements are not required for an application for supplemental type certificate (STC) in conjunction with an EFIS installation if the application was made prior to December 5, 1989. This effective date is based on the consideration that the applicant be advised of the HERF requirements in the early stages of the STC project. This special condition amends special condition No. 23–ACE–47 to delete the requirements of protection of critical systems from HERF for this particular EFIS installation since the application date for this STC project was prior to December 5, 1989.

Type Certification Basis

The type certification basis for the Beech Model 55 airplane is as follows. Part 3 of the Civil Aviation Regulation (CAR), as amended to May 15, 1956, and §§ 23.1385(c) and 23.1387(e) of part 23 of the Federal Regulations (FAR), effective February 1, 1965, as amended by amendment 23–12, special conditions No. 23–ACE–47, and the amended special condition adopted by this rulemaking action.

Discussion

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 an airplane or installation. Special conditions, as appropriate, are issued in accordance with § 11.49, after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and may become part of the type certification basis, as provided by § 21.101.

The proposed type design of the King EFS-40 EFIS installation in the Beech Model 55 airplane contains a number of novel and unusual design features not envisaged by the applicable airworthiness standards. Special conditions are considered necessary because the applicable airworthiness standards do not contain adequate or appropriate safety standards for the novel or unusual design features of the King EFS-40 EFIS installation in the Beech Model 55 series airplane.

Special conditions will also be applicable to all Beech Model 55 series airplanes for installation of similar EFIS (not limited to the same manufacturer) without further amendment of the special conditions.

Conclusion

This action affects only certain novel and unusual design features discussed for installation in the Beech Model 55 airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on these airplanes.

The substance of this amended special condition is the deletion of a design requirement in accordance with FAA policy. Since this action results in the deletion of a technical amendment in which the public is not particularly interested, notice and public comment procedure are unnecessary under 5 U.S.C. 553(b). This amended special condition is being issued and made effective 30 days from the date of publication.

List of Subjects in 14 CFR Parts 21 and 23

Aircraft, Air transportation, Aviation safety, and Safety.

The authority citation for these special conditions is as follows:

Authority: Sections 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49.

Adoption of Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special condition is issued as part of the type certification basis for the Beech Model 55 series airplane that incorporates the design features discussed.

Special condition No. 23-ACE-47 is amended by deleting paragraph 2, Protection of Electronic Flight Instrument Systems from High Energy Radiated Electromagnetic Fields (HERF).

Issued in Kansas City, Missouri on September 7, 1990.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-22131 Filed 9-18-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-75-AD; Amdt. 39-6737]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which requires replacement of the trailing edge flap track fail-safe straps and/or replacement of the strap attachment bolts. This amendment is prompted by a report of a failure of the fail-safe strap, which resulted in the outboard end of the affected flap contacting the runway during landing. This condition, if not corrected, could lead to separation of the flap during flight, resulting in partial loss of the controllability of the airplane, possible secondary damage to the airplane, and a hazardous to persons or property on the ground.

EFFECTIVE DATE: October 22, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW.; Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Richard H. Yarges, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2773. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW.; Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 747 series airplanes, which requires replacement of the trailing edge flap track fail-safe straps and/or replacement of the strap attachment bolts, was published in the **Federal Register** on May 21, 1989 (54 FR 26050).

This amendment is prompted by a report of a failure of the fail-safe strap, which resulted in the outboard end of the affected flap contacting the runway during landing. This condition, if not corrected, could lead to separation of the flap during flight, resulting in partial loss of the controllability of the airplane, possible secondary damage to the airplane, and a hazard to persons or property on the ground.

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

The commenters stated that the proposed AD lacks justification and requested that the proposal be withdrawn. The reasons cited are summarized as follows:

1. There have been no further incidents of fuse pin failures since improved fuse pins were installed in accordance with AD 83-08-02, Amendment 39-4548.

2. There is no regulatory basis for requiring the fail-safe strap since the Boeing Model 747 is certified to be capable of safe flight and landing with a missing flap assembly. There have been five in-flight failures of flap tracks in service, and control of the airplane was maintained, as certified, in each case.

3. Prior to the June 7, 1978, incident in which the flap track fail-safe strap failed, there were two other incidents reported of in-service failure of the fuse bolts in which the structural integrity of the fail-safe straps was proven. The third incident in which the strap failed was probably an isolated case.

4. The improved fail-safe strap design has not been proven by test; therefore, there is no proof it will work any better than the existing design.

The FAA does not concur with the commenter's suggestion to withdraw the proposal for the following reasons:

The FAA acknowledges that Item 1 is correct; however, it is to be noted that the forward end clevis is subject to

corrosion and cracking as described in Boeing Service Bulletin 747-57-2231.

Although the points made in Items 2 and 3 may be true, the FAA, nevertheless, has determined that, in light of the consequence of such a failure, particularly if it were to occur during a critical phase of landing, the likelihood of future failures is sufficiently great to warrant the actions required by this AD.

As for Item 4, the FAA has determined that, based on analysis, the improved fail-safe strap installation provides the necessary durability to function until detection of a failure at the forward attachment of the flap track is made before loss of the flap occurs.

If the AD is not withdrawn, several commenters suggested that the compliance time be extended to be consistent with the compliance times for another AD actions issued for more critical problems and to provide time for the availability of parts. Notwithstanding the discussion above, the FAA concurs that the compliance time for the incorporation of the improved fail-safe strap can be extended from the proposed 2 years to 4 years without compromising safety, for the following reasons: The FAA has already mandated inspections of the forward end of early design flap tracks every 300 landings [reference AD 89-05-04, Amendment 39-6148 (54 FR 7759, February 23, 1989)], which will detect a failed flap track forward end clevis or clevis pin. In addition, the FAA intends to propose, as part of the Model 747 aging airplane inspection program, directed inspections of the forward end clevis of flap tracks as described in Boeing Service Bulletin 747-57-2231 which will detect structural distress and prevent failure of the forward flap track attachment. Finally, extending the compliance time for incorporation of the improved fail-safe strap to 4 years makes it consistent with the compliance times of the other modifications which are mandated by AD 90-06-06 for service problems of equal criticality (AD 90-06-06 is the Model 747 aging airplane modification program which undertakes the modification of certain critical structure to reduce the reliance on inspection to maintain safety). The manufacturer has advised that an ample number of required parts will be available within this revised compliance time.

One commenter requested that all references to the service bulletin in the final rule include the phrase, "* * * or later FAA-approved service bulletin revisions," since this feature may save the airlines time if Boeing revises the bulletin. The FAA does not concur, since to do so would not be consistent with FAA policy in that regard. Later revisions of the service bulletin may be approved as an alternate means of compliance, as provided by paragraph C. of the final rule.

Paragraph C. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternate means of compliance.

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

There are approximately 565 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 150 airplanes of U.S. registry will be affected by this AD, that it will take approximately 80 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Required parts will cost approximately $20,000 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,480,000.

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

For the reasons discussed above, I certify that this action (1) is not a "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) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

Boeing: Applies to Model 747 series airplanes, listed in Boeing Service Bulletin 747-57-2187, Revision 2, dated December 15, 1982, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of the trailing edge flap track fail-safe straps, accomplish the following:

A. Within 4 years from the effective date of this AD, replace old design trailing edge flap track fail-safe straps, if installed, with improved fail-safe straps, and replace bolts having a grip length which is too short with bolts having the correct grip length, as applicable, in accordance with Boeing Service Bulletin 747-57-2187, Revision 2, dated December 15, 1982.

B. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

C. 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 (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector, (PI). The PI will then forward comments or concurrence to the Seattle ACO.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective October 22, 1990.

Issued in Renton, Washington, on September 6, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-22126 Filed 9-18-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-69-AD; 39-6745]

Airworthiness Directives; Boeing of Canada, Ltd., de Havilland Division, Model DHC-8-100 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain de Havilland Model DHC-8-100 series airplanes, which requires modification of the cowl door latch arrangement and installation of pressure relief features on both engine cowlings. This amendment is prompted by reports of two in-flight engine fires wherein the engine cowl doors came open or came off, rendering the engine fire extinguishing system ineffective. This condition, if not corrected, could result in loss of engine fire extinguishing capability, and subsequent fire damage to the structure and the hydraulic system.

EFFECTIVE DATE: October 26, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Richard P. Fiesel, Propulsion Branch, ANE-174; telephone (516) 791-7421. Mailing address: FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain de Havilland Model DHC-8-100 series airplanes, which requires modification of the cowl door latch arrangement and installation of pressure relief features on both engine cowlings, was published in the **Federal Register** on May 8, 1990 (55 FR 19084).

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

One commenter requested that the FAA cancel issuance of the proposed rule for the following reasons:

1. The FAA has failed to show that an unsafe condition exists;

2. There is no regulatory requirement for the nacelle to withstand the dynamic pressure rise associated with the explosive ignition of fuel vapor;

3. The FAA has concluded that designing a nacelle to completely withstand explosions is not practical and the regulatory design philosophy is to minimize the probability of an explosion occurring;

4. There has been only one case of a nacelle door coming open or off from in-flight fire/explosion, not two as indicated in the Notice;

5. Specific FAA guidance or policy information does not exist regarding nacelle explosion/overpressure design; and

6. If a deficiency exists at all, it lies in the regulations, not with the Model DHC-8.

The FAA responds to the commenter's issues as follows:

1. The FAA does not concur with the suggestion that an unsafe condition does not exist. The incidents described in the preamble to the Notice substantiate the existence of an unsafe condition. In one of the incidents the first officer observed a "flash" from the right engine. The center access panel on the left side of the right nacelle was then seen to be missing. Subsequent use of the propulsion fire extinguishing system was ineffective.

2. The FAA concurs that there currently is no regulatory requirement for the nacelle to withstand the dynamic pressure rise from explosive ignition of fuel vapor. A proposed regulatory amendment to FAR part 25.1193, "Cowling and nacelle skin," is in process to improve cowl retention in the event of an explosion. However, the proposed part 25 amendment would not be retroactively applicable to the Model DHC-8-100. Therefore, the FAA has determined that this AD action is required to ensure cowl retention improvements on the Model DHC-8-100.

3. The FAA concurs that practical nacelle designs cannot contain all explosion scenarios without deformation and/or loss. However, the Model DHC-8-100 service history demonstrates that the nacelles have a need for improved retention in the event of explosions. The FAA also concurs that action should be taken to minimize the probability of explosion. The FAA has determined that all U.S. operators complied with Pratt and Whitney Alert Wire 05-267509, No. 25-040378, dated April 19, 1988, which recommends inspection of all Pratt and Whitney PW100 series engines and spare fuel pumps to ensure that all high pressure fuel pump filter covers are properly installed and torqued.

4. The FAA disagrees that there has been only one incident of in-flight fire/explosion where the cowl doors came open or off. The first incident occurred in 1987. In that incident, the nacelle doors where blown open from fire/explosion. Extinguishant discharge was ineffective in stopping the fire. The airplane made a successful landing and ground fire equipment extinguished the fire. The second incident occurred in 1988. In this incident, a nacelle panel was blown off from in-flight fire/explosion. Again, extinguishant discharge was ineffective at stopping the fire. The airplane also landed successfully but subsequently lost directional control due to loss of hydraulics and was damaged from striking ground equipment and structures.

5. The FAA concurs that there is no specific guidance or policy information for nacelle explosion/overpressure design. Such guidance and/or policy may result from the regulatory action in process, mentioned above, on improving nacelle retention. However, in the interim, the FAA has determined that the modifications required by this AD action will improve the overpressure retention capability of the engine forward side cowling doors.

6. The FAA acknowledges that currently there may be a regulatory deficiency with respect to engine nacelle latching and pressure relief design requirements. However, as explained in the preamble to the Notice and reiterated above, the FAA has determined that an unsafe condition exists on the Model DHC-8 in that the propulsion system fire protection system can be rendered ineffective if an engine compartment explosion occurs. Such a situation could lead to subsequent fire damage to the airplane structure and hydraulic systems. The FAA has determined further that the existing current technology (specifically the cowl door retention latch arrangement modification and pressure relief features on the engine cowling, required by this AD action) adequately addresses the identified unsafe condition by providing improved overpressure retention capability of the engine forward side cowling doors.

This commenter also indicated that compliance within 180 days after the effective date of the AD is too short and a one year compliance time is more appropriate in order to assure that modification kits are available to all U.S. operators. The FAA concurs that the compliance time can be extended

somewhat. The manufacturer has recently advised the FAA that the required modification kits could be made available to U.S. operators by June 30, 1991. In consideration of the number of airplanes to be modified in the U.S. fleet (approximately 35), modification kit availability, and modification time (approximately 240 manhours), the FAA has determined that the compliance time may be extended to 300 days after the effective date of the AD without adversely affecting safety. The final rule has been revised accordingly. In the interim, the requirements of Pratt and Whitney Alert Wire 05-267509, No. 25-040378, dated April 19, 1988, will serve to decrease the probability of engine fires and/or explosions.

A second commenter supported the basic intent of the proposed AD, but recommended that the compliance time be reduced from 180 days to 90 days after the effective date of the AD. The commenter's reason for wanting the change is the potential unsafe condition that could arise from an engine fire/explosion. The FAA does not concur that the compliance time should be reduced from 180 days to 90 days. For the reasons described above, the FAA has determined that the revised compliance time of 300 days is appropriate. The currently existing safety measures will assure safety in the interim.

Paragraph B. of the final rule has been revised to specify the current procedure for submitting requests for approval of an alternate means of compliance.

The economic analysis paragraph in the preamble to the Notice inadvertently indicated that the number of manhours required to accomplish the modification was 120 manhours per airplane. The economic analysis paragraph, below, has been revised to clarify that the total manhours per airplane to accomplish the modification is 240 manhours; that is, 120 manhours *per nacelle*. The total cost impact of the AD on U.S. operators has been revised accordingly.

After careful review of the available data, including comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change noted above. These changes will not increase the scope of the AD.

It is estimated that 35 airplanes of U.S. registry will be affected by this AD, that it will take approximately 240 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The required modification kit will be supplied to the operators at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $336,000.

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

For the reasons discussed above, I certify that this action (1) is not a "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) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

Boeing of Canada, Ltd., De Havilland Division: Applies to de Havilland Model DHC-8-100 series airplanes, Serial Numbers 1 through 156 and 158 through 193, certificated in any category. Compliance is required within 300 days after the effective date of this AD, unless previously accomplished.

To prevent deformation or loss of the engine forward side cowl doors due to compartment overpressurization, and subsequent loss of fire extinguishing capability, accomplish the following:

A. Modify the cowl door retention latch arrangement and install pressure relief features on both engine cowlings, in accordance with the Accomplishment Instructions in de Havilland Service Bulletin No. 8-71-13, Revision C, dated January 12, 1990.

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, New York Aircraft Certification Office (ACO), ANE-170, FAA, New England Region.

Note: The request should be submitted directly to the Manager, New York ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, New York ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York.

This amendment becomes effective October 26, 1990.

Issued in Renton, Washington, on September 10, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-22130 Filed 9-18-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-177-AD; Amdt. 39-6744]

Airworthiness Directives; British Aerospace Viscount Model 700, 800, and 810 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Viscount Model 700, 800, and 810 series airplanes, which requires repetitive visual, X-ray, ultrasonic, and dye penetrant inspections to detect cracks and corrosion in the inboard and outboard engine nacelle structures on the left and right wings; replacement of any cracked fittings and mating struts; and treating or replacement of any corroded fittings or struts, if necessary. This amendment is prompted by several

reports of cracked and separated nacelle lower eye end fittings due to fatigue failure or stress corrosion. This condition, if not corrected, could result in reduced structural integrity of the engine nacelle support structures.

EFFECTIVE DATE: October 5, 1990.

ADDRESSES: The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM–113; telephone (206) 227–2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on all British Aerospace Viscount Model 700, 800, and 810 series airplanes. There have been recent reports of cracked and separated nacelle lower eye end fittings due to stress corrosion or fatigue failure. This condition, if not corrected, could result in reduced structural integrity of the engine nacelle support structures.

British Aerospace has issued Alert Telex No. 90/1, dated July 9, 1990, which describes procedures for a one-time visual, X-ray, and dye penetrant inspections to detect cracks in the inboard and outboard engine nacelle structures on the left and right wings, and replacement of cracked fittings and mating struts, if necessary. The various inspection procedures are identified as specific numbered "Techniques" (i.e., the dye penetrant inspection procedure is identified as "Technique 1"; the ultrasonic resonance/radiographic as "Technique 2"; the X-ray as "Technique 3"; and the ultrasonic as "Technique 4"). The alert telex also describes procedures for a complete inspection of engine nacelle structures that are found to have cracked elements when inspected at the specific locations identified in the telex. The alert telex refers to Preliminary Technical Leaflet (PTL) No. 122, Issue 4 (for Viscount Model 800 and 810 series airplanes), and PTL No. 258, Issue 4 (for Viscount Model 700 series airplanes), for the procedures describing this inspection. The United Kingdom CAA has classified the British Aerospace alert telex as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires repetitive visual, X-ray, ultrasonic, and dye penetrant inspections to detect cracks and corrosion in the inboard and outboard engine nacelle structures on the left and right wings; replacement of any cracked fittings and mating struts; and treating or replacement of any corroded fittings or struts, if necessary. The inspections and corrective actions are to be accomplished in accordance with the alert telex described above.

This AD differs from the instructions specified in the alert telex in that the inspections are required to be conducted on a repetitive basis. The FAA has determined that, until terminating action modifications are developed and made available for installation, repetitive inspections are necessary in order to detect cracking in a timely manner.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

British Aerospace: Applies to all Viscount Model 700, 800, and 810 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To detect cracks and prevent reduced structural integrity of the engine nacelle support structures on the left and right wings, accomplish the following:

A. Within 20 days after the effective date of this AD, and thereafter at intervals not to exceed 7,500 landings, accomplish the following:

1. For all Viscount Model 800 and 810 series airplanes: Perform a visual inspection and an X-ray inspection (specified as Technique 3 in the alert telex) of the nacelle lower eye end fittings at Locations G and L on the outboard engine nacelle, and at Location N on the inboard engine nacelles; and perform a visual inspection and a dye penetrant inspection (Technique 1) of the inboard engine nacelles at Location F, in accordance with British Aerospace Alert Telex No. 90/1, dated July 9, 1990.

Note: This alert telex references Preliminary Technical Leaflet (PTL) No. 122, Issue 4, for additional instructions.

2. For all Viscount Model 700 Series Airplanes: Perform a visual and an X-ray (Technique 3) inspection of the nacelle lower eye end fittings at Locations G and L on the outboard engine nacelle and at Location N on the inboard engine nacelles; and perform a visual and dye penetrant (Technique 1) inspection of the inboard engine nacelles at Location F, in accordance with Alert Telex No. 90/1, dated July 9, 1990.

Note: This alert telex references PTL No. 258, Issue 4, for additional instructions.

B. If cracks are found as a result of the inspections required by paragraph A. of this AD, prior to further flight, replace all cracked

fittings and mating struts, in accordance with Alert Telex No. 90/1, dated July 9, 1990.

1. In addition to the replacement, accomplish the following:

a. For Viscount Model 800 and 810 series airplanes: Perform a visual inspection; a dye penetrant inspection (Technique 1); an X-ray or, alternatively, an ultrasonic resonance/radiographic (Technique 2) inspection; an X-ray inspection (Technique 3); and an ultrasonic inspection (Technique 4) on the rest of the subframe; in accordance with PTL No. 122, Issue 4.

b. For Viscount Model 700 series airplanes: Perform a visual inspection; a dye penetrant inspection (Technique 1); an X-ray or, alternatively, an ultrasonic resonance/radiographic (Technique 2) inspection; an X-ray inspection (Technique 3); and an ultrasonic inspection (Technique 4) on the rest of the subframe, in accordance with PTL No. 258, Issue 4.

2. If cracks or corrosion are found as a result of the inspections required by paragraphs B.1.a. or B.1.b. of this AD, prior to further flight, replace all cracked fittings and mating struts, and replace or treat all corroded fittings and struts, as appropriate, in accordance with PTL No. 122, Issue 4 (for Viscount Model 800 and 810 series airplanes), or PTL 258, Issue 4 (for Viscount Model 700 series airplanes).

C. 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, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, D.C. 20041-0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective October 5, 1990.

Issued in Renton, Washington, on September 10, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-22128 Filed 9-18-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-CE-31-AD; Amdt. 39-6740]

Airworthiness Directives; EMBRAER (Empresa Brasileira de Aeronautica S/A) Models EMB-110P1 and EMB-110P2 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting Airworthiness Directive (AD) 90-12-01, which was previously made effective as to all known U.S. owners and operators of EMBRAER Models EMP-110P1 and EMB-110P2 airplanes by individual letters. The AD specified that EMBRAER Models EMB-110P1 and EMB-110P2 airplanes equipped with the 10 degree dihedral stabilizer (as original equipment or as an added modification per Embraer Service Bulletin 110-55-022) require initial and periodic inspections of these balance weight arms for cracks until replaced with improved parts. The AD was issued based upon reports of cracks in the elevator balance weight arms on four EMBRAER Models EMB-110P1 and EMB-110P2 airplanes equipped with the dihedral stabilizer. If the cracked parts are not replaced, the elevator mass balance weights could separate from the arms resulting in possible loss of the airplane.

DATES: Effective October 15, 1990, as to all persons except those persons to whom it was made immediately effective by priority letter AD 90-12-01, issued June 1, 1990, which contained this amendment.

ADDRESSES: The applicable service information may be obtained from EMBRAER, P.O. Box 343-CE, 12.200 Sao Jose dos Campos, Sao Paulo, Brazil, or may be examined in the Regional Rules Docket, FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Curtis Jackson, Aerospace Engineer, Airframe Branch, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; Telephone number (404) 991-2910.

SUPPLEMENTARY INFORMATION: On June 1, 1990, priority letter AD 90-12-01 was issued and made effective immediately as to all known U.S. owners and operators of EMBRAER Models EMB-110P1 and EMB-110P2 airplanes. The AD specified that EMBRAER Models EMB-110P1 and EMB-110P2 airplanes equipped with the 10 degree dihedral stabilizer (as original equipment or as an added modification per Embraer Service Bulletin 110-55-022) require initial and periodic inspections of these balance weight arms for cracks until replaced with improved parts.

The AD was prompted by reports of cracks in the elevator balance weight arms on four EMBRAER Models EMB-110P1 and EMB-110P2 airplanes equipped with the dihedral stabilizer. If the cracked parts are not replaced, the elevator mass balance weights may separate from the arms causing possible extreme vibration or flutter, and thus resulting in possible loss of the airplane.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued June 1, 1990, to all known U.S. owners and operators of EMBRAER Models EMB-110P1 and EMB-110P2 airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations to make it effective as to all persons.

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulations under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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. Section 39.13 is amended by adding the following new AD:

EMBRAER: Applies to Models EMB–110P1 and EMB–110P2 (all serial numbers) airplanes equipped with the 10 degree dihedral stabilizer (as original equipment or as an added modification per Embraer Service Bulletin 110–55–022), certificated in any category.

Compliance: Required as indicated in the body of the AD, unless already accomplished.

To prevent failure of the inboard elevator mass balance arms and possible extreme vibration or flutter, resulting in possible loss of the airplane, accomplish the following:

(a) Within the next 10 hours time-in-service (TIS) after the effective date of this AD, dye-penetrant inspect for cracks the areas of the elevator balance weight arms indicated in EMBRAER Alert Service Bulletin 110–027–A088, dated May 10, 1990, and visually inspect for cracks the remaining areas of the arms using a 10x glass for both elevator balance weight arms (Part Number (P/N) 110–3012–01–01 (left) or 110–3012–01–07 (left), and 110–3012–01–06 (right) or 110–3012–01–12 (right)).

(1) If any cracks are found, prior to further flight replace the cracked elevator balance weight arm with a modified arm (P/N 110–3012–01–13 (left) or 110–3012–01–14 (right)) or with an original arm (P/N 110–3012–01–01, 110–3012–01–06, 110–3012–01–07, or 110–3012–01–12, as applicable) that has been shown to be free from cracks using a visual inspection with a 10x glass.

(2) If no cracks are found, thereafter at intervals not to exceed 25 hours TIS, visually reinspect, using a 10x glass, the entire elevator balance weight arms for cracks.

(3) The above repetitive inspections may be discontinued when the airplane is modified by the installation of modified balance weight arms (P/N 110–3012–01–13 (left) and 110–3012–01–14 (right)).

(b) If not accomplished per paragraph (a) of this AD, within the next 1000 hours TIS after the effective date of this AD, replace both elevator balance weight arms, (P/N 110–3012–01–01 (left) or 110–3012–01–07 (left), and 110–3012–01–06 (right) or 110–3012–01–12 (right)), with modified arms (P/N 110–3012–01–13 (left) and 110–3012–01–14 (right), as applicable).

(c) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times which provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349.

Note: The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

This amendment becomes effective on October 15, 1990, as to all persons except those persons to whom it was made immediately effective by priority letter AD 90–12–01, issued June 1, 1990, which contained this amendment.

Issued in Kansas City, Missouri, on September 7, 1990.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–22127 Filed 9–18–90; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 88–ASW–45; Amdt. 39–6750]

Airworthiness Directives; McDonnell Douglas Helicopter Company (MDHC) Model 369 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to MDHC Model 369 series helicopters, superseding an existing AD. The new AD requires initial and repetitive inspections and checks of main rotor blade fitting assemblies and main rotor hub lead-lag link assemblies for fatigue cracks and corrosion, removal of cracked or broken parts from service. It also requires initial and repetitive inspections for loose bushings in the lead-lag link assemblies, and removal from service of links with loose bushings. This new Ad is needed to prevent failure of the main rotor blade root fittings or the hub lead-lag link lugs which could result in severe vibration and loss of control of the helicopter.

EFFECTIVE DATE: October 16, 1990.

ADDRESSES: The applicable service information notices may be obtained from MDHC Technical Publications, Building 543/D214, McDonnell Douglas Helicopter Company, 5000 E. McDowell Road, Mesa, Arizona 85205–9797, telephone (602) 891–6484; or may be examined in the Rules Docket, Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Room 158, Building 3B, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Sol Davis, Aerospace Engineer, Airframe Branch, ANM–123L, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 E. Spring Street, Long Beach, California 90806–2425; telephone (213) 988–5233.

SUPPLEMENTARY INFORMATION: AD 89–11–08, Amendment 39–6218 (54 FR 21934, May 22, 1989) currently requires initial and repetitive inspections of certain main rotor root fitting assemblies and main rotor hub lead-lag link assemblies on MDHC Model 369 series helicopters. After issuing AD 89–11–08, the FAA has determined that manufacturing defects may result in loose bushings in the links, which could lead to premature fatigue failure. Also, the manufacturer has superseded the old service information notices (SIN's) with new SIN's, which now permit certain repairs of hub assemblies, and this information is included in this amendment.

Since this condition is likely to exist or develop on other helicopters, the FAA is superseding AD 89–11–08 with a new AD which requires similar periodic inspections and checks of the same part numbers, but now also includes an inspection for loose bushings in the lead-lag links.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency

regulation otherwise would be significant under DOT Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained by contacting the Rules Docket at the location provided under the caption "Addresses."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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 Public L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

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

McDonnell Douglas Helicopter Co. Applies to MDHC Model 369 series helicopters, certificated in any category, when equipped with any of the following parts: (1) Main rotor blades assemblies having part numbers (P/N's) 369A1100-BSC, 369A1100-BSC-501, 369A1100-BSC-503, 369A1100-BSC-505, 369A1100-BSC-601, 369D21100-BSC, 369D21100-BSC-503, 369D21100-BSC-505, 369D21100-BSC-507, 369D21100-BSC-509, 369D21100-BSC-511, 369D21100-BSC-513, and 369D21102-BSC; or (2) Main rotor hub lead-lag link assemblies having P/N's 369A1203-BSC, 369A1203-BSC-3, 369A1203-BSC-11, 369H1203-BSC, 369H1203-BSC-11, 369H1203-BSC-21, 369H1203-BSC-31. (Docket No. 88-ASW-45)

Compliance is required as indicated, unless already accomplished.

To detect cracks in the main rotor blade attach lugs or in the main rotor lead-lag link attach lugs which could result in failure, and to detect loose bushings in the lead lag links which could result in severe vibration with loss of control of the helicopter, accomplish the following:

(a) Within 25 hours' time in service after the effective date of this AD, and thereafter at intervals not to exceed 100 hours' time in service from the last inspection, conduct an inspection of the exposed portions of the attach lugs of the main rotor blade root fittings, P/N's 369A1100-BSC, 369A1100-BSC-501, 369A1100-BSC-503, 369A1100-BSC-505, 369A1100-BSC-601; 369D21100-BSC, 369D21100-BSC-503, 369D21100-BSC-505, 369D21100-BSC-507, 369D21100-BSC-509, 369D21100-BSC-511, 369D21100-BSC-513; 369D21100-BSC; and of the exposed portions of the attach lugs of the main rotor hub lead-lag links, P/N's 369A1203-BSC, 369A1203-BSC-3, 369A1203-BSC-11; 369H1203-BSC, 369H1203-BSC-11, 369H1203-BSC-21, 369H1203-BSC-31. Inspect blade attach pin hole bushings for indications of movement of the bushings in the links.

Note: McDonnell Douglas Helicopter Company Service Information Notices HN-211.2, DN-51.4, EN-42.2, and FN-31.2, Part I, dated June 15, 1990, pertain to this inspection.

(b) Within 25 hours' time in service after the initial inspection required by paragraph (a) and at intervals not to exceed 25 hours' time in service thereafter, unless already accomplished by the requirements of paragraph (a), visually check the exposed portions of all the main rotor blade upper and lower root fitting attach lugs and the main rotor hub lead-lag link attach lugs for broken or cracked lugs. The checks required by this paragraph may be performed by a pilot provided his logbook is endorsed by a properly noted mechanic stating the pilot has been trained to conduct the check and must be recorded in accordance with section 43.9. The record must be maintained as required by FAR §§ 91.173 or 135.439.

Note: McDonnell Douglas Helicopter Company Service Information Notices HN-211.2, DN-51.4, EN-42.2, and FN-31.2, Part II, dated June 15, 1990, pertain to this check.

(c) If, as a result of the inspections or checks required by paragraph (a) or (b) above, broken or cracked lugs are found in any main rotor blade root fitting, P/N's 369A1113 and 369A1114, remove the blade from service and replace with a serviceable blade prior to further flight.

(d) If, as a result of the inspections or checks required by paragraph (a) or (b) above, broken or cracked lugs or loose bushings are found in any main rotor lead-lag, link, remove the main rotor hub assembly, P/N 369D21200-BSC, on helicopter Model 369D, E, F, FF; P/N 369A1200-BSC or 369H1200-BSC, on helicopter Model 369A (OH-6A), H, HE, HM, and HS; and replace or repair the main rotor hub before further flight. Consult the applicable service notice for restrictions on hub repair.

(e) In accordance with FAR § 21.197 and 21.199, the helicopter may be flown to a base where compliance with the AD may be accomplished.

(f) An alternate method of compliance with this AD, which provides an equivalent level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, 3229 E. Spring Street, Long Beach, California 90806-2425.

This amendment supersedes AD 89-11-08, Amendment 39-6218 (54 FR 21934, May 22, 1989).

This amendment becomes effective on October 16, 1990.

Issued in Forth Worth, Texas, on September 11, 1990.

James D. Erickson,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 90-22125 Filed 9-18-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-180-AD; Amdt. 39-6746]

Airworthiness Directives; McDonnell Douglas Models DC-9-81 (MD-81), DC-9-82 (MD-82), DC-9-83 (MD-83), and DC-9-87 (MD-87) Series Airplanes, and Model MD-88 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to McDonnell Douglas Models DC-9-80 series airplanes and Model MD-88 airplanes, which requires inspection of the four bolts connecting the flight controls elevator variable load feel torque tube to the elevator variable load feel mechanism, and correction of all discrepancies. This amendment is prompted by reports of loss of load feel in the elevator control system due to missing or loose bolts. This condition, if not corrected, could result in degraded flight handling qualities of the airplane.

EFFECTIVE DATE: October 5, 1990.

ADDRESSES: The applicable service information may be obtained from Douglas Aircraft Company, P.O. Box 1771, Long Beach, California 90801, Attn: Business Unit Manager, Technical Services, Mail Code 73-30. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Robert T. Razzeto, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-131L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5355.

SUPPLEMENTARY INFORMATION: Three operators of McDonnell Douglas Model DC-9-80 series airplanes and Model MD-88 airplanes reported one instance each in which the flight crew felt little to no load feel in the elevator control system during flight. Investigation revealed that some of the self-locking

nuts and bolts which attach the elevator variable load feel torque tube to the variable load feel mechanism were loose. In one case, one of the four bolts was missing. One operator inspected its fleet of 52 airplanes and discovered an additional 8 airplanes with one or more loose bolts. This condition, if not corrected, could result in degraded flight handling qualities of the aircraft.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin A27-313, dated August 3, 1990, which describes procedures for inspection and replacement of missing nuts and bolts, and eventual replacement of those self-locking nuts and bolts with four bolts and attaching parts with castellated nuts, cotter pins, and safety wire.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires inspection for loose or missing bolts, and correction of all discrepancies, in accordance with the service bulletin previously described.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA considers the requirements of this AD to be interim action and may propose further rulemaking to require further corrective action to ensure that the elevator load feel system bolts on Model DC-9-80 series and Model MD-88 airplanes will not become loose in service.

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

McDonnell Douglas: Applies to Model DC-9-81 (MD-81), DC-9-82 (MD-82), DC-9-83 (MD-83), DC-9-87 (MD-87) series airplanes, and Model MD-88 airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent degradation of airplane flight handling qualities, accomplish the following:

A. Within 14 days after the effective date of this AD, and thereafter at intervals not to exceed 60 days, inspect the four bolts of the flight controls which attach the elevator variable load feel torque tube to the elevator variable load feel mechanism for loose or missing bolts and nuts, in accordance with Phase 1 of the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin A27-313, dated August 3, 1990.

B. Any discrepancies found during the inspection required by paragraph A. of this AD must be corrected prior to further flight, in accordance with Phase 1 of the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin A27-313, dated August 3, 1990.

C. Removal of the four self-locking nuts and attaching parts and replacement with four bolts and attaching parts with castellated nuts and cotter pins, and safety wiring the fourth bolt to the torque tube, in accordance with Phase 2 of the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin A27-313, dated August 3, 1990, constitutes terminating action for the requirements of this AD.

D. 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, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Los Angeles ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Los Angeles ACO.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Douglas Aircraft Company, P.O. Box 1771, Long Beach, California 90801, Attn: Business Unit Manager, Technical Services, Mail Code 73-30. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment becomes effective October 5, 1990.

Issued in Renton, Washington, on September 10, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-22129 Filed 9-18-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-ASW-29; Amdt. 39-6717]

Airworthiness Directives; Schweizer Aircraft Corporation (Hughes Helicopter Inc.) Model 269C Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This notice corrects an error in a part number (P/N) previously published in the **Federal Register** (55 FR 36269; September 5, 1990) on an AD for Schweizer Aircraft Model 269C series helicopters. The correct part number for the lower longitudinal cyclic control rod assembly in (a) should read (P/N) 269A9940-7, in lieu of 2699940-7.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Socias, Aerospace Engineer, FAA, New York Aircraft Certification Office, Airframe Branch, ANE-172, New England Region, 181 South Franklin Avenue, Valley Stream, New York 11581; telephone (516) 791-6220.

Issued in Fort Worth, Texas, on September 11, 1990.

James D. Erickson,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 90-22124 Filed 9-18-90; 8:45 am]

BILLING CODE 4910-13-M

Coast Guard

33 CFR Part 161

[CGD 89-062]

RIN 2115-AD39

Regulations for Required Participation in Vessel Traffic Service New York; Correction

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: In final rule document 90-20068 beginning on page 34908 in the issue of Monday August 27, 1990, make the following correction.

§ 161.501 [Corrected]

On page 34910 in § 161.501(b), in the second line, section number "161.107" is corrected to read "161.507" and in the third line, section number "161.110" is corrected to read "161.510".

Dated: September 12, 1990.

J.W. Lockwood,

Acting.

[FR Doc. 90-22135 Filed 9-18-90; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[A-1-FRL-3832-2]

Approval and Promulgation of State Air Quality Implementation Plans for Designated Facilities and Pollutants; Maine; Plan for Controlling Total Reduced Sulfur Emissions From Existing Kraft Pulp Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice approves Maine's "111(d) plan" for the control of total reduced sulfur (TRS) emissions from existing kraft pulp mills. The plan was submitted by the Maine Department of Environmental Protection (DEP) on February 15, 1990. The plan consists of a regulation entitled "Chapter 124: Total Reduced Sulfur Control From Kraft Pulp Mills." The plan satisfies EPA's requirements for adoption and submittal of a plan to control TRS emissions from designated facilities in accordance with section 111(d) of the Clean Air Act (CAA).

EFFECTIVE DATE: This rule will become effective on October 19, 1990.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection, by appointment, during normal business hours at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: David B. Conroy, (617) 565-3254; FTS 835-3254.

SUPPLEMENTARY INFORMATION: On April 17, 1990 (55 FR 14322), EPA published a Notice of Proposed Rulemaking (NPR) for the State of Maine. The NPR proposed approval of a 111(d) plan controlling TRS emissions from existing kraft pulp mills in the State of Maine. Maine submitted the 111(d) plan controlling TRS emissions from existing kraft pulp mills on February 15, 1990. This plan was developed to meet the requirements of section 111(d) of the CAA. Under section 111(d), EPA established procedures whereby States submit plans to control existing sources of designated pollutants. Designated pollutants are defined as pollutants which are not included on a list published under section 108(a) of the CAA (i.e., National Ambient Air Quality Standard or "criteria" pollutants), but to which a standard of performance for new sources applies under section 111. TRS is such a pollutant. Under section 111(d), the States must adopt emission standards and submit them to EPA for approval. The standards limit the emissions of designated pollutants from existing facilities which, if new, would be subject to a new source performance standard (NSPS). Such facilities are called designated facilities.

The procedures under which States submit these plans to control existing sources are defined in subpart B of 40 CFR part 60. Subpart B requires the States to develop plans within federal guidelines for the control of designated pollutants. EPA publishes guideline documents for development of State emission standards along with the promulgation of any NSPS for a designated pollutant. These guidelines apply to designated pollutants and include information such as a discussion of the pollutant's effects, description of control techniques and their effectiveness, costs and potential impacts. The guidelines also provide recommended emission limits, times for compliance, and control equipment which will achieve these emission limits, as guidance for the State.

Subpart B discusses two types of designated pollutants. One type of designated pollutant is the type that may cause or contribute to the endangerment of public health. It is referred to as a health-related pollutant. The other type of designated pollutant is a welfare-related pollutant, for which adverse effects on public health have not been demonstrated.

For welfare-related pollutants such as TRS, States have the option of balancing emission guidelines, times for compliance, and other information provided in a guideline document against other factors of public concern in the establishment of emission standards, compliance schedules and variances, as long as the guideline document and public hearing information are considered and all the other requirements of subpart B are met. Therefore, States have greater flexibility in establishing plans for the control of TRS, and may consider factors other than technology and costs in developing such TRS plans.

This TRS plan for existing facilities affects six kraft pulp mills in Maine. They are International Paper Company in Jay, S.D. Warren Company in Westbrook, Boise Cascade in Rumford, James River Corporation in Old Town, Georgia-Pacific Corporation in Woodland, and Lincoln Pulp and Paper Company in Lincoln. There is one other kraft pulp mill in Maine, S.D. Warren Company in Skowhegan, but this entire facility is subject to the NSPS for kraft pulp mills and therefore, not subject to the plan.

Summary of the Plan

The 111(d) plan consists of a regulation entitled "Chapter 124: Total Reduced Sulfur Control From Kraft Pulp Mills." Chapter 124 was adopted by the State of Maine to control TRS emissions from existing kraft pulp mills on November 29, 1989 and became effective on January 8, 1990. This regulation contains the following emission limitations and requirements for existing processes:

(1) It prohibits gases which contain TRS in excess of 5 ppm by volume on a dry basis, corrected to 10 percent oxygen from any digester system, multiple-effect evaporator (MEE)

system, condensate stripper system, or brown stock washer system unless the following conditions are met:

(i) The gases are combusted in a lime kiln subject to the provisions of the regulation or the requirements of the kraft pulp mill NSPS (i.e., 40 CFR part 60, subpart BB);

(ii) The gases are combusted in a recovery furnace subject to the provisions of the regulation or the requirements of the kraft pulp mill NSPS;

(iii) The gases are combusted with other waste gases in an incinerator or other device, and are subjected to a minimum temperature of 1200°F. for at least 0.5 seconds; or

(iv) The gases are controlled by a means other than combustion such that no gases are discharged to the atmosphere which contain TRS in excess of 5 ppm by volume on a dry basis, corrected to the actual oxygen content of the untreated gas stream.

(2) It prohibits gases from any new design [1] straight kraft recovery furnace equipped with either a dry-bottom ESP or a wet-bottom ESP employing water which contain TRS in excess of 5 ppm by volume on a dry basis, corrected to 8 percent oxygen.

(3) It prohibits gases from any new design straight kraft recovery furnace with a wet-bottom ESP employing black liquor which contains TRS in excess of 15 ppm by volume on a dry basis, corrected to 8 percent oxygen.

(4) It prohibits gases from any old design [2] straight kraft recovery furnace which contain TRS in excess of 20 ppm by volume on a dry basis, corrected to 8 percent oxygen.

(5) It prohibits gases from any smelt dissolving tank which contain TRS in excess of 0.016 g/kg black liquor solids as H_2S (0.033 lb/ton black liquor solids as H_2S).

(6) It prohibits gases from any lime kiln which contain TRS in excess of 20 ppm by volume on a dry basis, corrected to 10 percent oxygen.

The regulation also requires each facility to have a backup system for the control of the TRS emissions from the digester system, MEE system, and condensate stripper system. This control system is to be employed within 40 minutes after the primary control system's malfunction or shutdown. Furthermore, the regulation outlines the monitoring requirements, recordkeeping and reporting requirements, and test methods necessary for each subject TRS-emitting process. It also defines excess emissions for each affected process. Compliance with all of the requirements of the regulation except the emission standard for brown stock washer systems is required by January 8, 1991 (i.e., twelve months after the effective date of the regulation). Compliance with the emission standard for brown stock washer systems is required by January 1, 1994.

EPA has reviewed the plan and has written a technical support document based on the requirements of section 111(d) of the CAA of 1977, as amended; 40 CFR part 60, subpart B; and the EPA guideline document entitled "Kraft Pulping: Control of TRS Emissions from Existing Mills" (EPA-450/2-78-003b). EPA's review of Maine's submittal indicates that it meets the requirements of 40 CFR part 60, subpart B. EPA is approving Maine's 111(d) plan controlling TRS emissions from kraft pulp mills, which was submitted on February 15, 1990. Public comments were submitted on the NPR by two parties.

Response to Public Comments

EPA received comments on its NPR from two parties during the public comment period which ended on May 17, 1990. Those two parties were the Paper Industry Information Office (PIIO), and the Georgia Pacific Corporation. Because the comments from both parties are similar, EPA has prepared one general response to all of the comments.

Comment: PIIO said it generally supports the control of low volume gas streams with high TRS concentrations at existing kraft pulp mills. Sources of such gases include digester, multiple effect evaporators, and foul condensate strippers. PIIO said that they have found that, in general, it is cost-effective and environmentally beneficial to control TRS emissions from these sources.

PIIO said, however, that they strongly oppose the proposal to control vent gas from brown stock washer systems. The TRS emissions from brown stock washers can be characterized as high volume gas streams with low TRS concentrations. PIIO said they have found that it is extremely difficult from an engineering perspective and not cost-effective to control these dilute TRS emission sources. A recent BACT analysis conducted at one of PIIO's members company's mill found that the most cost effective control alternative was incineration in a power boiler at a cost of $11,300 per ton of TRS controlled. PIIO said that this cost is considerably higher than the commonly accepted cost of $2000 per ton in BACT analyses. Thus PIIO concludes that controlling TRS emissions from brown stock washers is excessively costly, as compared to the environmental benefit. PIIO said EPA reached the same conclusion in the EPA document "Kraft Pulping Control of TRS Emissions from Existing Pulp Mills," pages 10–12 and 10–13, when it examined the cost versus benefit associated with incineration of TRS emissions from brown stock washers.

PIIO said, furthermore, there are adverse energy and environmental costs associated with this type of control. Burning the moisture-laden TRS gas in a power boiler imposes an energy penalty on the mill. It also can cause operating problems if the volume of brown stock washer vent gas is large in relation to total boiler input air. Finally, when each ton of TRS gas (as sulfur) is incinerated, it is converted to two tons of sulfur dioxide (SO_2). Thus, one pollutant is being traded for twice as much of another.

For these reasons, PIIO believes that is in uneconomical and environmentally imprudent to control TRS gas from brown stock washer vents, and is opposed to the regulation to the extent that it will require mills to do so. However, PIIO said that if the Agency and Main Department of Environmental Protection still believe that control of brown stock washers is appropriate, PIIO requests that a provision be included in the regulations which would allow a brown stock washer system to be exempt from the control requirements if it can be demonstrated that control is technically or economically infeasible. PIIO said such a provision currently exists in 40 CFR 60.283(a)(1)(iv) for new sources. It seems that, at a minimum, it should also be available for existing sources.

Georgia-Pacific Corporation (GP) had similar concerns. GP's primary concern with Maine's TRS regulation is the economic impact of the TRS control system which must be in place for the brown stock washer systems by January 1, 1994. GP said there are several problems in trying to initiate a TRS control system on its existing brown stock washer system, as there are similar problems in other mills. GP said that by creating a 5 ppm emission limit, the State of Maine has required incineration of these gases in its Power Boiler. GP feels that incineration in either its Recovery Boiler or its Lime Kiln is not feasible due to the extensive modifications necessary to either of these sources to receive these gases.

GP said that according to its on-site engineers, the cost of incinerating its

[1] In the regulation, a "new design straight kraft recovery furnace" is defined as a furnace with membrane wall or welded wall construction designed for low TRS emissions and having stated in its contracts that it was constructed with air pollution control as an objective.

[2] In the regulation, an "old design straight kraft recovery furnace" is defined as a furnace without membrane wall or welded wall construction, or one that was not constructed with air pollution control as an objective.

brown stock washer system would be approximately 2 million dollars. This cost excludes the start-up and maintenance costs of a monitoring system which is also required by the proposed rule. The specific problem involves the size of the ducts and fans which would be necessary to pipe these high volume gases with low TRS concentrations approximately 300 feet to the Power Boiler, and the backup incinerator.

GP said it is also concerned as to how this increased volume will effect its existing emissions from its power boiler, and in turn if the modifications required to incinerate these gases will cause its current air license, issued by the State of Maine, to be reopened.

GP said, in summary, it is concerned that the amount of capital expenditure required and the indeterminate effect on current emissions is not appropriate to attain TRS control of the brown stock washer system.

Response: It is true that EPA's guidelines for existing kraft pulp mills do not require controls for TRS emissions from brown stock washer systems. The new source performance standard (NSPS) for kraft pulp mills (*i.e.*, 40 CFR part 60, subpart BB), however, does require control of TRS emissions from brown stock washer systems that were constructed or modified after September 24, 1976. During the development of the NSPS for kraft pulp mills, EPA determined that it was cost effective to control TRS emissions from most new, modified, or reconstructed brown stock washer systems. The NSPS does include an exemption for new brown stock washer systems where combustion of the vent gases is not technologically or economically feasible. (See 40 CFR 60.283(a)(1)(iv).) This provision was included because the EPA agreed with the industry's comment that older recovery furnaces do not have the capability to accept large volumes of gases, and the costs associated with altering these recovery furnaces could be prohibitive. Information obtained during the NSPS review in 1982 and 1983, however, indicates that power boilers (instead of recovery furnaces) are being used as the incineration device for the high volume gas streams. Discussions at that time with mill personnel and an equipment vendor indicated no operating problems with using the power boiler as an incineration device. The costs associated with using the power boiler would be similar to the costs of using a new recovery furnace designed to handle the gases.

The State of Maine, in adopting a plan pursuant to section 111(d) of the CAA to control TRS emissions from existing kraft pulp mills, chose to adopt requirements for existing brown stock washer systems. Under section 116 of the CAA, the State of Maine is legally entitled to adopt more stringent emission standards for stationary sources than required or recommended by EPA. The State of Maine in its response to public comments on the proposed regulation specified that they felt that the control of TRS emissions from brown stock washers was important because of the magnitude of potential emissions from uncontrolled washers and the height at which they are emitted (*i.e.*, they are more likely to have negative impacts on local residential areas because they are emitted at lower levels and are subject to less dispersion). In its regulation, as specified above, the State is requiring compliance with the emission standard for brown stock washer systems by January 1, 1994, which should give adequate time for affected facilities to work out any compliance problems.

In response to PIIO's request for a specific exemption provision in chapter 124 for brown stock washer systems, EPA notes that the lack of a specific exemption provision in Maine's regulation does not preclude the State from proposing to exempt a facility's brown stock washer system from control if economic and technological infeasibility is demonstrated. The State certainly has the option of submitting a single-source revision to its 111(d) plan to EPA for approval. EPA would review the supporting documentation submitted with the State's request when deciding whether a relaxation of the regulation is warranted because of economic or technological infeasibility of controlling the TRS emissions. EPA will act on such a proposal, however, only if the State of Maine initiates it.

To respond to the general concerns raised about the infeasibility of control of TRS emissions from brown stock washer systems, it is important to discuss the two types of washers used at mills in the State of Maine and the applicability requirements of Maine's regulation for washer systems. Brown stock washer systems remove black liquor from the pulp. The two main types of washers are rotary-drum vacuum washers and diffusion washers. Vacuum washers are the most common type of kraft pulp washers, but diffusion washing is generally integrated with the continuous digester used in newer mills.

TRS emissions from both types of washers arise primarily from the vaporization of the volatile reduced sulfur compounds. TRS compounds emitted are principally dimethyl sulfide and dimethyl disulfide. Uncontrolled TRS emissions from a vacuum drum washing system average about 0.27 lb/ton air dried pulp (ADP) at a concentration of 30 ppm. TRS emissions are affected by the wash water source, water temperature, degree of agitation and turbulence in the filtrate tank, and blow tank pulp consistency. TRS emissions will increase significantly if contaminated condensate from the digester and evaporator systems is used for washing. Higher temperatures and agitation result in increased stripping of TRS during the washing. (See EPA-450/3-83-017, page 2-10.) Uncontrolled TRS emissions from diffusion type washers, on the other hand, are less than 0.001 lb/ton ADP. (See 51 FR 18539.) Diffusion washers are not covered by the NSPS and not covered by Maine's regulation due to these low emission rates.

At the time of the last review of the NSPS, incineration of the vent gases is the only control technique employed on the brown stock washing systems subject to the NSPS. Incineration is the basis for the NSPS. (See EPA-450/3-83-017, page 4-8.) Since diffusion washers are generally being installed when mills upgrade or replace their washer systems and, because these systems are not subject to further control under Maine's 111(d) plan, the installation of these systems amounts to a control technique available for compliance under the 111(d) plan.

At the time of the last review of the NSPS, two vacuum drum washing systems were subject to the NSPS. The vent gases from one system were used as combustion air in a power boiler. The other vacuum drum washer was not controlled by incineration, but was granted an exemption from the standard because the mill did not have available an incineration device which could safely handle the gases economically. However, the one mill which received an exemption from the NSPS only added a single additional washing stage. This vacuum drum washer was installed as a new fourth stage washer on an existing washing system. (See EPA-450/3-83-017, page 4-9.) This was not an entirely new washer installation and therefore infeasibility was easier to demonstrate because of the low TRS emissions from this unit. In the review of the NSPS, the cost of control of TRS emissions from vacuum drum type washer systems is estimated to be about $2,400 per ton of TRS removed. (See EPA-450/3-83-017, page 6-2.) This value is higher than that for the other TRS sources, but not necessarily an unreasonable amount for the existing mills in Maine.

In response to the $11,300 per ton figure mentioned by PIIO for a recent BACT analysis conducted at one of its member company's mill, PIIO does not specify whether the new washers under consideration were vacuum drum type washers or diffusion type washers. If the new washers were diffusion type washers, which most mills are now going to when new washers are installed, the cost of control would be high since the emissions from these types of washers are so low. But such costs are irrelevant, because, as explained above, this type of washer is not subject to Maine's 111(d) plan. For the type of washer subject to Maine's 111(d) plan, EPA has evidence that the cost of control is substantially less (about $2,400 per ton of TRS removed) than the figure PIIO cites.

In response to PIIO's concern about the energy penalty on the mill associated with burning the moisture-laden TRS gas in a power boiler, the problem arising from the introduction of high moisture content gases can be eased by installing a condenser on the gases prior to introduction into the boiler. PIIO also raises the issue that when each ton of TRS gas (as sulfur) is incinerated, it is converted to two tons of SO_2. PIIO says that one pollutant is being traded for twice as much of another. This is not exactly true since any TRS emitted to the atmosphere will participate in photochemical reactions and eventually be converted to SO_2. Thus, there is no overall increase in SO_2 to the atmosphere through the incineration of TRS, although there could be an increase in SO_2 emissions at the plant site if the exhaust stream is not controlled.

Finally, GP expressed concern that controlling TRS in its power boiler would cause its current air license to be reopened if SO_2 emissions increase from the power boiler. In discussing this comment, it is important to distinguish between applicable state licensing and federal permitting requirements. Maine requires that air pollution sources obtain a license to emit under state law, and the effect on the license of increased emissions from a TRS control plan is a question of state law. Under federal law, major modifications to major stationary sources resulting in a significant emissions increase in an attainment area must obtain a prevention of significant deterioration (PSD) permit under part C of the CAA. Maine typically incorporates PSD permitting conditions into its state air license, along with conditions required by state law. Pursuant to memoranda from John Calcagni, Director, Air Quality Management Division dated April 10, 1989 and from Gerald A. Emison, Director, Office of Air Quality Planning and Standards dated July 7, 1986, major modifications made as part of a TRS control plan that result in an increase in emissions at a major stationary source exceeding the significance level for triggering PSD applicability as defined in 40 CFR 52.21(b)(23)(i), would be subject to a full PSD review, including "top-down" BACT, air quality impact, and increment consumption analyses. As explained in the July 17, 1989 memorandum from Gerald A. Emison, the NSPS and PSD programs have very different goals. The NSPS program is designed to impose a technological norm or regulated facilities, while the PSD program is designed to preserve ambient air quality. It is appropriate that the applicability of PSD permitting requirements operate independently of any considerations of NSPS applicability or control technology improvements. When a TRS control plan results in a major modification, the PSD program must evaluate ambient air quality impacts which the NSPS program does not directly address.

Final Action

EPA is approving the 111(d) plan controlling TRS emissions from kraft pulp mills submitted by the Maine Department of Environmental Protection. The plan which consists of a regulation entitled "Chapter 124: Total Reduced Sulfur From Kraft Pulp Mills" affects six existing kraft pulp mills in the State of Maine.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 rulemaking actions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future submittal of a 111(d) plan by any State. Each request for approval of a 111(d) plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 20, 1990. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 62

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Paper and paper products industry, Reporting and recordkeeping requirements.

Dated: September 7, 1990.

Julie Belaga,

Regional Administrator, Region I.

Title 40 of the Code of Federal Regulations, chapter I, part 62, subpart U is amended as follows:

Subpart U—Maine

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 62.4845 is amended by adding paragraphs (b)(2) and (c)(2) to read as follows:

§ 62.4845 Identification of plan.

* * * * *

(b) * * *

(2) Control of total reduced sulfur (TRS) emissions from existing kraft pulp mills, submitted on February 15, 1990.

(c) * * *

(2) *Kraft pulp mills.*

4. Subpart U is amended by adding § 62.4925 and an undesignated heading to read as follows:

Total Reduced Sulfur from Existing Kraft Pulp Mills

§ 62.4925 Identification of sources.

(a) The plan applies to the following existing kraft pulp mills:

(1) International Paper Company in Jay.

(2) S.D. Warren Company in Westbrook.

(3) Boise Cascade in Rumford.

(4) James River Corporation in Old Town.

(5) Georgia-Pacific Corporation in Woodland.

(6) Lincoln Pulp and Paper Company in Lincoln.

[FR Doc. 90-22180 Filed 9-18-90; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6795

[AK-932-00-4214-10; F-030632]

Revocation of Public Land Order No. 3520, as Modified; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes in its entirety a public land order as it affects approximately 8,958,720 acres of land withdrawn for Powersite Classification No. 445 at Rampart Canyon. The land is no longer needed for power development. This action also opens approximately 720,413 acres for selection by the State of Alaska, if such land is otherwise available. Any of this land that is not selected by the State will be subject to Public Land Order Nos. 5179, 5180, and 5184. The land withdrawn by Public Land Order Nos. 5179 and 5184 will remain closed to all forms of appropriation under the public land laws, including the mining and mineral leasing laws. The land withdrawn by Public Land Order No. 5180 has been and will remain open to location for metalliferous minerals under the mining laws. The remaining land, approximately 8,238,307 acres, is within conservation system units as established by the Alaska National Interest Lands Conservation Act of December 2, 1980, the utility corridor as withdrawn by Public Land Order No. 5150, or has been transferred from Federal ownership.

EFFECTIVE DATE: September 19, 1990.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513-7599, 907-271-5477.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), and by section 17(d)(1) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1616(d)(1) (1988), it is ordered as follows:

1. Public Land Order No. 3520, as modified, which withdrew land for power purposes is hereby revoked in its entirety. The land is described in the **Federal Register** of March 21, 1963 (28 FR 2826-2831) as amended in the issues of April 11, 1963 (28 FR 3558), and April 24, 1963 (28 FR 4040). The area described, including both public and nonpublic land, contains approximately 8,958,720 acres.

2. Subject to valid existing rights, the public land described above lying outside of Public Land Order No. 5150 or the conservation system units established by the Alaska National Interest Lands Conservation Act of December 2, 1980, 94 Stat. 2371, 2381, 2388, 2390, is opened to selection by the State of Alaska under either the Alaska Statehood Act of July 7, 1958, 48 U.S.C. prec. 21 (1988), or section 906(b) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(b) (1988).

3. As provided by section 6(g) of the Alaska Statehood Act, the State of Alaska is provided a preference right of selection for the land described in paragraph 2, for a period of ninety-one (91) days from the date of publication of this order, if the land is otherwise available. Any of the land described herein that is not selected by the State of Alaska will be subject to the terms and conditions of overlapping Public Land Order No. 5179, Public Land Order No. 5180, both as amended, Public Land Order No. 5184, and any other withdrawal of record.

4. The remaining public land continues to be subject to the terms and conditions of Public Land Order No. 5150, or is within conservation system units as established by the Alaska National Interest Lands Conservation Act of December 2, 1980, 94 Stat. 2371, 2381, 2388, 2390.

Dated: August 30, 1990.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 90-22152 Filed 9-18-90; 8:45 am]

BILLING CODE 4310-JA-M

43 CFR Public Land Order 6796

[CA-940-00-4214-10; CACA-19048]

Partial Revocation of Secretarial Order Dated July 7, 1936; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Secretarial order insofar as it affects 99.80 acres of National Forest System land withdrawn for the Bureau of Reclamation's Central Valley Project. The land is no longer needed for reclamation purposes. This action will open 99.80 acres to surface entry and mining. All of the land has been and will remain open to mineral leasing.

EFFECTIVE DATE: October 19, 1990.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, Room E-2845, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825, 916-978-4820.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Secretarial Order dated July 7, 1936, which withdraw National Forest System land for the Bureau of Reclamation's Central Valley Project is hereby revoked as it affects the following described land:

Mount Diablo Meridian

T. 33 N., R. 2 W.,

Sec. 4, lots 1 and 2, and W½SW¼NE¼.

The area described contains 99.80 acres in Shasta County.

2. At 10 a.m. on October 19, 1990 the land shall be opened to such forms of disposition as may by law be made of National Forest System land, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, including location and entry under the United States mining laws. Appropriation of lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: August 30, 1990.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 90-22198 Filed 9-18-90; 8:45 am]

BILLING CODE 4310-40-M

43 CFR Public Land Order 6800

[ID-943-09-4214-10; IDI-27535]

Partial Revocation of Secretarial Order Dated May 20, 1926; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Secretarial Order insofar as it affects 2.63 acres of National Forest System lands withdrawn for Powersite Classification No. 146 in the Boise

National Forest. The withdrawal is being revoked so the Forest Service can resolve three residential occupancy trespasses by sale and complete a proposed exchange. The lands are not needed for the purpose for which they were withdrawn. This action will open the lands to surface entry. The lands have been and will remain open to the mining and mineral leasing laws.

EFFECTIVE DATE: October 19, 1990.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1735.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Secretarial Order dated May 20, 1926, which withdrew land for Powersite Classification No. 146, is hereby revoked insofar as it affects the following described land:

Boise Meridian

T. 9 N., R. 7 E.,
Sec. 27, SE¼SE¼SW¼SW¼.
T. 9 N., R. 8 E.,
Sec. 26, portion of lot 3;
Sec. 32, portion of lot 8.

The areas described aggregate 2.63 acres in Boise County.

2. At 9 a.m. on October 19, 1990, the lands described in paragraph one above shall be open to such forms of disposition as may by law be made of National Forest System lands, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. The lands have been and will continue to be open to the mining and mineral leasing laws.

Dated: September 13, 1990.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 90-22199 Filed 9-18-90; 8:45 am]

BILLING CODE 4310-GG-M

43 CFR Public Land Order 6801

[AZ-930-00-4214-10; A-23294]

Withdrawal of Public Land for the Smithsonian Institution's Fred Lawrence Whipple Observatory; AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws approximately 61.356 acres of National Forest System land in the Coronado National Forest from mining for a period of 20 years for use by the Smithsonian Institution for the Fred Lawrence Whipple Observatory. The land has been and remains open to such forms of disposition as may by law be made of National Forest System land and to mineral leasing.

EFFECTIVE DATE: September 19, 1990.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM, Arizona State Office, 3707 N. 7th Street, Phoenix, Arizona 85014, 602-640-5509.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. chapter 2) and reserved for use by the Smithsonian Institution as an addition to the Fred Lawrence Whipple Observatory:

Gila and Salt River Meridian

Coronado National Forest

T. 20 S., R. 14 E.,
MS 2409 lying within sections 22, 23, 26, and 27.

The area described contains approximately 61.356 acres in Santa Cruz County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of National Forest System land under lease, license, or permit, or governing the disposal of its mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: September 13, 1990.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 90-22197 Filed 9-18-90; 8:45 am]

BILLING CODE 4310-32-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 365

[Docket No. R-135]

Official Seal of the Maritime Administration

AGENCY: Maritime Administration, DOT.

ACTION: Removal of rule.

SUMMARY: The rule at 46 CFR part 365 describes the Official Seal of the Maritime Administration, which is displayed in a photograph. This Seal was designed when the Maritime Administration was a unit within the Department of Commerce, and the name "Department of Commerce" appears on the Seal. Since the Maritime Administration was transferred to the Department of Transportation by Public Law 97-31 on August 6, 1981, the Seal described and displayed in 46 CFR part 365 is inappropriate and is being removed.

EFFECTIVE DATE: October 19, 1990.

FOR FURTHER INFORMATION CONTACT: Edmund T. Sommer, Jr., Chief, Division of Regulations and Administrative Law, 400 7th Street SW., Washington, DC 20590, telephone (202) 366-5181.

SUPPLEMENTARY INFORMATION:

List of Subjects in 46 CFR Part 365

Seals and insignia.

PART 365—[REMOVED]

Accordingly, under the Secretary's authority, 46 U.S. 1114, 46 CFR part 365 is removed.

By Order of the Maritime Administrator.

Dated: September 14, 1990.

James E. Saari,

Secretary.

[FR Doc. 90-22106 Filed 9-18-90; 8:45 am]

BILLING CODE 4910-81-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-396; RM-6783]

Television Broadcasting Services; Baxley, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 34 to Baxley, Georgia, as that community's first local television service. *See* 54 FR 40140, September 29, 1989. Channel 34 can be allotted to Baxley in compliance with § 73.610 of the Commission's Rules. The coordinates are North Latitude 31-46-42 and West Longitude 82-21-00. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 29, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-396, adopted August 24, 1990, and released September 14, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

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

Authority: 47 U.S.C. 154, 303.

§ 73.606(b) [Amended]

2. Section 73.606(b), the Television Table of Allotments is amended under Georgia by adding Baxley, Channel 34.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-22189 Filed 9-18-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-351; RM-6377]

Radio Broadcasting Services; Carlisle, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 264A to Carlisle, Kentucky, as that community's first FM broadcast service. Channel 264A can be allotted to Carlisle in compliance with the Commission's minimum distance separation requirements with a site restriction 11.0 kilometers (6.9 miles) northeast to avoid a short-spacing to the upgrade of Station WLFX(FM), Channel 261C2, Winchester, Kentucky. The coordinates for Channel 264A are North Latitude 38-21-31 and West Longitude 83-54-40. With this action, this proceeding is terminated.

DATES: Effective October 29, 1990. The window period for filing applications will open on October 30, 1990, and close on November 29, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy J Walls, Mass Media, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-351, adopted August 24, 1990, and released September 14, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Kentucky by adding Carlisle, Channel 264A.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-22190 Filed 9-18-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-588; RM-7161]

Radio Broadcasting Services; St. James, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 259C3 for Channel 258A at St. James, Missouri, and modifies the construction permit for Channel 258A to specify Channel 259C3, in response to a petition filed by J. Eric Hoehn. The coordinates for Channel 259C3 are 38-04-38 and 91-38-06. See 55 FR 324, January 4, 1990.

EFFECTIVE DATE: October 29, 1990.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-588, adopted August 24, 1990, and released September 14, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Missouri by removing Channel 258A and adding Channel 259C3 at St. James.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-22191 Filed 9-18-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-48, RM-5772, RM-5941, RM-6533, RM-6534, RM-6535, RM-6536]

Radio Broadcasting Services; Arlington, McKinney, Celina, Terrell, Daingerfield, College Station, Caldwell, Howe, TX, and Durant, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 296C2 for Channel 296A at Durant, Oklahoma, and modifies the license of Station KLBC-FM, Durant, Oklahoma, to specify operation on Channel 296C2. In doing so, this document corrects the earlier Report and Order in this proceeding which dismissed the proposal upgrade at Durant, Oklahoma. The reference coordinates for Channel 296C2 at Durant, Oklahoma, are 34-13-33 and 96-25-15. With this action, the proceeding is terminated.

EFFECTIVE DATE: October 29, 1990.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Second Report and Order, MM Docket No. 88-48, adopted August 24, 1990, and released September 14, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC

Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 1200 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303, 316.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Oklahoma, by removing Channel 296A and adding Channel 296C2 at Durant.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-22193 Filed 9-18-90; 8:45 am]

BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 525

[APD 2800.12A, CHGE13]

General Services Administration Acquisition Regulation; Trade Agreements Act—Tools Commodity Center

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR), chapter 5 (APD 2800.12A), is amended to add § 525.406 to recognize that the exclusion in FAR 25.406 for the Tools Commodity Center applies only to purchases made by the Tools Commodity Center Procurement Division of the International, Tools, and Appliances Commodity Center and to the Tools Material Management Division in Kansas City, MO.

EFFECTIVE DATE: September 28, 1990.

FOR FURTHER INFORMATION CONTACT: Paul Linfield, Office of GSA Acquisition Policy, (202) 501-1224.

SUPPLEMENTARY INFORMATION:

A. Public Comments

This rule was not published in the Federal Register for public comment because it is not a significant revision as defined in FAR 1.501-1.

B. Background

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, is not applicable because the proposed policy was not required to be published in the Federal Register. The rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Part 525

Government procurement.

PART 525—[AMENDED]

1. The authority citation for 48 CFR part 525 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. Section 525.406 is added to read as follows:

§ 525.406 Agencies covered by the Agreement on Government Procurement.

The exclusion provided for in FAR 25.406 for the Tools Commodity Center applies only to purchases of items in Groups 51 and 52 by the Tools Commodity Center Procurement Division of the International, Tools, and Appliances Commodity Center and to the Tools Material Management Division in Region 6.

Dated: September 7, 1990.

Richard H. Hopf III,

Associate Administrator for Acquisition Policy.

[FR Doc. 90-22092 Filed 9-18-90; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 900511-0111]

Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California

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

ACTION: Notice of reopening and inseason adjustments.

SUMMARY: NOAA announces the reopening of the ocean recreational salmon fishery in the exclusive economic zone (EEZ) between the U.S.-Canada border and the Queets River, Washington, and between Leadbetter Point, Washington, and Cape Falcon, Oregon, for two days effective 0001 hours local time Saturday, September 8, 1990 through 2400 hours local time Sunday, September 9, 1990. NOAA also announces revised subarea quotas for coho salmon in three recreational fisheries north of Cape Falcon, Oregon. The Director, Northwest Region, NMFS (Regional Director), has determined: That (1) The coho salmon catch quota for the subarea between the U.S.-Canada border and Cape Alava, Washington, should be increased by 2,500 from 24,900 to 27,400 fish; (2) the coho salmon catch quota for the subarea between Queets River and Leadbetter Point, Washington, should be reduced by 4,800, from 91,300 to 86,500 fish; and (3) the coho salmon catch quota for the subarea between Leadbetter Point, Washington, and Cape Falcon, Oregon, should be increased by, 1,500, from 122,500 to 124,000 fish. These actions are taken in accordance with the inseason management provisions of the framework amendment to the Fishery Management Plan for Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California. These actions result in no net increase in impacts on critical Washington coastal and Puget Sound natural coho salmon stocks. These actions are intended to maximize the harvest of coho salmon without exceeding the ocean share allocated to the recreational fishery north of Cape Falcon, Oregon, and to provide additional recreational fishing opportunity in the subareas north of Cape Falcon, Oregon.

DATES:

Effective: Reopening of the EEZ to recreational salmon fishing between the U.S-Canada border and the Queets River, Washington, and between Leadbetter Point, Washington, and Cape Falcon, Oregon, is effective 0001 hours local time Saturday, September 8, 1990 through 2400 hours local time Sunday, September 9, 1990. Actual notice to affected fishermen was given prior to that time through a special telephone hotline and U.S Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.20, 661.21, and 661.23 (as amended May 1, 1989). Modification of the coho salmon catch quotas in the subareas from the U.S-Canada border to Cape Alava, Washington, and from the Queets River, Washington, to Cape Falcon, Oregon, is effective 0001 hours local time, September 8, 1990.

Comments: Public comments are invited until October 1, 1990.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director,

Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115-0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director (Regional Director).

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries are published at 50 CFR part 661. In its preseason notice of 1990 management measures (55 FR 18894, May 7, 1990), NOAA announced recreational fishing seasons for all salmon species in four separate subareas between the U.S-Canada border and Cape Falcon, Oregon. Each of the four fishing seasons is scheduled to close either September 20 or upon attainment of either separate subarea catch quotas for coho salmon or an overall catch quota of 37,500 chinook salmon north of Cape Falcon. Regulations at 50 CFR 661.21(b)(1)(i) authorize inseason modification of quotas and regulations governing the ocean salmon fisheries at 50 CFR part 661 specify at § 661.21(a)(2) that "If a fishery is closed under a quota before the end of a scheduled season based on overestimate of actual catch, the Secretary will reopen that fishery in as timely a manner as possible for all or part of the remaining original season provided the Secretary finds that a reopening of the fishery is consistent with the management objectives for the affected species and the additional open period is no less than 24 hours."

Three of the four subareas between the U.S-Canada border and Cape Falcon, Oregon, were closed inseason due to projected attainment of the subarea coho salmon quotas. However, subsequent evaluation of landing data for the Cape Alava to Queets River, Washington, subarea indicate that the closure of this subarea was based on an overestimate of catch. In addition, the best available information on September 5 indicates that the recreational fishery from the Queets River to Leadbetter Point is not expected to fully harvest its subarea coho quota prior to the September 20 closure. At the request of the States, the Regional Director consulted with representatives of the Pacific Fishery Management Council (Council), the Washington Department of Fisheries, the Oregon Department of Fish and Wildlife, and the Council's Salmon Technical Team (STT) to determine if sufficient coho would be available to provide additional fishing opportunity in the three subareas north of Cape Falcon, Oregon. These consultations resulted in determinations and actions for each subarea as follows.

Queets River to Leadbetter Point, Washington

This subarea is currently open to recreational fishing seven days per week with a quota of 91,300 coho salmon (reduced from 94,300 coho salmon on July 29, 1990 (55 FR 32259, August 8, 1990)). According to the best available information on September 5, the recreational fishery in this subarea is not expected to fully harvest its subarea coho quota of 91,300 fish prior to the September 20 closure and sufficient coho remain to transfer to other subareas north of Cape Falcon, Oregon. The Regional Director has agreed to reduce the coho quota in this subarea by 4,800, from 91,300 to 86,500 fish, to allow for additional fishing opportunity in the subareas between the U.S-Canada border and Cape Alava and between Leadbetter Point and Cape Falcon. In order to maximize harvests and achieve no net increases in impacts on critical Washington coastal and Puget Sound natural coho stocks, the 4,800 coho reduction in this subarea quota results in a 2,500 coho increase in the U.S-Canada border to Cape Alava, Washington, subarea and a 1,500 coho increase in the Leadbetter Point, Washington, to Cape Falcon, Oregon, subarea.

U.S.-Canada border to Cape Alava, Washington

The recreational fishery catch in this subarea was projected to reach the subarea quota of 24,900 coho salmon on August 12 and the fishery was closed on that date (55 FR 34019, August 21, 1990). Subsequent evaluation of landing data indicates that the recreational catches through August 12 totaled 24,200 coho salmon, leaving 700 fish available for harvest in the subarea coho subquota. The Regional Director has determined that the remaining 700 coho salmon plus the 2,500 coho salmon transferred from the Queets River to Leadbetter Point subarea (increasing the subarea coho quota from 24,900 to 27,400 fish) will provide for two additional days of fishing on September 8 and 9, 1990.

Leadbetter Point, Washington, to Cape Falcon, Oregon

The recreational fishery catch in this subarea was projected to reach the subarea quota of 122,500 coho salmon on August 30 and the fishery was closed on that date (notice filed with the Office of the Federal Register on September 4, 1990). Subsequent evaluation of landing data indicates that the recreational catches through August 30 totaled 119,500 coho salmon, leaving 3,000 fish available for harvest in the subarea coho subquota. The Regional Director has determined that the remaining 3,000 coho salmon plus the 1,500 coho salmon transferred from the Queets River to Leadbetter Point subarea coho salmon quota (increasing the subarea coho quota from 122,500 to 124,000 fish) will provide for two additional days of fishing on September 8 and 9, 1990

Cape Alava to the Queets River, Washington

The subarea quota for coho salmon in this subarea was modified on July 29 to 5,400 fish (55 FR 32259, August 8, 1990). The recreational fishery catch in this subarea was projected to reach the subarea quote of 5,400 coho salmon on September 3 and the fishery was closed on that date (notice filed with the Office of the Federal Register on September 10, 1990). Subsequent evaluation of landing data indicates that the recreational catches through September 3 totaled 5,100 coho salmon, leaving 300 fish available for harvest in the subarea coho subquota. The Regional Director has determined that the remaining 300 coho will provide for two additional days of fishing on September 8 and 9, 1990.

Based on this consultation with the Council and the affected States, and on the analysis by the STT, the Regional Director has determined that these inseason modifications of subarea catch quotas for coho salmon are warranted. This action is intended to maximize the harvest of coho salmon without exceeding the ocean share allocated to the recreational fishery north of Cape Falcon, Oregon, and to provide additional fishing opportunity in the subareas between the U.S.-Canada border and Cape Alava, Washington, and between Leadbetter Point, Washington and Cape Falcon, Oregon.

In accordance with the revised inseason notice procedures of 50 CFR 661.20, 661.21, and 661.23, actual notice to fishermen was given prior to 0001 hours local time, September 8, 1990, by telephone hotline number (206) 526-6667 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 KHz. NOAA issues this notice to (1) reduce the catch quota for coho salmon in the subarea from the Queets River to Leadbetter Point, Washington from 91,300 to 86,500 fish; (2) increase the catch quota for coho salmon in the subarea from the U S.-Canada border to Cape Alava, Washington from 24,900 to 27,400 fish;

(3) increase the catch quota for coho salmon in the subarea from Leadbetter Point, Washington to Cape Falcon, Oregon from 122,500 to 124,000 fish; and (4) reopen the ocean recreational salmon fishery in the EEZ between the U.S.-Canada border and the Queets River, Washington, and between Leadbetter Point and Cape Falcon, Oregon, for two days effective 0001 hours local time Saturday, September 8, 1990 through 2400 hours local time Sunday, September 9, 1990. This notice does not apply to treaty Indian fisheries or to other fisheries which may be operating in other areas.

The Regional Director consulted with representatives of the Pacific Fisherv Management Council, the Washington Department of Fisheries and the Oregon Department of Fish and Wildlife regarding this reopening and transfers of subarea quotas. The States of Washington and Oregon will manage the recreational fishery in State waters adjacent to this area of the EEZ in accordance with this federal action.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted for 15 days after filing with the Office of the Federal Register, through October 1, 1990.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

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

Dated: September 13, 1990.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-22156 Filed 9-14-90; 12:31 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 182
Wednesday, September 19, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-148-AD]

Airworthiness Directives; Airbus Industrie Model A320-111, A320-211, and A320-231 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A320-111, A320-211, and A320-231 series airplanes, which would require replacing the existing standby generator control unit (GCU) with a new improved standby GCU. This proposal is prompted by reports of improper functioning of the standby GCU. This condition, if not corrected, could result in loss of the standby emergency generation system, which provides necessary back-up capability when both main generators fail.

DATES: Comments must be received no later than November 6, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-148-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 227-2140. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: 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.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-148-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Airbus Industrie Model A320-111, -211, and -231 series airplanes. There have been reports of improper functioning of the standby generator control unit (GCU). This condition, if not corrected, could result in loss of emergency electrical generation system, which provides necessary back-up capability when both main generators fail.

Airbus Industrie has issued Service Bulletin A320-24-1035, Revision 1, dated February 27, 1990, which describes procedures for replacing the existing standby GCU with a new improved standby GCU that enables reduction of power loss when 28VDC internal power supply occurs. The French DGAC has classified this service bulletin as mandatory, and has issued Airworthiness Directive 89-198-004(B) addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require replacing the existing standby GCU with a new improved GCU in accordance with the service bulletin previously described.

It is estimated that 18 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1.5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The estmated cost for required parts is $450. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $9,180.

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

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

Airbus Industrie: Applies to Model A320-111, A320-211, and A320-231 series airplanes, Serial Numbers 003 through 058, 060 through 067, 069 through 072, 074 through 083, and 085, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent loss of the emergency electrical generation system, accomplish the following:

A. Within 150 days after the effective date of this AD, in Zone 125 of the avionics compartment, remove one GCU identified as 1XE part number (P/N 520754, and install a modified GCU identified as 1XE P/N 520915, in accordance with Airbus Industrie Service Bulletin A320-24-1035, Revision 1, dated February 27, 1990. Following installation, perform an operational test of the Emergency Generation System, the Emergency Generator Control Unit from Centralized Fault Display System, and the Static Inverter, in accordance with the service bulletin.

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, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on September 6, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate; Aircraft Certification Service.

[FR Doc. 90-22134 Filed 9-18-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-152-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which would require the inspection for cracks of the Section 42 frames, from Stringer (S)-8L to S-8R, body station (BS) 540 to BS 920, and repair, as necessary. This proposal is prompted by reports of multiple cracks in the Section 42 frames. This condition, if not corrected, could result in rapid depressurization of the airplane.

DATES: Comments must be received no later than November 13, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-152-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Steven C. Fox, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2777. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: 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.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-152-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

Five operators of Boeing Model 747 series airplanes reported finding cracks in the section 42 frame webs originating at the stringer cutouts from body station (BS) 540 to BS 920; at Stringer (S)-8L to S-8R, on five airplanes. One airplane had approximately 50 cracks in these frames; the airplane had accumulated approximately 16,500 flight cycles. The FAA has determined that these cracks were due to fatigue cracking resulting from pressurization cycles. The large number of cracks being found on some airplanes at this time is attributed to the fact that inspections in this area have not been previously required, either under regular maintenance procedures or by AD action. Cracks in this area, if not corrected, could lead to rapid depressurization of the airplane.

Airplanes, manufacturing line numbers 001 through 045, have Section 42 upper deck frames constructed of a certain aluminum alloy. Airplanes, manufacturing line number 046 and above, use a different alloy having better fatigue characteristics, and these frames have not yet been found to be subject to these types of fatigue cracks.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require the inspection of Section 42 frames for cracks in certain Boeing Model 747 series airplanes and repair, if necessary, in accordance with

the Structural Repair Manual or a method approved by the FAA.

There are approximately 45 Boeing Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 32 airplanes of U.S. registry would be affected by this AD, that it would take approximately 100 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $128,000.

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

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

Boeing: Applies to Model 747 series airplanes, line numbers 001 through 045, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent sudden cabin pressure loss, accomplish the following:

A. Within the next 500 flight cycles after the effective date of this AD, or prior to the accumulation of 10,000 total flight cycles, whichever occurs later, perform a detailed visual inspection for cracks of the Section 42 fuselage frame web at the stringer cutout from body station (BS) 540 to BS 920, Stringer (S)-8L to S-8R. Repeat this inspection thereafter at intervals not to exceed 2,000 flight cycles.

B. If cracking is found as the result of the inspections required by paragraph A. of this AD, prior to further flight, repair the fuselage frame web in accordance with the Boeing 747 Structural Repair Manual (SRM), Section 53-10-04, Figure 4, or in manner approved by the Manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate.

C. 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 (ACO), Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on September 10, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-22132 Filed 9-18-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-160-AD]

Airworthiness Directives; Boeing Model 767-300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to Boeing Model 767-300 series airplanes, which would require modification of the engine and cargo compartment fire extinguishing wiring and plumbing to preclude improper connection during maintenance. This action would also allow for termination of certain repetitive inspections and functional tests of the engine and cargo fire extinguishing systems following system maintenance which are currently required by another AD. This proposal is prompted by reports of crossed wiring and plumbing in the engine and cargo compartment fire extinguishing system. This condition, if not corrected, could result in mis-direction of the extinguishing agent in the event of an engine or cargo compartment fire.

DATES: Comments must be received no later than November 5, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-160-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. G. M. Dail, Seattle Aircraft Certification Office, Systems & Equipment Branch, ANM-130S; telephone (206) 227-2674. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: 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.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report

summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-160-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On May 1, 1989, the FAA issued AD 89-03-51, Amendments 39-6251 (54 FR 20118, May 10, 1989), requiring inspections and/or functional checks for improperly installed wiring and plumbing in the engine and cargo compartment fire protection systems and fire detection systems, and subsequent checks following any maintenance actions in those areas for various Boeing model airplanes, including the Model 767-300. That action was prompted by numerous reports of improperly installed plumbing or wiring on several different Boeing airplane models. In these cases, wiring and plumbing components had been cross-connected due to their similarity and relative proximity to each other. This condition, if not corrected, could have resulted in the extinguishing agent not being discharged into the intended area in the event of an engine or cargo compartment fire due to crossed connections or improper indications from the smoke detector system, and subsequent loss of the airplane. The FAA stated that the maintenance procedures required by AD 89-03-51 were considered interim action until a final action was identified.

Since issuance of AD 89-03-51, the FAA has reviewed the Model 767-300 engine and cargo fire extinguishing system design, and has determined that the crossed wiring and plumbing connections were caused by the close physical location of similar connections.

The FAA has reviewed and approved Boeing Service Bulletins 767-26-0045, dated May 10, 1990, and 767-26-0048, dated June 21, 1990, which describe modifications of the engine and cargo compartment fire extinguishing system wiring and plumbing for certain Model 767-300 series airplanes. These modifications physically isolate fire extinguishing system hardware to prevent cross-connection and thus ensure that plumbing and wiring connections will be reinstalled correctly after system maintenance.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require modification of the engine and cargo fire extinguishing system wiring and plumbing in accordance with the service bulletins previously described. This AD would constitute terminating action for the requirements of AD 89-03-51 for the affected Model 767-300 series airplanes.

Note: AD 89-03-51 is currently applicable to Boeing Models 737, 747, 757, and 767 series airplanes, and requires repetitive inspections and/or functional checks of each model for improperly installed wiring and plumbing in the engine and cargo compartment fire protection systems. As modifications are designed which constitute terminating action for the required inspections, the FAA intends to issue separate rulemaking, such as this action, to mandate each airplane model's terminating action. Once all affected models have been addressed, the FAA will consider rescinding or superseding AD 89-03-51.

There are approximately 63 Model 767-300 series airplanes of the affected design in the worlwide fleet. It is estimated that 30 airplanes of U.S. registry would be affected by this AD, that it would take approximately 110 manhours per airplane to accomplish the required action, and that the average labor cost would be $40 per manhour. Replacement parts are estimated to cost $7,450 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $355,500.

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

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39:

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

Boeing: Applies to Model 767-300 series airplanes listed in Boeing Service Bulletins 767-26-0045, dated May 10, 1990, and 767-26-0048, dated June 21, 1990, certificated in any category. Compliance required within the next 24 months after the effective date of this AD, unless previously accomplished.

To preclude cross-connection of engine and cargo compartment fire extinguishing system wiring and plumbing during maintenance, accomplish the following:

A. Modify the engine and cargo compartment fire extinguishing system wiring and plumbing in accordance with Boeing Service Bulletin 767-26-0045, dated May 10, 1990, or 767-26-0048, dated June 21, 1990, as appropriate.

Accomplishment of this action constitutes terminating action for paragraphs D.1. and D.3. of Airworthiness Directive 89-03-51, Amendment 39-6251.

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 (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on September 5, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-22133 Filed 9-18-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-CE-21-AD]

Airworthiness Directives; All Piper Model Airplanes Equipped With Wing Lift Struts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: This notice reopens the comment period of a proposed Airworthiness Directive (AD), which would supersede AD 70-03-08 and is applicable to all Piper airplanes incorporating wing lift struts. This proposal would require inspections, corrosion prevention, and on certain models, replacement of the lift struts. The proposal is based on reports of in-flight wing separation due to corrosion of the wing lift struts. The actions of this proposal will preclude the loss of wing structural integrity.

DATES: Comments must be received on or before November 16, 1990.

ADDRESSES: Piper Service Bulletin (SB) 910A, dated October 10, 1989, and SB 528C, dated October 11, 1989, applicable to this AD, may be obtained from the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida; Telephone (407) 567-4361. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90-CE-21-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Charles L. Perry, Aerospace Engineer, Airframe Branch, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; Telephone (404) 991-2910.

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 or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90-CE-21-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations to include an AD, aplicable to all Piper airplanes incorporating wing lift struts, which would have required inspections, corrosion prevention, and on certain models, replacement of the lift struts, was published in the **Federal Register** on June 7, 1990 (55 FR 23231).

Piper initially alerted owners/oprators of certain Piper airplanes equipped with lift struts to the possibility of corrosion in the struts through Piper SB 528, issued October 28, 1976. This SB, and its later revisions, called for a one-time application of internal corrosion impedance treatment and 5-year repetitive inspections. The FAA issued AD 77-03-08 to mandate the requirements of the SB.

A Piper Model PA-18 airplane experienced an in-flight separation of the left wing near Jacksonville, Arkansas, on February 25, 1989. On August 29, 1989, an in-flight separation of the right wing occurred on a Piper Model PA 22 airplane at Moose Lake, Minnesota. The investigation results of both of these accidents revealed that separation of the lift struts was casused by internal corrosion. Logbook entries for both airplanes indicated compliance with the requirements of AD 77-03-08. A review of available service information revealed 24 reports of internal corrosion involving wing lift struts on various Piper airplanes.

The FAA has also determined that the one-time internal application of the oil required by AD 77-03-08 is not adequate to ensure continued corrosion protection as evidence by the failure of the lift strut on one airplane that had documented compliance with AD 77-03-08, but displayed an absence of preservative oil. Since the condition described is likely to exist or develop in other Piper airplanes incorporating wing lift struts of the same type design, an AD was proposed that would supersede AD 77-03-08 and would require initial and repetitive inspections, as well as corrosion prevention on all affected Piper airplanes. On Piper models PA-18 and PA-19 airplanes, the proposed AD would mandate replacement of the wing lift struts with a new moisture-sealed strut. Further rulemaking will be initiated concerning the moisture-sealed wing lift struts for the remaining models when the redesign is completed and the parts become available.

Subsequent to the end of the public comment period for this proposed AD, the Aircraft Owners and Pilots Association (AOPA) requested an extension to the comment period to allow for additional research in several areas pertaining to the proposal. The FAA has determined that this extension should be granted and the comment period for this proposed AD has been reopended to provide additional time for public comment.

The FAA has determined there are approximately 20,000 airplanes affected by the proposed AD. The cost of inspecting these airplanes as required by the proposed AD is estimated to be $240.00 per airplane for each inspection. The cost of replacement of struts is $760.00 per airplane. Accordingly the total fleet cost for a one-time inspection and subsequent replacement of the wing lift struts is estimated to be $20,000,000. The exact cost to the fleet cannot be accurately determined because of the many potential combinations of inspections and strut replacement. The availability of new sealed replacement struts will have a major impact on how many inspections will be required to be performed prior to installation of the new struts. For example, if all owners cannot obtain a replacement strut and two inspections are needed as an interim action prior to the installation of new struts, then the entire fleet cost could be $24,800,000. The cost of compliance with the proposed AD is so small that it would be necessary that a

small entity own five or more of the affected airplanes for there to be a significant financial impact on these entities. Few, if any, small entities own this many of the affected airplanes.

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

Therefore, I certify that this action (1) Is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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. Section 39.13 is amended by superseding AD 77-03-08, Amendment 39-2833 with the following new AD:

Piper: Applies to the following airplanes, certificated in any category.

Models Affected	Serial Nos. Affected
J-2 Series, Cub	ALL.
J-3, NE-1, L-4 Cub	ALL.
J-4 Series Coupe	ALL.
J-5, J-5C, L-14, AE-1, HE-1, Series Cub Cruiser.	5-1 through 5-1389.
PA-11 Series, Cub Special.	11-1 through 11-1678.
PA-12 Series, Super Cruiser.	12-1 through 12-4036.
PA-14 Series, Family Cruiser.	14-1 through 14-523.
PA-15 Vagabond	15-1 through 15-388.
PA-16 Clipper	16-1 through 16-736.
PA-17 Vagabond	17-1 through 17-215.
PA-20 Series (Pacer)	20-1 through 20-1121.
PA-22 Series, (Tri-Pacer/Colt).	22-1 through 22-9848.
PA-25-Series, (Pawnee)	25-1 through 25-8156024.
PA-18/18A Series (super Cub).	18-1 through 18-8309025, 1809001 through 1809032, 1809034 through 1809040.
PA-19 (Super Cub)	19-1, 19-2 and 19-3.

Compliance: Required as indicated unless already accomplished. To preclude failure of the wing lift strut and resulting loss of wing structural integrity, accomplish the following:

(a) For models J-2 Series, (Cub); J-3, NE-1, L-4 (Cub); J-4 Series (Coupe); J-5, J-5C, L-14, AE-1, HE-1, Series (Cub Cruiser); PA-11 Series, (Cub Special); PA-12 Series, (Super Cruiser); PA-14 Series, (Family Cruiser); PA-15 (Vagabond); PA-16 (Clipper); PA-17 (Vagabond); PA-20 Series, (Pacer); PA-22 Series, (Tri-Pacer/Colt); and PA-25 Series, (Pawnee) airplanes: within the next 30 calendar days after the effective date of this AD and thereafter at intervals not to exceed 12 calendar months, inspect the wing lift struts for corrosion in accordance with the Instructions Section of Piper Service Bulletin (SB) 528C, dated October 11, 1989. If evidence of corrosion is found, prior to further flight repair or replace the affected strut in accordance with the criteria in the above referenced SB.

(b) For models PA-18A Series (Super Cub) and PA-19 (Super Cub) airplanes:

(1) Within the next 30 calendar days after the effective date of this AD, and again within 12 calendar months after the initial inspection, inspect the wing lift struts for corrosion in accordance with the Instructions Section of Part I, Piper SB 910A, dated October 10, 1989. If evidence of corrosion is found, prior to further flight repair or replace the affected strut in accordance with the criteria in the above referenced SB.

(2) Within the next 24 calendar months after the effective date of this AD, modify the airplane by the installation of sealed wing lift struts as specified in Part II of the above referenced SB. The inspections required by paragraph (b)(1) of this AD are not required when the airplane has been modified with sealed wing lift struts.

(c) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(d) An alternate method of compliance or adjustment of the initial or repetitive inspeciton compliance times which provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349.

Note: The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

This Amendment supersedes AD 77-03-08, Amendment 39-2833. Issued in Kansas City, Missouri, on September 11, 1990.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certificate Service.

[FR Doc. 90-22123 Filed 9-18-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 356

[Docket No. 81N-0033]

Over-the-Counter Dental and Oral Health Care Drug Products for Antiplaque Use; Safety and Efficacy Review

AGENCY: Food and Drug Administration, HHS.

ACTION: Request for data and information.

SUMMARY: The Food and Drug Administration (FDA) is announcing a call-for-data for ingredients contained in products bearing antiplaque and antiplaque-related claims, such as "for the reduction or prevention of plaque, tartar, calculus, film, sticky deposits, bacterial build-up, and gingivitis." The agency will review the submitted data to determine whether these products are generally recognized as safe and effective and not misbranded for their labeled uses. This notice also describes the agency's general enforcement policy governing the marketing of over-the-counter (OTC) drug products bearing antiplaque and antiplaque-related claims during the pendency of this review. This request is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Data and information to be submitted by March 18, 1991.

ADDRESSES: Submissions should be sent to the Division of OTC Drug Evaluation (HFD-210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In 1972, FDA established the OTC drug review to evaluate drugs marketed OTC in the United States. The final regulations providing for the OTC drug review were published in the **Federal Register** of May 11, 1972 (37 FR 9464) (subsequently recodified at 21 CFR 330.10). The agency appointed 17 advisory review panels to evaluate the safety and effectiveness data submitted on active ingredients found in OTC drug products. Two advisory review panels, the advisory Review Panel on OTC Dentifrice and Dental Care Drug Products (Dental Panel) and the Advisory Review Panel on OTC Oral Cavity Drug Products (Oral Cavity Panel), reviewed OTC dental and oral health care drug products. In a **Federal Register** notice published on January 30, 1973, interested persons were invited to submit data to support the stated claims for dentrifices and dental care agents (38 FR 2781).

The Dental Panel (which deliberated from 1973 to 1978) reviewed fluoride dentifrices which contain abrasive ingredients. However, this Panel was primarily concerned about the effect of fluoride on dental caries and did not specifically consider the activity of abrasives for the removal of plaque. In its report on OTC anticaries drug products (published in the **Federal Register** of March 28, 1980; 45 20666), the Dental Panel did acknowledge that the cleansing function of a dentrifrice is achieved by the mechanical removal of dental plaque, stain, and debris from tooth surfaces by the abrasive system (45 FR 20676). Because there were no submissions from drug companies for dental products making antiplaque claims in their labeling at that time, there was no need for the Dental Panel to consider the particular abrasives in dentifrices as active ingredients for the removal of plaque.

The Dental Panel did consider gingivitis and antiplaque claims for dentifrices in its report on OTC oral mucosal injury drug products (published in the **Federal Register** of November 2, 1979; 44 FR 63270). Claims for the prevention, control, or treatment of gingivitis were placed in Category II (44 FR 63283). The Dental Panel concluded that "drug products which have antiplaque, plaque control, or gingivitis claims are not currently appropriate for the OTC market because there is no general recognition of any such drug products as safe and effective for these indications at this time." The Dental Panel recommended that such drug products and claims should be evaluated by FDA through the new drug application (NDA) procedures.

The Oral Cavity Panel (which deliberated from 1974 to 1979) only reviewed antimicrobial ingredients for sore mouth and sore throat claims and did not specifically evaluate the effectiveness of oral health care antimicrobial agents to inhibit plaque formation. (See the **Federal Register** of May 25, 1982; 47 FR 22760.) Although data on plaque reduction as a measure of the effectiveness of antimicrobial ingredients were presented to the Oral Cavity Panel, the Panel did not accept such data because it believed that "the rationality of plaque reduction as a criterion of effectiveness of antimicrobial agents for use in the mouth and throat is highly debatable, and evidence of the validity of the method is scant" (47 FR 22840). Because the Oral Cavity Panel was not charged with reviewing drug products used to treat dental or periodontal diseases, it did not specifically consider ingredients with antiplaque claims.

The Dental Panel described dental plaque as a gel-like mat that is firmly attached to the surface of a tooth or restoration. The Panel stated that plaque is made up of microbial masses, intermicrobial matrix, and nonbacterial cellular inclusions (45 FR 20666 at 20671). The Oral Cavity Panel described plaque as a soft and tenacious material found on the surfaces of teeth. It added that the composition of plaque is multivaried, and its microbial and biochemical composition varies with the site of formation, the duration of accumulation, the composition of the diet, and perhaps, other undetermined factors (47 FR 22760 at 22841). Studies have demonstrated that the presence of dental plaque is directly related to the occurrence of gingivitis in humans (Refs. 1 and 2).

Dorland's Illustrated Medical Dictionary (Ref. 3) defines dental plaque as "a soft, thin film of food debris, mucin, and dead epithelial cells deposited on the teeth, providing the medium for the growth of various bacteria." Dorland's states that plaque "plays an important etiologic role in the development of dental caries and periodontal and gingival diseases," (Ref. 3).

Section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(g)(1)) defines a "drug" primarily as an article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease or an article intended to affect the structure or function of the body. Section 201(i) of the act (21 CFR 321(i)) defines a "cosmetic" essentially as an article applied to the human body for "cleansing, beautifying, promoting attractiveness, or altering the appearance." Products may be simultaneously drugs and cosmetics. Because plaque is a colorless bacterial layer which is not clearly visible unless calcified or stained, plaque removal is not considered a cosmetic purpose. Plaque-reduction or removal is intended to prevent disease, i.e., gingivitis, caries, and periodontal disease. Primarily because of this explicit or implicit disease prevention purpose regarding plaque, the agency considers plaque reduction and removal claims to be drug claims.

Two classes of dental and oral health care products have made antiplaque claims over the years: (1) Products containing abrasives that rely on mechanical action to remove plaque, and (2) products that claim to reduce or remove plaque by antimicrobial or chemical activity. Because such claims are drug claims, the safety and effectiveness of ingredients used in products making plaque reduction and removal claims must be demonstrated.

Recently, products with antiplaque claims have been heavily promoted, and the agency is aware that a great deal of research has been conducted in this area in recent years. Because neither the Dental Panel nor the Oral Cavity Panel reviewed in detail the safety and effectiveness data on particular ingredients for antiplaque or gingivitis indications, the agency has determined that it is appropriate to issue another call-for-data on such ingredients. Historically, claims such as "for the reduction or prevention of plaque, tartar, calculus, film, sticky deposits, bacterial build-up, and gingivitis" have been made for dental products primarily in promotional materials and advertising, including professional labeling and advertising (information provided to health professionals but not to the general public). Some of these claims, such as plaque removal claims, have appeared on the labeling of certain OTC drug products marketed to the general public. Other claims, such as "for the reduction, prevention, or treatment of

gum disease, inflamed gums, swollen gums, bleeding gums, pyorrhea, Vincent's infection, periodontal disease, or tooth-destroying acids," as well as "promote healthy gums" or to "condition gums" have also appeared in promotional material, advertising, and profesional labeling for dental products. Although the agency questions the acceptability of some of these claims for an OTC drug product, the agency will accept data on such claims in this review in order to make a determination as to their status. The agency invites comment on the appropriateness of each such claim for OTC drug labeling. (See general regulatory policy discussed below.)

FDA invites the submission of data, published and unpublished, and any other information pertinent to active ingredients used in any dosage forms of dental and oral health care drug products, such as dentifrices, gargles, mouthwashes, and similar products that have antiplaque or antiplaque-related claims. In order to be eligible for review under the OTC drug review procedures, the ingredient must have been marketed in a product with the relevant indication (e.g., with a plaque or gingivitis claim) to a material extent and for a material time (21 U.S.C. 321(p)(2)). Manufacturers of products bearing antiplaque and antiplaque-related claims that contain active ingredients that have not been marketed for such indication(s) to a material extent and for a material time should submit supporting safety and effectiveness data in an NDA. These products may not be legally marketed in interstate commerce until an NDA is approved.

Manufacturers of products bearing antiplaque and antiplaque-related that contain active ingredients that have been marketed for such indication(s) to a material extent and for a material time may submit supporting safety and effectiveness data to the OTC drug reveiw. The submission of data should include information that demonstrates that the ingredients have been marketed to a material extent and for a material time for the relevant indications(s). Products with ingredients under consideration for these indications in the OTC drug review may be marketed (at the same dosage strength and in the same dosage form) under the manufacturer's good faith belief that the product is generally recognized as safe and effective and not misbranded and in accordance with FDA's enforcement policies related to the OTC drug review. (*See* FDA's Compliance Policy Guides Nos. 7132b.15 and 7132b.16.) Such products are marketed at the risk that the agency may adopt a position requiring relabeling, recall, or other regulatory action.

This call-for-data is part of the agency's ongoing review of OTC oral health care drug products. The Oral Cavity Panel's report was published in the **Federal Register** of May 25, 1982 (47 FR 22760). The agency is issuing the tentative final monograph for OTC oral health care drug products in several segments. The first segments addressed OTC oral health care anesthetic/analgesic, astringent, debriding agent/oral wound cleanser, and demulcent drug products and was published in the **Federal Register** of January 27, 1988 (53 FR 2436). An amendment to this segment will address OTC relief of oral discomfort drug products. Another segment will contain the agency's responses to comments regarding oral health care antimicrobial drug products and comments on the drug or cosmetic status of certain oral health care products and claims. These segments will be published in future issues of the **Federal Register**. This call-for-data is the initial step in the development of the final segment of the rulemaking for OTC oral health care drug products, which will address antiplaque and antiplaque-related claims.

To be considered in this view, eight copies of the data and information must be submitted, preferably bound, indexed, and on standard size paper (approximately 8½ by 11 inches). The agency suggests that all submissions be in the format described in 21 CFR 330.10(a)(2).

In accordance with § 330.10(a)(2), all submitted data on antiplaque ingredients and claims will be handled as confidential by the agency. However, all the submitted information will be put on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, 30 days after publication of any proposed rules resulting from the review of the submitted material, except to the extent that the person submitting it demonstrates that it falls within the confidentiality provisions of 18 U.S.C. 1905 or section 301(j) of the act (21 U.S.C. 331(j)). At the time of publication, requests for confidentiality should be submitted to William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210) (address above).

Data and information should be addressed to the Division of OTC Drug Evaluation (address above) Data submitted after the closing date of March 18, 1991 will not be considered except by petition pursuant to § 10.30 (21 CFR 10.30).

In the **Federal Register** of December 19, 1988 (53 FR 50940), the agency announced the establishment of the Dental Products Panel and stated that this panel will function at times as an OTC drug advisory panel to review and evaluate various currently marketed nonprescription drug products for human use and the adequacy of their labeling. The panel will advise the Commissioner of Food and Drugs on the promulgation of mongraphs establishing conditions under which these drugs are generally recognized as safe and effective and not misbranded. The agency intends to use this panel to review and evaluate ingredients contained in products bearing antiplaque and antiplaque-related claims prusuant to this call-for-data.

References

(1) Loe, H., E. Theilade, and S.B. Jensen, "Experimental Gingivitis in Man," *Journal of Periodontology*, 36:177-187, 1965.

(2) Theilade, E., et al., "Experimental Gingivitis in Man II. A Longitudinal Clinical and Bacteriological Investigation," *Journal of Periodontal Research*, 1:1-13, 1966.

(3) "Dorland's Illustrated Medical Dictionary," 27th Ed., W.B. Saunders Co., Philadelphia, 1988, s.v. "plaque."

Dated: September 12, 1990.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-21986 Filed 9-18-90; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 149

[CGD 90-016]

RIN 2115-AD53

Deepwater Port Radar Beacons

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing modifications to the radar beacon regulations for deepwater ports to require transmission in both the X-band and S-Band, eliminate the sweep requirements, and limit the transmission rate for frequency agile radar beacons. This change is needed to improve the effectiveness of radar beacons as a navigational aid.

DATES: Comments must be received on or before November 20, 1990.

ADDRESSES: Comments on the proposal should be submitted to Commandant (G–LRA–2), U.S. Coast Guard, 2100 Second St. SW., Washington, DC 20593–0001. Comments may be delivered to and will be available for inspection and copying at the Marine Safety Council (G–LRA–2) in room 3406 at the same address. Normal office hours are between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Gary W. Chappell, Office of Marine Safety, Security and Environmental Protection (G–MPS–3) at (202) 267–0491, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The public is invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Comments should include the name and address of the person making them, identify this notice (CGD 90–016) and the specific section of the proposal to which each comment applies, and give the reason for each comment. If an acknowledgment is desired, a stamped, self-addressed post card or envelope should be enclosed.

The proposed rules may be changed in light of the comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

No public hearing is planned. One may be held at a time and place to be set in a subsequent notice in the **Federal Register**, if written requests for a public hearing are received from persons raising valid issues and it is determined that the opportunity to make oral presentations will be beneficial to the rulemaking process.

Drafting Information

The principal persons involved in drafting this document are Mr. Gary W. Chappell, Project Manager, and Christena G. Green, Project Counsel, Office of Chief Counsel.

Discussion

The Coast Guard is proposing changes to the regulations for radar beacons on deepwater ports to improve their effectiveness as a navigational aid. The existing radar beacon requirements require transmission capability only in the 9320–9500 MHz frequency range. The increasing use of S-Band radar indicates a growing need for radar beacons to transmit in the 2900–3100 MHz frequency range that can be picked up by S-Band radar. Therefore, the Coast Guard proposes to require dual band radar beacons that transmit in two frequency ranges: 2900–3100 MHz and 9300–9500 MHz.

Another proposed change would permit the use of frequency agile radar beacons and limit their transmission rate to between 60% and 90% of the time. A transmission rate higher than 90% will clutter the vessel's radar screen, possibly obscuring other objects. A transmission rate less than 60% could reduce detection of the beacon by vessels. Current regulations can be interpreted as requiring the use of sweep type radar beacons which do not present a clutter problem but have other disadvantages. Wording referring to sweep type and sweep rate would be eliminated. This change would allow flexibility in the selection of an effective radar beacon.

While transmission on a second frequency band and limitation of the transmission rate for frequency agile radar beacons would improve navigation safety, continued use of an existing X-Band radar beacon does not present an immediate safety hazard. There is only one deepwater port in the United States and its location is well marked on navigational charts. Currently, most vessels have only X-Band radar, which can detect the current radar beacon. Generally, those vessels with S-Band radar also have an X-Band radar onboard, although some do not. Over time, the number of S–Band radars in use and the number of vessels having only S-Band radar onboard is expected to increase significantly. The proposed rule would allow the existing deepwater port to continue using its existing radar beacon until it reaches the end of its useful life, in approximately 10 years. At that point the radar beacon would be replaced with one meeting the proposed requirements.

Regulatory Evaluation

This proposed rule is considered to be non-major under Executive Order 12291 and nonsignificant under the Department of Transportation (DOT) regulatory policies and procedures (44 FR 11034; February 26, 1979). A Draft Regulatory Evaluation has been prepared and placed in the rulemaking docket. It may be inspected or copied at the Office of the Marine Safety Council where indicated under ADDRESSES. The telephone number is (202) 267–1477.

The cost resulting from this rule will be low. The deepwater port radar beacon currently in use need not be replaced until the end of its useful life, in approximately 10 years. A dual band radar beacon costs approximately $1,800.00 more than a comparable single band beacon. Radar beacons cost between $20,000 to $35,000 each. The $1,800.00 increase in cost required by this proposal is a relatively small cost differential. Over time the cost differential between single and dual band radar beacons is expected to become an even smaller percentage of the total unit price. Single band radar beacons may even become unavailable as dual band radar beacons become standard for most applications.

This rule will have no impact on small entities. Neither the owner or operator of the existing deepwater port qualify as a small entity.

Environmental Impact

The Coast Guard has thoroughly reviewed this rulemaking and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2. of Commandant Instruction (COMDTINST) M16475.1B. A Categorical Exclusion Determination statement has been prepared and is included as part of the rulemaking docket.

Paperwork Reduction Act

This rulemaking contains no information collection requirements.

Federalism

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

List of Subjects in 33 CFR Part 149

Fire prevention, Harbors, Marine safety, Navigation (water), Occupational safety and health, Oil pollution.

For the reasons set out in the preamble, the Coast Guard proposes to amend part 149 of title 33, Code of Federal Regulations as follows:

PART 149—[AMENDED]

1. The authority citation for part 149 is revised as follows:

Authority: 33 U.S.C. 1504; 49 CFR 1.46.

2. Section 149.795 is revised to read as follows:

§ 149.795 Radar beacon.

The tallest platform must have an FCC type accepted radar beacon (RACON) that:

(a) Transmits in—

(1) Both the 2900–3100 MHz and 9300–9500 MHz frequency bands, or

(2) The 9320–9500 MHz frequency band if installed prior to November 20, 1990.

(b) Transmits a signal of at least 250 milliwatts radiated power that is omnidirectional and polarized in the horizontal plane;

(c) Transmits a 2-element or 3-element Morse coded pulse signal, the length of which does not exceed 25% of the radar range expected to be used by vessels operating in the area;

(d) If of the frequency agile type, is programmed so that it will transmit at least 60% of the time but not more than 90% of the time;

(e) Is installed at a minimum height of 15 feet above the highest deck of the platform and where the structure of the platform, or equipment mounted thereon, does not obstruct the signal propagation in any direction.

Dated: August 20, 1990.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 90–22144 Filed 9–18–90; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AE88

Clothing Allowance and Marriage Requirements

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its adjudication regulations on clothing allowances and the period of marriage required for eligibility for certain survivor benefits. The proposed changes are based on recently enacted legislation. The intended effect of these changes is to expand and extend benefit eligibility.

DATES: Comments must be received on or before October 19, 1990. The proposed changes are to be effective December 18, 1989, the date the legislation was signed into law. Comments will be available for public inspection until October 29, 1990.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these changes to Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW. Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132, at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays), until October 29, 1990.

FOR FURTHER INFORMATION CONTACT: Phyllis Barber, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, (202) 233–3005.

SUPPLEMENTARY INFORMATION: The recently enacted Veterans' Benefits Amendments of 1989 (Pub. L. 101–237, 103 Stat. 2062) amended 38 U.S.C. 362 to expand the category of veterans entitled to receive a clothing allowance. Veterans who because of a skin condition resulting from a service-connected disability use medication which a physician has prescribed, and which the Secretary determines causes irreparable damage to the veterans' outergarments, are now eligible for this benefit. Under this proposed regulation, the term "irreparable damage" does not encompass clothing stains that are removable through regular laundering or dry cleaning. 38 U.S.C. 362 has also been amended to eliminate the requirement that eligibility for the clothing allowance be based upon a compensable disability. VA proposes to amend 38 CFR 3.810(a) and (a)(2) to implement these changes.

Section 113 of Public Law 101–237 amended 38 U.S.C. 418(c)(1) to reduce the time a surviving spouse must have been married to a veteran in order to be eligible for certain survivor benefits. Eligibility previously required two years of marriage. This has been reduced to one year. We propose to amend 38 CFR 3.54(c)(2) to implement this new provision of law.

The Secretary hereby certifies that these regulatory 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 reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. section 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that these regulatory amendments are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

(The Catalog of Federal Domestic Assistance program numbers are 64.105, 64.109 and 64.110)

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: August 29, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR part 3, Adjudication, is proposed to be amended as follows:

PART 3—ADJUDICATION

§ 3.54 [Amended]

1. In § 3.54(c)(2) remove the words "2 years" where they appear and add, in their place, the words "1 year".

2. In § 3.810 the authority citation at the end of paragraph (a)(2) is removed and a new authority citation for all of § 3.810 is added. The introductory text of paragraph (a) and paragraph (a)(2) are revised to read as follows:

§ 3.810 Clothing allowance.

(a) A veteran who has a service-connected disability, or a disability compensable under 38 U.S.C. 351 as if it were service-connected, is entitled, upon application therefor, to an annual clothing allowance as specified in 38 U.S.C. 362. The annual clothing allowance is payable in a lump sum, and the following eligibility criteria must also be satisfied:

* * * * *

(2) The Chief Medical Director or designee certifies that because of such disability a prosthetic or orthopedic appliance is worn or used which tends to wear or tear the veteran's clothing, or that because of the use of a physician-prescribed medication for a skin condition which is due to the service-connected disability irreparable damage is done to the veteran's outergarments. For the purposes of this paragraph "appliance" includes a wheelchair.

* * * * *

(Authority: 38 U.S.C. 362)

[FR Doc. 90–22153 Filed 9–18–90; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3831-7]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Denial

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to deny a petition submitted by Bethlehem Steel Corporation (BSC), Chesterton, Indiana, for a one-time exclusion of certain solid wastes generated at its facility from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 268, 124, 270, and 271 of title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Today's proposed decision is based on the re-evaluation of waste-specific information provided by the petitioner. EPA previously denied this petition on November 18, 1986 (see 51 FR 41620).

The Agency is also proposing the use of an organic leachate model and a fate and transport model and their application in evaluating the waste-specific information provided by the petitioners. These models have been used in evaluating the petition to predict the concentration of hazardous constituents released from the petitioned waste.

DATES: EPA is requesting public comments on today's proposed decision and on the applicability of the organic leachate model and fate transport model used to evaluate the petition. Comments will be accepted until November 3, 1990. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on this proposed decision and/or the models used in the petition evaluation by filing a request with the Director, Permits and State Programs Division, whose address appears below, by October 4, 1990. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (OS-305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSPD/OSW (OS-343), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F-90-B1DP-FFFFF".

Requests for a hearing should be addressed to Director, Permits and State Programs Division, Office of Solid Waste (OS-340), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW. (Room M2427), Washington, DC 20460, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact Chichang Chen, Office of Solid Waste (OS-343), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4782.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity) or meet the criteria for listing contained in 40 CFR 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See 40 CFR 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (*i.e.*, ignitability, reactivity, corrosivity, and EP toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See 40 CFR 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing hazardous wastes are also considered hazardous wastes. Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. See 40 CFR 261.3(c) and (d)(2). The substantive standards for "delisting" a treatment residue or a mixture are the same as previously described for listed wastes.

B. Approach Used to Evaluate This Petition

This petition requests a delisting for a listed hazardous waste. In making the initial delisting determination, the Agency evaluated the petitioned waste against the listing criteria and factors cited in 40 CFR 261.11(a)(2) and (a)(3). Based on this review, the Agency disagrees with the petitioner's claim that the waste is non-hazardous with respect to the original listing criteria. As a result, EPA today is proposing to deny the petition. EPA also evaluated the waste with respect to other factors or

criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The Agency considered whether the waste is acutely toxic, and considered the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, and the quantities of waste generated. Based on this review, the Agency disagrees with the petitioner's claim that the waste is non-hazardous. As a result, EPA today is proposing to deny the petition.

For this delisting determination, the Agency used such information to identify plausible exposure routes for hazardous constituents present in the petitioned waste, and is proposing to use an organic leachate model and a fate and transport model to predict the concentration of hazardous constituents that may be released from the petitioned waste after disposal and to determine the potential impact of the unregulated disposal of BSC's petitioned waste on human health and the environment. Specifically, the models were used to predict compliance-point concentrations which were compared directly to the levels of regulatory concern for particular hazardous constituents.

EPA believes that this fate and transport model represents a reasonable worst-case waste disposal scenario for the petitioned waste, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA subtitle C. Because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill.

The Agency also considers the applicability of ground-water monitoring data during the evaluation of delisting petitions. In this case, the Agency determined that, because BSC is seeking a delisting for waste managed on site in a unit subject to the RCRA ground-water monitoring regulations, ground-water data collected from the area where the petitioned waste is contained are necessary to determine whether hazardous constituents have migrated to the ground water. EPA recently proposed a rule clarifying the Agency's use of ground-water data in delisting decisions (see 54 FR 41930, October 12, 1989). Ground-water monitoring data collected from BSC's monitoring wells helps characterize the impact (if any) of the disposal of BSC's waste on ground-water quality.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all public comments (including those at public hearings, if any) on today's proposal are addressed.

II. Disposition of Delisting Petition

A. Bethlehem Steel Corporation, Chesterton, Indiana

1. Petition for Exclusion

Bethlehem Steel Corporation (BSC), at its Burns Harbor plant in Chesterton, Indiana, produces carbon steel products in various forms (bands, plates, and sheets). BSC petitioned the Agency to exclude, on a one-time basis, its wastewater treatment sludge disposed of on-site in a series of waste piles, collectively referred to as a landfill. The petitioned waste is listed as EPA Hazardous Waste No. F006—"Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum". The listed constituents for EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel, and cyanide (complexed) (see 40 CFR part 261, appendix VII).[1]

BSC petitioned to exclude its waste because it does not believe that the waste meets the criteria of the listing. BSC claims that the wastewater treatment sludge contained in its landfill is not hazardous because the constituents of concern are either non-detectable or present at extremely low concentrations in the wastewaters discharged to the Secondary Wastewater Treatment Plant (SWTP), and hence, not likely to be present in the petitioned waste (also referred to as the SWTP sludge). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4). As discussed in more detail below, the Agency previously proposed and finalized its decision to deny BSC's petition. However, as a result of BSC's appeal of the final denial, the Agency withdrew its decision. Today's proposal to deny this petition for delisting is the result of the Agency's re-evaluation of BSC's petition.

2. Background

On July 14, 1981, BSC petitioned the Agency to exclude the waste contained in its on-site landfill and subsequently provided additional information. BASC, in its petition, also requested the exclusion of wastewater treatment sludge contained in its Terminal Polishing Lagoons (TPLs). On November 22, 1982, BSC was granted a temporary exclusion for its landfill and TPL wastes (see 47 FR 52670) based on an evaluation of the constitutents for which the wastes were listed. After a more complete evaluation, the Agency proposed to deny BSC's petition for its landfill and TPL wastes on July 23, 1986 (see 51 FR 26419). The landfill waste exhibited significant mobile levels of cadmium and lead; the TPL wastes exhibited significant mobile levels of cadmium, chromium, lead, and barium. The Agency received public comments on the proposed decision between August and October 1986 and published a final denial, including responses to these public comments in the **Federal Register** on November 18, 1986 (see 51 FR 41620). BSC withdrew the portion of its petition for the sludge residing in the Terminal Polishing Lagoons in November 1986. On March 18, 1988, in

[1] The petitioned waste was once also listed as EPA Hazardous Waste No. K062—"Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332)". However, due to the redesignation of lime-stabilized pickle liquor sludges in the iron and steel industry as non-hazardous, the petitioned waste is no longer listed as a K062 waste (see 40 CFR 261.3(c)(2)(ii)(A)).

light of the decision in *McLouth Steel Products Corp.* v. *Thomas*, 838 F.2d 1317 (D.C. Cir. 1988) BSC moved to the Court of Appeals to remand EPA's determination to deny BSC's delisting petition. On July 29, 1988, the U.S. Court of Appeals granted in part BSC's motion to remand, requiring EPA to re-evaluate the portion of BSC's petition for the waste disposed in its on-site landfill. On September 30, 1988, the Agency withdrew its final denial of BSC's petition and announced that the petition would be re-evaluated in a manner consistent with the court's opinion in *McLouth Steel Products Corp.* v. *Thomas* (see 53 FR 38291). As stated previously in this notice, the Agency's re-evaluation of BSC's petitioned landfill waste is the subject of today's proposal.

In support of its petition, BSC submitted (1) detailed descriptions of its manufacturing and wastewater treatment processes, including schematic diagrams; (2) Material Safety Data Sheets (MSDS) for all tradename materials that might be expected to have contributed to the waste; (3) results of total constituent analyses of samples of the petitioned waste for the EP toxic metals, nickel, and cyanide; (4) results of EP and Oily Waste EP (OWEP) leachate analyses of samples of the petitioned waste for the EP toxic metals and nickel; (5) results of total sulfide analyses of samples of the petitioned waste; (6) results of total oil and grease analyses on samples of the petitioned waste; (7) results of total constituent analyses of samples of the petitioned waste for the priority pollutants (see 40 CFR Part 403, Appendix B for a list of these constituents); (8) "lysimeter" data for cadmium, chromium, lead, and 91 priority pollutant constituents for the unit in which the petitioned waste is managed; and (9) ground-water monitoring data collected from wells monitoring the on-site landfill.

BSC electroplated carbon steel sheets with chromium or tin during the period the SWTP sludge was generated. (BSC discontinued its chromium and tin electroplating operations in June 1983; sludges generated from the treatment of these wastewaters are the basis for classifying the SWTP sludge as hazardous.) Electroplating wastewaters were discharged to BSC's process wastewater sewer system and routed to Secondary Treatment Plan (SWTP), along with wastewaters from the primary facilities area (containing blast furnaces, a basic oxygen furnace shop, a sinter plant, continuous casters, a slabbing mill and a power station), the hot forming facilities area (containing a hot strip mill and plate mills), and the cold mill facilities area (containing continuous picklers, cold reduction mills, heat treating and annealing lines). Based on available records, BSC claims that less than one percent of the wastewater influent to the SWTP were wastewaters from its chromium electroplating operations. Spent sulfuric acid pickle liquors also were discharged to the SWTP from a continuous sulfuric acid pickling process. Spent pickle liquors were neutralized by commingling them with alkaline wastewaters in the sewer system and/or lime slurry in secondary mixing tanks at the SWTP. The commingling of electroplating wastewaters and spent pickle liquor in the sewer system also facilitated the reduction of chromium from the hexavalent to the trivalent state. After the addition of a polymer to aid flocculation, the combined wastewater stream was sent through a clarifier in which the solids were removed and routed to a thickener. The underflow from the thickener was discharged to a vacuum filter press, resulting in a sludge cake. This sludge cake was transported by a conveyor to a collection hopper prior to disposal in the on-site landfill. The waste contained in this on-site landfill is the subject of today's notice. The process wastewater effluent from the clarifier was sent to the Terminal Polishing Lagoons (TPLs) before final discharge to the Little Calument River under a National Pollutant Discharge Elimination System (NPDES) permit.

To collect representative samples from a waste disposed of in a landfill like BSC's, petitioners are normally requested to divide the unit into 10,000 square foot sections and randomly collect five full-depth core samples from each section. The five full-depth core samples are then composited (mixed) by section to produce composite samples. See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA, Office of Solid Waste and Emergency Response, Publication SW-846 (third edition), November 1986, and "Petitions to Delist Hazardous Waste—A Guidance Manual," U.S. EPA, Office of Solid Waste, (EPA/530-SW-85-003), April 1985.

BSC originally sampled the SWTP sludge on July 11, 1980, and December 1-4, 1980. In total, five composite samples were collected, representing five sampling dates. The July 1980 sample was collected as the SWTP sludge fell from the conveyor that transports the material from the vacuum filter to a collection hopper. This sample was a composite made of aliquots obtained at regular intervals during a 3-minute period. The December 1, 1980 sample was collected from the landfill containing the SWTP sludge. A steel spatula was used to take ten equal volume (100 cc) aliquots of the petitioned waste from equally spaced points along a trench (two feet by one foot) dug into the landfill. These aliquots then were composited into a 1 liter sample. The three composite samples collected on December 2-4, 1980 were collected from the conveyor using compositing procedures similar to those in the July 1980 sampling event. BSC analyzed these five composite samples for extraction procedure (EP) leachable concentrations (*i.e.*, mass of a particular constituent per unit volume of extract) of the EP toxic metals. Four of these five samples were analyzed for EP leachable concentrations of nickel and total constituent concentrations (*i.e.*, mass of a particular constituent per mass of waste) of cyanide.

On July 31, 1981, and August 4, 1981, BSC collected four additional composite samples. BSC stated in its petition that these samples were collected using procedures similar to those used to collect the samples in 1980. These for composite samples were analyzed for total constituent concentrations of cadmium, chromium, lead, and nickel.

In accordance with typical sampling guidance that had evolved since 1981, the Agency recommended in a letter to BSC (dated December 6, 1984) that the landfill be divided into 24 sections with dimensions measuring 105 feet by 150 feet. The Agency further recommended that a minimum of 6 discrete samples be taken from each of the 24 cell areas and composited for analysis. Based on these recommendations, BSC collected additional samples of the petitioned waste on eight different days over a two and a half week period in November and December 1985. To collect these samples, BSC divided the landfill into twenty-four cell areas, and subdivided each cell area into sections measuring five feet by five feet. Six sections were randomly selected for sampling from each of the twenty-four cell areas. A steel auger was used to take individual samples in each of the selected sections at four to eight-inch intervals for the entire depth of the landfill. Six discrete samples, representing the six selected sections, were collected from each of the twenty-four cell areas (*i.e.*, a total of 144 discrete samples). Two composites from each of the 24 cell areas, comprising samples collected from all six sampling sections in a cell area, were then formed (*i.e.*, a total of 48 composites). BSC selected one composite sample from each of the 24 cell areas for analyses as follows: six composite samples were

analyzed for total constituent concentrations of the priority pollutants; twenty composite samples were analyzed for total constituent concentrations of the EP toxic metals and nickel; eight composite samples were analyzed for oil and grease content, total sulfide, and total cyanide; twenty-three composite samples were analzyed for the EP toxic metals and nickel using the standard EP; and seven of these twenty-three composite samples were analyzed for the EP toxic metals and nickel using the Oily Waste EP (OWEP).

The Agency notes that, while a few of the cell areas in this sampling scheme have dimensions exceeding the recommended 105 feet by 150 feet, less than 50 percent of the actual area within each section in most cells is covered by the waste because the landfill is actually a collection of waste piles. Therefore, the Agency believes that the samples collected for analysis are representative of any variation in the petitioned waste. In addition, the Agency notes that BSC only analyzed a portion of the 24 composite samples for total constituent concentrations of the priority pollutants and OWEP leachate concentrations of the EP toxic metals and nickel. Had the analytical results provided in BSC's petition indicated that the waste was a candidate for exclusion, the Agency would have requested that BSC provide additional analytical data to further characterize the composition of the waste contained in the landfill.

BSC also provided analytical results for samples of the wastewater discharged to the SWTP (*i.e.*, the influent streams from the primary facilities area, the hot forming facilities area, and the cold mill facilities area). These composite samples were collected during two 20-hour sampling periods in 1978 and analyzed for total constituent concentrations of the priority pollutants (see the RCRA public docket for today's notice for a summary of these data). In addition, BSC submitted MSDSs for the chemical products used at the facility that potentially may be discharged to the SWTP.

BSC also submitted ground-water and leachate monitoring information, collected from wells and "lysimeters" monitoring the landfill, to demonstrate that waste contained in the landfill was not adversely impacting ground-water quality.[2] The ground-water monitoring information submitted by BSC included: (1) Boring logs and well construction information for each well; (2) water levels; and (3) results of the analysis of ground-water samples. The leachate monitoring information submitted by BSC included: (1) Boring logs and "lysimeter" construction information for each well; (2) leachate elevation levels; and (3) results of the analysis of leachate samples.

3. Agency Analysis

BSC used SW-846 Methods 7061 through 7760 to quantify the total constituent concentrations of the EP toxic metals and nickel in the petitioned waste. SW-846 Method 9010 was used to quantify total cyanide concentrations in the petitioned waste. A modified version of SW-846 Method 9030 was used to quantify total sulfide levels in the petitioned waste. SW-846 Methods 1310 (standard EP) and 1330 (OWEP), in combination with SW-846 Methods 7061 through 7760, were used to determine the leachable concentrations of the EP toxic metals and nickel. Table 1 presents the maximum reported total constituent, EP leachate, and OWEP leachate concentrations of the EP toxic metals, nickel, cyanide, and sulfide. (Analysis for leachable concentrations of sulfide (or reactive sulfide) is not necessary because the Agency's level of regulatory concern is based on the total constituent concentration of reactive sulfide.)

TABLE.—MAXIMUM TOTAL CONSTITUENT AND LEACHABLE CONCENTRATIONS (PPM) LANDFILL WASTE

Constituents	Total constituent analyses	EP leachate analyses	OWEP leachate analyses
Arsenic	[1] 28.5	0.01	<0.01
Barium	[1] 92.5	2.4	[1] 0.98
Cadmium	13.	0.2	0.15
Chromium	630.	0.25	1.0
Lead	2,100.	1.4	0.76
Mercury	1.3	0.005	<0.003
Nickel	120.	1.1	0.5
Selenium	0.97	0.1	[1] 0.027
Silver	[1] 6.8	0.14	0.08
Cyanide	3.8	[2] 0.19	[3] 0.20
Sulfide	340.	.....	.....

< Denotes that the constituent was not detected at the detection limit specified in the table.

[1] Average concentration of replicate samples.

[2] Calculated by assuming a dilution factor of twenty (based on 100 grams of sample and dilution with 2 liters of water) and a theoretical worst-case leaching of 100 percent.

[3] Calculated by assuming a dilution factor of nineteen (see "Dilution from Oily Waste EP," July 29, 1986, Internal Agency Memorandum in the RCRA public docket, for details regarding the estimation of this dilution factor).

The detection limits in Table 1 represent the lowest concentrations quatifiable by BSC when using the appropriate analytical methods to analyze the petitioned waste. (Detection limits may vary according to the waste and waste matrix being analyzed, *i.e.*, the "Cleanliness" of waste matrices varies and "dirty" waste matrices may cause interferences, thus raising the detection limits.)

Using Method 9071, BSC determined that oil and grease levels ranged between 5.9 and 13 percent in the petitoned waste. Petitioners are required to modify the EP procedure in accordance with the Oily Waste EP (OWEP) methodology if the oil and grease content of the waste exceeds one percent (*i.e.*, wastes having more than one percent total oil and grease may either have significant concentrations of the constituents of concern in the oil phrase which may not be assessed using the standard EP leachate procedure, or the concentration of oil and grease may be sufficient to coat the solid phase of the sample and interfere with the leading of metals from the sample). See SW-846 Method 1330. BSC provided both standard EP and OWEP data in support of its petition.

SW-846 Method 5020 was used to quantify the total constituent concentrations of the volatile priority pollutants in the petitioned waste. SW-846 Methods 3540 and 8270 were used to quantify the total constituent concentrations of the base/neutral and acid extractable priority pollutants in the petitioned waste. Finally, SW-846 Methods 3540/8080 were used to quantify the total constituent concentrations of polychlorinated biphenyls (PCBs) and pesticides on the EPA priority pollutant list. Table 2 presents the maximum reported concentrations for hazardous organics detected in the petitioned waste.

TABLE 2. —TOTAL CONSTITUENT ANALYSES (PPM) LANDFILL WASTE

Constituents	Total constituent analyses
Benzo(a) anthracene	18.0
Fluroanthene	9.9
Naphthalene	4.5
PCBs	1.2
Phenanthrene	7.3
Pyrene	11.0

On the basis of test results and information provided by BSC, pursuant to 40 CFR 260.22, none of the samples analyzed exhibited the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, § 261.22, and § 261.23, respectively.

[2] BSC explains in its petition that three "lysimeters" were constructed and installed within the landfill to collect in-situ leachate generated within the landfill.

BSC submitted a signed certification stating that an estimated 48,000 tons of waste are currently contained in the on-site landfill. The Agency reviews a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate estimated waste volume. EPA accepts BSC's certified estimate of 48,000 tons (approximately 48,000 cubic yards).

EPA does not generally verify submitted test data before proposing delisting decisions, and has not verified the data upon which it proposes to deny BSC's petition. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The Agency, however, has initiated a spot-check sampling and analysis program to verify the respresentative nature of data for some percentage of the submitted petitions, and may select facilities likely to be proposed for exclusion for spot-check sampling.

4. Agency Evaluation

Because BSC's petition is for waste contained in an on-site landfill, the Agency chose to evaluate the petition using a landfill scenario. The Agency believes that disposal in a landfill is an appropriate and reasonable worst-case management scenario for the petitoned waste. Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The Agency, therefore, evaluated the petitoned waste using its vertical and horizontal spread (VHS) landfill model which predicts the potential for ground-water contamination from wastes that are landfilled. See 50 FR 7882 (February 26, 1985), 50 FR 48896 (November 27, 1985), and the RCRA public docket for these notices for a detailed description of the VHS model and its parameters. This modeling approach, which includes a ground-water transport scenario, was used with conservative, generic parameters to predict reasonable worse-case contaminant levels in ground water at a hypothetical receptor well or compliance point (*i.e.*, the model estimates the dilution of a toxicant within the aquifer for a specific volume of waste). The use of the VHS model in the evaluation of BSC's petitioned waste was not intended to consider site-specific factors. An evaluation that considered site-specific factors would assess the potential hazards of a waste at a specific location. However, once a waste is excluded from regulation as a hazardous waste, a facility is under no obligation to manage the waste at the specified location, and might likely move the waste after a period of time. Consequently, the Agency believes that the VHS model and its parameters, when used to evaluate the petitioned waste, is appropriate.

In addition, the Agency used its Organic Leachate Model (OLM) to estimate the leachable portion of the organic constituents in the petitoned waste. See 50 FR 48953 (November 27, 1985), 51 FR 41084 (November 13, 1986), and the RCRA public docket for these notices for a detailed description of the OLM and its parameters. The results of the OLM analysis were used in conjunction with the VHS model to estimate the potential impact of the organic constituents on the underlying aquifer. The Agency requests comments on the use of the OLM and VHS model as applied to the evaluation of BSC's waste.

Specifically, the Agency used the VHS model to evaluate the mobility of the hazardous inorganic constituents detected in the combined "OWEP" extracts (as defined in Method 1330) and EP extracts of BSC's petitoned waste. The Agency's evaluation, using BSC's estimated waste volume of 48,000 cubic yards and the maximum reported OWEP leachate concentrations (*i.e.*, mobile metal concentrations), generated the compliance-point concentrations shown in Table 3.

The Agency did not evaluate the mobility of arsenic and mercury from BSC's petitoned waste because it was not detected in the combined OWEP extracts using the appropriate analytical test methods (see Table 1). The Agency believes that it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method. Specifically, if a constituent cannot be detected (when using the appropriate analytical method), the Agency assumes that the constituents is not present and therefore does not present a threat to either human health or the environment.

TABLE 3—VHS MODEL: COMPLIANCE-POINT CONCENTRATIONS (PPM) LANDFILL WASTE

Constituents	Compliance-point concentrations		Levels of regulatory concern [1]
	OWEP	EP	
Barium	0.16	0.38	1.0
Cadmium	0.024	0.032	0.01
Chromium	0.16	0.040	0.05
Lead	0.12	0.22	0.05
Nickel	0.079	0.17	0.7
Selenium	0.0043	0.016	0.01
Silver	0.013	0.022	0.05

TABLE 3—VHS MODEL: COMPLIANCE-POINT CONCENTRATIONS (PPM) LANDFILL WASTE—Continued

Constituents	Compliance-point concentrations		Levels of regulatory concern [1]
	OWEP	EP	
Cyanide	0.032	0.030	0.7

[1] See "Docket Report on Health-based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," November 1989, located in the RCRA public docket.

The petitioned waste exhibited cadmium, chromium, lead, and selenium concentrations at the compliance point that exceed the Agency's health-based levels used in delisting decision-making. Based on OWEP test results, four of seven samples failed the VHS model evaluation for cadmium and lead and three of seven samples failed for chromium. Based on standard EP data, eleven of twenty-eight samples failed the VHS model evaluation for cadmium; twenty-three of twenty-eight samples failed for lead; and one of twenty-eight samples failed for selenium. (See the RCRA public docket for today's notice for a tabulated summary of standard EP data for cadmium, lead, and selenium and OWEP test results for cadmium, chromium, and lead.) The Agency believes that the modeling evaluation using EP data supports the finding that significant levels of cadmium and lead in BSC's petitioned waste are mobile because OWEP concentrations are typically higher than EP leachate concentrations. A denial decision based on standard EP data is conservative because OWEP data are normally a more stringent measure of constituent concentrations that may be mobilized from a waste. EPA notes that maximum levels of some constituents in Table 3 determined by the EP exceed the maximum levels measured by the OWEP. However, the maximum EP and OWEP concentrations for a given constituent were measured for different composite samples. Therefore, the differences in the EP and OWEP results reflect the wide variability of the waste, and not just differences in the leach procedures.

The petitioned waste exhibited barium, nickel, silver, and cyanide levels at the compliance point below the health-based levels used in delisting decision-making. As reported in Table 1, the maximum reported concentration of total cyanide in BSC's waste is 3.8 ppm. Because reactive cyanide is a specific subcategory of the general class of cyanide compounds, the maximum level

of reactive cyanide in the petitioned waste also will not exceed 3.8 ppm. Thus, the Agency concludes that the concentration of reactive cyanide will be below the Agency's interim standard of 250 ppm. See "Interim Agency Thresholds for Toxic Gas Generation," July 12, 1985, Internal Agency Memorandum in the RCRA public docket. Furthermore, because the total constituent concentration of sulfide in the waste is 340 ppm, the concentration of reactive sulfide will be below the Agency's interim standard of 500 ppm. See "Interim Agency Thresholds for Toxic Gas Generation," July 12, 1985, Internal Agency Memorandum in the RCRA public docket. On the basis of test results and information submitted by the petitioner pursuant to 40 CFR 260.22, the Agency concludes that BSC's waste does not exhibit the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23, respectively.

The Agency also used the VHS model to evaluate the mobility of the hazardous organic constituents that are potentially present in the waste. The Agency used the OLM to predict leachable concentrations of the hazardous organics that were detected in the waste. The resulting leachable concentrations and BSC's estimate of 48,000 cubic yards of accumulated waste were used as inputs in the VHS model in order to assess the potential impacts of these constituents upon the ground water. The calculated compliance-point concentrations for the organic constituents detected in the petitioned waste are presented in Table 4.

TABLE 4.—OLM/VHS MODEL: COMPLIANCE-POINT CONCENTRATIONS (PPM), LANDFILL WASTE

Constituents	Compliance-point concentrations	Levels of regulatory concern [1]
Benzo(a)anthracene	0.00035	0.00001
Fluoroanthene	.00097	.2
Naphthalene	.0035	10
PCBs	.0001	.0005
Phenanthrene	.0013	.002
Pyrene	.0008	4

[1] See "Docket Report on Health-based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," November 1989, located in the RCRA public docket.

The petitioned waste, when evaluated using the OLM and VHS model, exhibited benzo(a)anthracene concentrations at the compliance point that exceed the Agency's health-based levels used in delisting decision-making. Benzo(a)anthracene in 1 of 6 landfill waste samples failed the OLM/VHS model evaluation. The petitioned waste exhibited fluoranthene, naphthalene, PCB, phenanthrene, and pyrene concentrations at the compliance point below levels of regulatory concern. Other priority pollutant organics analyzed by BSC were reported to be below the detection limits.

The Agency also evaluated the ground-water monitoring data available for BSC's landfill. Data from the analysis of samples collected from the existing ground-water monitoring system at the landfill are inconclusive in determining whether or not the petitioned unit may have contributed to ground-water contamination. Numerous deficiencies exist in the ground-water monitoring information provided, including the lack of a full year of quarterly sampling data, a description of well development procedures, a description of the site geology, analytical results for monitoring well MWU-1 for the samples taken in 1986, and analytical results for the full range of constituents of concern. In addition, the monitoring wells may be inappropriately screened in a clay layer. The Agency notes that BSC was notified, by letter (dated February 14, 1989), of the Agency's general concerns regarding the deficiencies and inadequacies of the ground-water information and data submitted in support of the petition and of the Agency's intention not to formally request additional information to resolve these inadequacies. The Agency did not request that BSC provide additional ground-water monitoring information because sufficient data existed to support a proposed denial of the petition.

In addition, the Agency reviewed the "lysimeter" data submitted as part of public comments to the July 23, 1986 proposed denial. As stated previously, BSC explains in its petition that three "lysimeters" were constructed and installed within the landfill to collect in-situ leachate generated within the landfill and not to detect the migration of leachate from the unit to ground water aquifers. The Agency does not consider the "lysimeter" data to be a substitute for adequate ground-water monitoring data, because the "lysimeters" (as described by BSC) were not installed to detect the migration of hazardous constituents from the unit to the ground water. Furthermore, EPA believes the "lysimeter" data are inadequate to demonstrate that constituents from BSC's waste have not leached at levels of concern because: (1) The three "lysimeters" are not sufficient to provide data representative of the entire unit; (2) the data for three samples from each of the three "lysimeters" represents only three months of leachate collection; and (3) the analysis of the leachate was incomplete, *i.e.*, only three of the EP toxic metals (cadmium, chromium, and lead) were analyzed in the "lysimeter" samples, with no data available for the remaining metals of concern. For these reasons, the Agency does not accept the use of the collected "lysimeter" data to support BSC's petition.

5. Conclusion

The Agency believes that BSC has failed to demonstrate that its petitioned waste is not hazardous. The Agency's evaluation of analytical data provided by BSC indicates that the landfill waste exhibits concentrations of leachable cadmium, chromium, lead, and selenium that yield compliance-point concentrations exceeding the Agency's health-based levels used in delisting decision-making. In addition, total concentrations of benzo(a)anthracene exceed the delisting health-based level at the compliance point. Furthermore, the ground-water monitoring system for the landfill is inadequate to assess the impact of the waste on ground water. The Agency, therefore, proposes to deny Bethlehem Steel Corporation's petition for exclusion of its wastewater treatment plant sludge described in its petition as EPA Hazardous Waste No. F006 and contained in its landfill at its Chesterton, Indiana facility. Therefore, this waste remains a hazardous waste and would continue to be subject to regulation under 40 CFR parts 260 through 268 and the permitting standards of 40 CFR part 270.

III. Effective Date

This rule, if finally promulgated, will become effective immediately upon such final promulgation. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would not change the existing requirements for persons generating hazardous wastes. This facility has been obligated to manage its waste as hazardous before and during the Agency's review of its petition. Because a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this denial should be effective immediately upon final promulgation. These reasons also provide a basis for making this rule

effective immediately, upon promulgation, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The proposed denial of this petition, if promulgated, would not impose an economic burden on this facility because prior to submitting and during review of the petition, this facility should have continued to handle its waste as hazardous. The denial of the petition means that they are to continue managing their waste as hazardous in the manner in which they have been doing, economically, and otherwise. There is no additional economic impact, therefore, due to today's rule. This proposal is not a major regulation; therefore, no Regulatory Impact Analysis is required.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment, if promulgated, will not have an adverse economic impact on small entities. The facility included in this notice does not constitute a small entity. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VI. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

List of Subjects in 40 CFR Part 261

Hazardous Materials, Waste Treatment and Disposal, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.

Dated: August 28, 1990.

Don R. Clay,

Assistant Administrator Office of Solid Waste and Emergency Response.

[FR Doc. 90–22049 Filed 9–18–90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-412, RM-7289]

Radio Broadcasting Services; Marion and Rural Retreat, VA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by James K. Cornick proposing the allotment of Channel 278A to Marion, Virginia, as the community's third local FM service. In order to accommodate the allotment of Channel 278A to Marion, we also propose to substitute Channel 237A for Channel 276A at Rural Retreat, Virginia, and to modify the construction permit of Station WCRR–FM accordingly. Channel 278A can be allotted to Marion, Virginia, in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.7 kilometers (8.4 miles) northeast to avoid a short-spacing to Station WIMZ–FM, Channel 278C, Knoxville, Tennessee. Channel 237A can be allotted to Rural Retreat, Virginia, in compliance with the Commission's minimum distance separation requirements and can be used at the site specified in Station WCRR–FM's construction permit. The coordinates for the allotment of Channel 278A at Marion, Virginia, are North Latitude 36–54–28 and West Longitude 81–23–25. The coordinates for Channel 237A at Rural Retreat, Virginia, are 36–54–15 and 81–10–51. Petitioner is requested to state his intention to reimburse the permittee of Station WCRR–FM for the costs involved in the change of channel.

DATES: Comments must be filed on or before November 5, 1990, and reply comments on or before November 20, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: James K. Cornick, P.O. Box 85, Marion, Virginia 24354 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making and Order to Show Cause, MM Docket No. 90–412, adopted August 24, 1990, and released September 14, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–22194 Filed 9–18–90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-620; RM-7125]

Radio Broadcasting Services; Hayward, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of petition.

SUMMARY: This document dismisses a petition for rulemaking filed by Pine-Aire Broadcasting Corporation, Inc., requesting the substitution of FM Channel 222C3 for Channel 221A and modification of the license for Station WRLS–FM, at Hayward, Wisconsin. The petition is dismissed because no expression of interest has been filed by the petitioner. See 55 FR 01066, January 11, 1990.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–620, adopted August 24, 1990, and released September 14, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–22195 Filed 9–18–90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90–411, RM–7238]

Radio Broadcasting Services; Birch Tree, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Jack G. Hunt, requesting the substitution of Channel 296C3 for Channel 296A at Birch Tree, Missouri. Petitioner also requests modification of his license for Station KBMV–FM to specify operation on Channel 296C3. The coordinates for Channel 296C3 are 37–03–26 and 91–32–33.

DATES: Comments must be filed on or before November 5, 1990, and reply comments on or before November 20, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John R. Wilner, Bryan, Cave, McPheeters & McRoberts, 1015 Fifteenth Street, Suite 1000, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheurele, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–411, adopted August 24, 1990, and released September 14, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–22193 Filed 9–18–90; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 55, No. 182
Wednesday, September 19, 1990

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

Office of the Secretary

Announcement of General Policy

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: Notice is hereby given that it is the general policy of the United States Department of Agriculture (USDA) that its employees purchase and use fuels containing ethanol or ETBE (ethyl tertiary butyl ether) in USDA owned and leased highway vehicles when such fuels are available at prices comparable with regular unleaded gasoline. This action is being taken in response to President Bush's clean air proposal, which relies heavily on the use of oxygenated fuel to help improve air quality. Gasolines oxygenated with ethanol and ETBE produced from corn and other agricultural products reduce hydrocarbons and other noxious emissions that react in sunlight to form ozone or smog. This action is also consistent with President Bush's initiative to reduce America's dependence on foreign oil. [The Freedom of Information Act (5 U.S.C. 552(a)(1)(D)].

FOR FURTHER INFORMATION CONTACT: Bruce Gardner, Acting Director, Office of Energy, 447-4164.

Clayton Yeutter,

Secretary of Agriculture.

[FR Doc. 90-22175 Filed 9-18-90; 8:45 am]

BILLING CODE 3410-26-M

Forest Service

Wild and Scenic River Suitability Study for the Lower Wallowa River, Wallowa and Union Counties, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a legislative environmental impact statement.

SUMMARY: The USDA, Forest Service will prepare a legislative environmental impact statement (LEIS) and wild and scenic river study report to determine the eligibility and address the suitability of the Lower Wallowa River in Wallowa and Union Counties for inclusion into the National Wild and Scenic Rivers System. The Forest Service invites written comments and suggestions on management of this river section and the scope of this analysis. The agency gives notice of the full environmental analysis and decisionmaking process that will occur on this study so that interested and affected people are aware of how they may participate and contribute to the final recommendation to Congress.

DATES: Comments concerning the study of this river should be received by November 3, 1990.

ADDRESSES: Send written comments and suggestions concerning the management of this river to Robert M. Richmond, Forest Supervisor, Wallowa-Whitman National Forest, P.O. Box 907, Baker City, Oregon 97814.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and draft LEIS should be directed to Woody Fine, Wild & Scenic River Planning Team Leader, Wallowa-Whitman National Forest, P.O. Box 907, Baker City, Oregon 97814; telephone (503) 523-6391.

SUPPLEMENTARY INFORMATION: The Omnibus Oregon Wild and Scenic Rivers Act of 1988 amended section 5(a) of the Wild and Scenic Rivers Act (Pub. L. 90-542, 82 Stat. 910, as amended) to include the Lower Wallowa River. Section 5(b) of the Wild and Scenic Rivers Act requires that rivers identified in section 5(a) be studied "to determine whether it should be included in the National Wild and Scenic Rivers System." The study will consider a 9-mile segment of the Wallowa River, from its confluence with the Minam River to its confluence with the Grande Ronde River, to include lands generally within ¼ mile from each stream bank. Preliminary alternatives include a wild and scenic designation for the length of the proposal, and an unsuitable for designation alternative.

Robert M. Richmond, Forest Supervisor, Wallowa-Whitman National Forest is the responsible official for preparing the suitability study. Clayton Yeutter, Secretary of Agriculture, U.S. Department of Agriculture, room 200-A, Administration Building, Washington, DC 20250 is the responsible official for recommendations for wild and scenic river designation.

Public participation is especially important at several points in the study process. The first point is the scoping process (40 CFR 1501.7). The Forest Service is seeking information, comments, and assistance from Federal, State, and local agencies, affected Indian tribes, individuals and organizations who may be interested in or affected by the proposed action. The public input will be used in preparation of the draft LEIS.

Initial scoping has occurred. Public meetings have been held and comments have been solicited by letters, newsletters, and newspaper articles. Twelve public meetings were held between November 1989 and March 1990, to inform the public of the study process and to provide for public participation and involvement. Federal, State, and local agencies as well as the Confederated Tribes of the Umatilla Indian Reservation, and the Nez Perce Indian Nation, user groups, and other organizations participated in scoping the issues that should be considered. In addition, an Ad Hoc Work Group representing these interests has been formed, under the provisions of section 11(b) of the Wild and Scenic Rivers Act (Pub. L. 90-542, 82 Stat. 910, as amended), to help develop alternatives to be analyzed as part of the river study. Additional comments conerning the study of this river are encouraged.

The draft LEIS is expected to be filed with the Environmental Protection Agency (EPA), and available for public review by September 1991. At that time, the EPA will publish a notice of availability of the draft LEIS in the **Federal Register**.

The comment period on the draft LEIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in the management of this river participate at that time. To be the most helpful, comments on the draft LEIS should be as specific as possible, and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council

on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act, 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft LEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft LEIS stage but that are not raised until after completion of the final LEIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1988) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

After the comment period ends on the draft LEIS, comments will be analyzed and considered by the Forest Service in preparing the final LEIS. In the final LEIS, the Forest Service will respond to comments received (40 CFR 1503.4). The final LEIS is scheduled to be completed by the end of March 1992. The Secretary will consider the comments, responses, and consequences discussed in the LEIS, applicable laws, regulations, and policies in making a recommendation to the President regarding the suitability of this river for inclusion into the National Wild and Scenic Rivers System. The final decision on inclusion of a river in the National Wild and Scenic Rivers System rests with the Congress of the United States.

Dated: September 13, 1990.

David E. Ketcham,

Director of Environmental Coordination.

[FR Doc. 90-22151 Filed 9-18-90; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Harold Bennett

Order

In the Matter of: Harold Bennett, 25 Ironwood Street, Coto De Caza, El Toro, California 92679, Respondent.

Whereas, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), has notified Harold Bennett (Bennett), of its intention to initiate an administrative proceeding against Bennett pursuant to section 13(c) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. 2401-2420 (Supp. 1990)) (the Act), by issuing a Charging Letter alleging that Bennett violated the provisions of § 787.12 the Export Administration Regulations (currently codified at 15 CFR parts 768-799 (1990)) (the Regulations) on 11 separate occasions during the period April 1985 through January 1986, by partcipating in export transactions with Kurt Behrens, a "person denied export privileges" within the meaning of § 787.12(b) of the Regulations;

Whereas, the Department and Bennett have entered into a Consent Agreement whereby they have agreed to settle the matter by Bennett's paying to the Department a civil penalty of $10,000, which penalty is suspended as set forth below, and by the Department's denying Bennett's export privileges for five years;

The Terms of the Consent Agreement having been approved by me;

Therefore, it is ordered

First, that a civil penalty in the amount of $10,000 is assessed against Bennett. As authorized by § 788.17(b) of the Regulations, the civil penalty herein provided for against Bennett shall be suspended for a period of five years beginning from the date of entry of this Order and shall thereafter be waived, provided that, during the period of suspension, Bennett has not committed any violation of the Act or any regulation, order or license issued under the Act.

Second, that Harold Bennett, 26 Ironwood Street, Coto De Caza, El Toro, California 92679, and all his successors, assignees, officers, partners, representatives, agents and employees, shall be denied, for a period of five years from the date of this Order, all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving the export of U.S.-origin commodities or technical data from the United States or abroad.

A. All outstanding individual validated export licenses in which Bennett appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Bennett's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

B. Without limiting the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data, in whole or in part, exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

C. After notice and opportunity for comment, such denial may be made applicable to any person, firm, corporation, or business organization with which Bennett is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

D. 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 Licensing shall, with respect to U.S.-origin commodities and technical data subject to the Act and the Regulations, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with Bennett or any related person, or whereby Bennett or any related person 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 U.S.-origin commodity or technical data exported in whole or in part, or to be exported by, to, or for Bennett or any related person 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.

Third, that the proposed Charging Letter, the Consent Agreement and this Order shall be made available to the public and shall be published in the **Federal Register.**

This constitutes the final agency action in this matter.

Dated: September 19, 1990.

Quincy M. Krosby,

Assistant Secretary for Export Enforcement.

[FR Doc. 90-22150 Filed 9-18-90; 8:45 am]

BILLING CODE 3510-DT-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amdt. of an Import Limit and Restraint Period for Certain Cotton Textile Products Produced or Manufactured in the Republic of the Philippines

September 14, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending a limit and restraint period.

EFFECTIVE DATES: September 20, 1990.

FOR FURTHER INFORMATION CONTACT: Kim-Bang Nguyen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715. For information on categories on which consultations have been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and the Philippines agreed, effected by exchange of letters dated September 6 and 7, 1990, to amend the current limit for Category 361 for the new restraint period which began on June 28, 1990 and extends through December 31, 1990. As a result, the limit for Category 361, which is currently filled, will re-open.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 55 FR 29258, published on July 16, 1990.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

September 14, 1990.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on July 11, 1990 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of cotton textile products in Category 361, produced or manufactured in the Philippines and exported during the period which began on June 28, 1990 and extends through September 25, 1990.

Effective on September 20, 1990 the directive of July 11, 1990 is amended to extend the restraint period for Category 361 through December 31, 1990 at an increased level of 543,070 numbers.[1]

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,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-22157 Filed 9-18-90; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

September 13, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing an import limit.

EFFECTIVE DATE: September 20, 1990.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6498. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding dated August 24, 1990, the Governments of the United States and Pakistan agreed to amend their current bilateral textile agreement to increase the designated consultation level for Category 659 for the 1990 agreement year only.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 48293, published on November 22, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Memorandum of Understanding, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

September 13, 1990.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive of November 16, 1989 issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1990 and extends through December 31, 1990.

Effective on September 20, 1990, you are directed to increase to 144,600 kilograms [1] the current limit for man-made fiber textile products in Category 659.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-22108 Filed 9-18-90; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to account for any imports exported after June 27, 1990.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1989.

Establishment of an Import Limit for Certain Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Republic of the Philippines

September 13, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: September 20, 1990.

FOR FURTHER INFORMATION CONTACT: Kim-Bang Nguyen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715. For information on categories on which consultations have been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Inasmuch as consultations have not yet been held on a mutually satisfactory solution on Category 847 and the consultation period expired on August 28, 1990, the United States Government has decided to control imports in this category for the prorated period August 29, 1990 through December 31, 1990.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 55 FR 24604, published on June 18, 1990.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

September 13, 1990.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further amended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Agreement of March 4, 1987, as amended, between the Governments of the United States and the Philippines; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on September 20, 1990, entry into the United States for consumption and withdrawal from warehouse for consumption of silk blend and other vegetable fiber apparel in Category 847, produced or manufactured in the Philippines and exported during the period which began on August 29, 1990 and extends through December 31, 1990, in excess of 191,713 dozen [1].

Textile products in Category 847 which have been exported to the United States on and after January 1, 1990 shall remain subject to the Group II limit established for the period January 1, 1990 through December 31, 1990.

Imports charged to the limit for Category 847 for the period May 31, 1990 through August 28, 1990 shall be charged against the level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

For the import period May 31, 1990 through June 18, 1990, there are zero charges to be made to Category 847 for the restraint period May 31, 1990 through August 28, 1990.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

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,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-22109 Filed 9-18-90; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to account for any imports exported after August 28, 1990.

Adjustment of an Import Limit for Certain Cotton, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Sri Lanka

September 13, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing a limit.

EFFECTIVE DATE: September 20, 1990.

FOR FURTHER INFORMATION CONTACT: Kim-Bang Nguyen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6580. For information on embargoes and quota re-opening, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 347/348/847 is being reduced for carryforward used during the previous agreement period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 55 FR 25861, published on June 5, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

September 13, 1990

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on June 19, 1990 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Sri Lanka and exported during the period which began on July 1, 1990 and extends through June 30, 1991.

Effective on September 20, 1990, the directive of June 19, 1990 is being amended to reduce the limit for textile products in Categories 347/348/847, as provided under the provisions of the current bilateral agreement between the Governments of the United States and Sri Lanka:

Category	Adjusted twelve-month limit [1]
347/348/847.....	826,800 dozen of which not more than 525,845 dozen shall be in Categories 347-T/348-T.[2]

[1] The limit has not been adjusted to account for any imports exported after June 30, 1990.

[2] Category 347-T: only HTS numbers 6103.19.2015, 6103.19.4020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.3010, 6112.11.0050, 6113.00.0035, 6203.19.1020, 6203.19.4020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.3020,

6210.40.2030, 6211.20.1520, 6211.20.3010 and 6211.32.0040; Category 348-T: only HTS numbers 6104.12.0030, 6104.19.2030, 6104.22.0040, 6104.29.2034, 6104.62.2010, 6104.62.2025, 6104.69.3022, 6112.11.0060, 6113.00.0040, 6117.90.0042, 6204.12.0030, 6204.19.3030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.3010, 6204.69.9010, 6210.50.2030, 6211.20.1550, 6211.20.6010, 6211.42.0030 and 6217.90.0050.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-22110 Filed 9-18-90; 8:45 am]

BILLING CODE 3510-DR-M

CONSUMER PRODUCT SAFETY COMMISSION

Request for Approval of Collection of Information—Survey of Fire Departments Investigating Gas Appliance Fires

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for approval through September 30, 1992, of a collection of information involved in a survey of local fire departments which report investigations of fires through the National Fire Incident Reporting System. The purpose of this survey is to obtain information about the number of fires involving water heaters, furnaces, space heaters and similar appliances which use natural gas for fuel, and the number of fires involving the same kinds of appliances which use liquified petroleum (LP) gas for fuel. The Commission will use the information obtained by this survey and other information about the numbers of appliances fueled by natural gas and by LP gas to evaluate the comparative risk of fires associated with the two types of gas-fueled appliances.

Additional Details About the Request for Approval of a Collection of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Fuel Involved in Gas Heating Equipment Fires.

Type of request: New plan.

Frequency of collection: One time.

General description of respondents: Local fire departments which report fire investigations through the National Fire Incident Reporting System.

Estimated number of respondents: 2,000.

Estimated average number of hours per respondent: 1/60.

Estimated number of hours for all respondents: 33.3.

Comments: Comments on this request for approval of a collection of information should be addressed to Elizabeth Harker, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395-7340. Copies of the request for approval of a collection of information are available from Francine Shacter, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 492-6416.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: September 13, 1990.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 90-22095 Filed 9-18-90; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10801-001, California]

Surrender of Preliminary Permit, Boca Hydro Associates

September 12, 1990.

Take notice that Boca Hydro Associates, permittee for the Boca Dam Hydro Project No. 10801 has requested that its preliminary permit be terminated. The preliminary permit was issued December 12, 1989, and would have expired on November 30, 1992. The project would have been located at an existing dam on the Little Truckee River in Nevada County, California.

The permittee filed the request on August 23, 1990, and the preliminary permit for Project No. 10801 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect thorough the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 90-22112 Filed 9-18-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[Docket No. FE C&E 90-19; Certification Notice 67]

Notice of Filing Certification of Compliance: Coal Capability of New Electric Powerplant

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Act of 1978, as amended, ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a), 42 U.S.C. 8311(a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. One owner and operator of proposed new electric base load powerplant has filed self certification in accordance with section 201(d). Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following company has filed self certification:

Name	Date received	Type of facility	Mega-watt ca-pacity	Location
Indeck Energy Services of Yonkers, Inc., Wheeling, IL	9-04-90	Combine cycle	130	Yonkers, NY.

Amendments to the FUA on May 21, 1987, (Pub. L. 100-42) altered the general prohibitions to include only new electric base load powerplants and to provide for the self certification procedure.

Copies of this self certification may be reviewed in the Office of Fuels Programs, Fossil Energy, room 3F-056, FE-52, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, or for further information call Myra Couch at (202) 586-6769.

Issued in Washington, DC on September 13, 1990.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Fossil Energy.

[FR Doc. 90-22196 Filed 9-18-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-38323]

Proposed Administrative Settlement Under 122(H)(1), Loveland Pass MTBE Site, Keystone, CO

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement; request for public comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to enter into an administrative settlement to resolve claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(h)(2). This settlement is intended to resolve the liabilities of Canal Insurance Company for response costs incurred at the Loveland Pass MTBE Site, Keystone, Colorado.

DATES: Comments must be submitted by October 19, 1990.

ADDRESSES: An original and two copies of comments must be sent to Louise F. Gunderson, Cost Recovery Coordinator, Loveland Pass MTBE Site Team, EPA Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202-2405.

FOR FURTHER INFORMATION CONTACT: Louise F. Gunderson, (303) 293-1868.

SUPPLEMENTARY INFORMATION: The proposed settler, Canal Insurance Company ("Canal"), insured the owner, operator and driver of the truck that overturned and spilled gasoline and MTBE on Loveland Pass in Colorado.

By the terms of the proposed settlement, Canal will pay $35,102.90 in response costs to EPA. In return, the United States will provide Canal and its insureds with a covenant not to sue limited to: Claims for civil liability to the United States arising out of section 107(a) of CERCLA for reimbursement of response costs incurred at or in connection with the Site as of the date upon which EPA signs the settlement agreement.

Kerrigan G. Clough,

Acting Regional Decision Officer, U.S. EPA, Region VIII.

[FR Doc. 90-22168 Filed 9-18-90; 8:45 am]

BILLING CODE 6560-50-M

[OPP-36175; FRL-3775-9]

Reevaluation and Update of Pesticide Assessment Guidelines, Subdivision F, Hazard Evaluation: Human and Domestic Animals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comments.

SUMMARY: In October 1982, EPA issued the Pesticide Assessment Guidelines, Subdivision F, Hazard Evaluation: Human and Domestic Animals. Subdivision F presented recommended experimental designs for a set of toxicology and associated studies in experimental animals. The studies were designed to assess the toxicity of pesticidal chemicals in order to evaluate their potential for harm to humans or domestic animals under proposed use conditions. Eight years of experience with the Subdivision F Guidelines and the concurrent advance of scientific and technical knowledge have shown that scientific and technical modifications of these Guidelines may be necessary. This notice is a request for scientific and technical comments on the Subdivision F Guidelines to be used in the Agency's efforts to update them in light of more modern technical knowledge.

DATES: Comments, must be received on or before January 17, 1990.

ADDRESSES: Submit three copies of written comments, identified with the docket control number "OPP-36175" by mail to: Public Docket and Freedom of Information Section, Field Operations Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location to deliver comments to: Rm. 236C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any portion 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 docket. 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 Room 244 Bay at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Robert P. Zendzian, Health Effects Division (H7509C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 816D, CM #2,1921 Jefferson Davis Highway, Arlington, VA (703) 557-5495.

SUPPLEMENTARY INFORMATION: The Pesticide Assessment Guidelines, Subdivision F, describe protocols for performing toxicology and related tests to support registration of pesticides under the Federal Food, Drug, and Cosmetic Act (FFDCA) and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). A description of the organization of these Guidelines and their relationship to data requirements appear in 40 CFR part 158, Data Requirements for Registration. Information necessary for ordering copies of Subdivision F and subsequent addenda from the National Technical Information Service is given below.

The Agency is also in the process of updating the data requirements for registration, as specified in part 158, and will independently issue proposed modifications for public comment.

Subdivision F was proposed for public comment in 1978 and, after modifications based on these comments, published in October 1982. Subsequently, additions to these guidelines, mainly the Data Report addenda, have been published. However, no comprehensive reevaluation of these Guidelines has been undertaken. Eight years of experience with the Subdivision F Guidelines has raised various questions about their technical performance. In general, questions have been raised about the clarity of the description of certain tests, and the scientific merit of adding to, changing, or deleting certain portions of particular tests. In addition, the Agency's and the scientific community's interpretation as to what constitutes the best scientific evidence for risk assessment purposes has, in some cases, changed with increasing knowledge.

This request for comments is designed to take advantage of the public's practical experience with the Subdivision F Guidelines and the scientific advances in toxicological testing since their publication.

All interested parties are encouraged to submit scientific and technically directed comments on the Subdivision F Guidelines. Comments are generally expected to fall into one of three categories: the scientific merit of certain tests, the clarity of the description of certain tests, and the necessity of modifying certain tests. Comments should specifically identify the test by name, number, and paragraph or subparagraph. Recommended changes/modifications must be supported by current scientific/technical knowledge and include supporting references. References may be to other existing guidelines, the published literature, studies submitted to the Agency in support of registration and unpublished data. Citations must be sufficiently detailed so as to allow the Agency to obtain copies of the original documents, and unpublished data must be supplied in sufficient detail to allow its evaluation.

The Agency is processing guidelines for mutagenicity and neurotoxicity studies and is preparing draft guidelines for dermal absorption and immunotoxicity to be published for public comment in the fall of 1990. Comments on these guidelines are not to be included in responding to this notice.

Comments on Subdivision F will be considered by the Agency, in light of its experiences over the last 8 years, and such modifications of the Guidelines that are of scientific and technical merit will be considered for inclusion in draft revised Guidelines. The draft modifications will be made available to the public for comment and will be presented to the FIFRA Scientific Advisory Panel at a public meeting for their comments before being published in a final form.

Copies of Pesticide Assessment Guidelines, Subdivision F, may be obtained from the National Technical Information Service (NTIS). Orders may be placed to NTIS by telephone at the following number: (703) 487-4650, or by mail to the following address: National Technical Information Service, Attention: Order Desk, 5285 Port Royal Road, Springfield, VA 22161. Titles and order numbers are as follows:

Titles	Order Number
Subdivision F, Hazard Evaluation: Humans & Domestic Animals (Revised)	PB86-108958
Subdivision F, Hazard Evaluation: Humans & Domestic Animals-Adden 1	PB86-248184
Subdivision F, Hazard Evaluation: Humans & Domestic Animals-Adden 2	PB88-162292
Subdivision F, Hazard Evaluation: Humans & Domestic Animals-Adden 3	PB88-171179
Subdivision F, Hazard Evaluation: Humans & Domestic Animals-Adden 4	PB88-162227
Subdivision F, Hazard Evaluation: Humans & Domestic Animals-Adden 5	PB88-162219
Subdivision F, Hazard Evaluation: Humans & Domestic Animals-Adden 6	PB89-124077
Subdivision F, Hazard Evaluation: Humans & Domestic Animals-Adden 7	PB89-124085
Subdivision F, Hazard Evaluation: Humans & Domestic Animals-Adden 8	PB90-122227
Subdivision F, Revised Policy for Acute Toxicity Testing	PB90-122151

The Agency will also use this occasion as an opportunity to combine those portions of Subdivision F that have been published at different times into a single document for public dissemination.

Dated: September 5, 1990.

Penelope A. Fenner-Crisp,

Director, Health Effects Division, Office of Pesticide Programs.

[FR Doc. 90-21891 Filed 9-18-90; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

[FCC 90-310]

Conflict of Interest Waiver

AGENCY: Federal Communications Commission.

ACTION: Notice of waiver of section 4(b) of the Communications Act.

SUMMARY: Notice is hereby given that the Commission granted a waiver of the financial interest prohibition contained in section 4(b) of the Communications Act, 47 U.S.C. 154(b), for Mr. William O. Browning, vice president, Consolidated Communications Company (CCC), who has been appointed to the Commission's Field Operations Bureau under the President's Commission on Executive Exchange. The Commission concluded that, notwithstanding Mr. Browning's intention to return to CCC, waiver is appropriate in this case given the nature of Mr. Browning's FCC position, the one year duration of his employment, the fact that his salary will be paid fully by the FCC and the fact that his appointment is under the President's Executive Exchange Program. The Communications Act requires that notice of section 4(b) waivers be published in the **Federal Register.**

EFFECTIVE DATE: September 11, 1990.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Sharon Kelley, (202) 632-6990.

SUPPLEMENTARY INFORMATION: This notice is in accordance with section 4(b) of the Communications Act, 47 U.S.C. 154(b)(2)(B)(ii).

Donna R. Searcy,

Secretary.

[FR Doc. 90-22188 Filed 9-18-90; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Vessel Operators Hazardous Materials Association Agreement

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 § 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.: 203-011290-001

Title: Vessel Operators Hazardous Materials Association Agreement.

Parties: American-Africa-Europe Line GmbH, Atlantic Container Line B.V., Evergreen Marine Corporation (Taiwan), Ltd., Farrell Lines, Inc., Hapag-Lloyd AG, Kawasaki Kisen Kaisha Ltd., A.P. Moller-Maersk Line, Mitsui O.S.K. Lines, Ltd., Nippon Yusen Kaisha Line, P&O Containers, Ltd., Sea-Land Service, Inc., Wilh. Wilhelmsen Ltd. AS, Zim Israel Navigation Shipping Co., Ltd.

Synopsis: The proposed amendment would add Independent Container Line Ltd., Hamburg-Sudamerikanische Dampfschiffahrts Gesellschaft Eggert & Amsinck (Columbus Line) and Nedlloyd Lijnen B.V. as parties to the Agreement. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: September 13, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-22098 Filed 9-18-90; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed; Virginia International Terminals, Inc./Jugolinija Rijeka Terminal Agreement, et al.

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 10220. 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 § 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.: 224-200415

Title: Virginia International Terminals, Inc./Jugolinija Rijeka Terminal Agreement

Parties:

Virginia International Terminals, Inc. (VIT)

Jugolinija Rijeka (Jugolinija)

Synopsis: The Agreement provides for VIT to grant Jugolinija non-exclusive use of marine terminal facilities and services at Portsmouth Marine Terminal. Jugolinija will receive incentive rates based on a guaranteed movement of a minimum of 7,500 containers per year through Portsmouth Marine Terminal. Except for the inventive rates, all other terminal services and charges shall be in accordance with the terms and conditions of Terminal Tariff No. 2, issued by the Terminal Operators Conference of Hampton Roads. Jugolinija shall pay VIT for services rendered within 45 days of receipt of invoice. The term of the agreement is three years.

Agreement No.: 224-200414

Title: North Carolina State Ports Authority/Polish Ocean Lines Terminal Agreement.

Parties:

North Carolina State Ports Authority (Authority)

Polish Ocean Lines (POL)

Synopsis: The Agreement for: (1) POL's rental of approximately 11 acres of land located at the Authority's Wilmington Terminal for the receipt, delivery and storage of containers, chassis, trailers and highway vehicles; and, (2) the Authority to furnish certain special services to POL. During the term of the Agreement, POL will pay the Authority rent for the land in advance in monthly installments of $12,833.34. The term of the Agreement shall end on September 30, 1991.

Agreement No: 224-200413

Title: Greater Baton Rouge Port Commission/International Marine Terminals Terminal Agreement.

Parties:

Greater Baton Rouge Port Commission

International Marine Terminals (IMT)

Synopsis: The Agreement provides that IMT is entitled to use the Midstream Anchorage public dry bulk marine terminal facility pursuant to a first call on berth preferential assignment. IMT will have operational control of the facility and may impose reasonable rules and operational requirements in addition to those set forth in the Greater Baton Rouge Port Commission Tariff No. 1. The Agreement will terminate on October 31, 1990, but may be extended for additional periods of 1-year each.

By Order of the Federal Maritime Commission.

Dated: September 13, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-22099 Filed 9-18-90; 8:45 am]

BILLING CODE 6730-01-M

Item Submitted for OMB Review

The Federal Maritime Commission hereby gives notice that the following item has been submitted to OMB for review pursuant to the Paperwork Reduction Act of 1980, as amended. Requests for information, including copies of the collection of information and supporting documentation, may be obtained from John Robert Ewers, Director, Bureau of Administration, Federal Maritime Commission, 1100 L Street NW., room 12211, Washington, DC 20573, telephone number (202) 523-5866. Comments may be submitted to the agency and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Maritime Commission, within 15 days after the date of the **Federal Register** in which this notice appears.

Summary of Item Submitted for OMB Review

46 CFR Part 504

FMC requests an extension of clearance for 46 CFR Part 504 which implements the National Environmental Policy Act of 1969. That Act requires that agencies complete an assessment of potential environmental impacts of all major regulatory actions not excluded categorically from consideration. The Commission estimates an annual respondent universe of 27 with a total estimated 192 manhour burden. Total cost to the Federal Government is estimated at $37,500; total cost to respondents is estimated at $8,125.

Joseph C. Polking,

Secretary.

[FR Doc. 90-22122 Filed 9-18-90; 8:45 am]

BILLING CODE 6730-01-M

Item Submitted for OMB Review

The Federal Maritime Commission hereby gives notice that the following item has been submitted to OMB for review pursuant to the Paperwork Reduction Act of 1980, as amended. Requests for information, including

copies of the collection of information and supporting documentation, may be obtained from John Robert Ewers, Director, Bureau of Administration, Federal Maritime Commission, 1100 L Street, NW., room, 12211, Washington, DC 20573, telephone number (202) 523-5866. Comments may be submitted to the agency and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Maritime Commission, within 15 days after the date of the Federal Register in which this notice appears.

Summary of Item Submitted for OMB Review

46 CFR Part 560

FMC requests an extension of clearance for its rule pertaining to agreements in the domestic offshore trades subject to the Shipping Act, 1916. The rules has only limited applications because of the small number of agreements which are likely to be filed in the domestic offshore trades.

Out of the potential respondent universe of 260 common carriers and 445 marine terminal operators, the Commission estimates a respondent universe of approximately 10 with a total estimated annual manhour burden of 428. Total estimated cost to the Federal Government is approximately $23,920; total estimated cost to respondents is approximately $13,000.

Joseph C. Polking,

Secretary.

[FR Doc. 90-22121 Filed 9-18-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Firstar Corporation; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition 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 become 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)) 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, 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 they would be presented at the 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 October 9, 1990.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. Firstar Corporation, Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of Banks of Iowa, Inc., Des Moines, Iowa, and thereby indirectly acquire United Bank & Trust, Ames, Iowa; First National Bank, Burlington, Iowa; Cedar Falls Trust & Savings Bank, Cedar Falls, Iowa; Merchants National Bank of Cedar Rapids, Cedar Rapids, Iowa; Council Bluffs Savings Bank, Council Bluffs, Iowa; First Bank, National Association, Davenport, Iowa; Valley National Bank, Des Moines, Iowa; Central Trust and Savings Bank, Eldridge, Iowa; Henry County Savings Bank, Mount Pleasant, Iowa; Union Bank and Trust Company, Ottumwa, Iowa; Montgomery County National Bank of Red Oak, Red Oak, Iowa; and First National Bank in Sioux City, Sioux City, Iowa.

In connection with this application, Applicant also proposes to acquire Banks of Iowa Capital Corporation, Des Moises, Iowa, and thereby engage in servicing loans pursuant to § 225.25(b)(1); Banks of Iowa Credit Corporation, Des Moises, Iowa, and thereby engage in making, acquiring, and servicing loans pursuant to § 225.25(b)(1); and Banks of Iowa Computer Services, Inc., Cedar Rapids, Iowa, and thereby engage in providing data processing services pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 13, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-22114 Filed 9-18-90; 8:45 am]

BILLING CODE 6210-01-M

Fuji Securities Inc., et al.; Applications To Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 9, 1990.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President), 33 Liberty Street, New York, NY 10045:

1. *Fuji Securities Inc.*, Chicago, Illinois; to engage *de novo* in serving as investment adviser to an investment company registered under the Investment Company Act of 1940, including sponsoring, organizing and managing a closed-end investment company; providing portfolio investment advice to any other person; furnishing general economic information and advice, general economic statistical forecasting services and industry studies; and providing financial advice to state and local governments, such as with respect to the issuance of their securities pursuant to § 225.25(b)(4) of the Board's Regulation Y.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President), 104 Marietta Street, NW., Atlanta, GA 30303:

1. *Bartow Bancshares, Inc.*, Cartersville, GA; to engage *de novo* through its subsidiary, New South Finance, Inc., Cartersville, GA, in making, acquiring and servicing small consumer and commercial loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 13, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-22115 Filed 9-18-90; 8:45 am]

BILLING CODE 6210-01-M

Kirkwood Bancorporation Co.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has 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 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

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 to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than October 9, 1990.

A. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Kirkwood Bancorporation Co.*, Bismarck, North Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of Kirkwood Bank & Trust Co., Bismarck, North Dakota.

Board of Governors of the Federal Reserve System, September 13, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-22116 Filed 9-18-90; 8:45 am]

BILLING CODE 6210-01-M

Elvin Lowery; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than October 3, 1990.

A. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Elvin Lowery*, Huntington, Texas; to acquire an additional 36.8 percent of the voting shares of Huntington Bancshares, Inc., Huntington, Texas, for a total of 38.6 percent, and thereby indirectly acquire Huntington State Bank, Huntington, Texas.

Board of Governors of the Federal Reserve System, September 13, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-22117 Filed 9-18-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90M-0279]

CIBA Vision Corp.; Premarket Approval of CIBA Vision® Cleaner

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by CIBA Vision Corp., Atlanta, GA, for premarket approval, under the Medical Device Amendments of 1976, of the CIBA Vision® Cleaner. The device is to be manufactured under an agreement with Allergan Optical, Irvine, CA, which has authorized CIBA Vision Corp. to incorporate information contained in its approved premarket approval application and related supplements for the Lens Clear™ Soft Lens Cleaner (formerly LC-65 Daily Contract Lens Cleaner). FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of August 14, 1990, of the approval of the application.

DATES: Petitions for administrative review by October 9, 1990.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, 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, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1080.

SUPPLEMENTARY INFORMATION: On December 7, 1989, CIBA Vision Corp., Atlanta, GA 30360, submitted to CDRH an application for premarket approval of the CIBA Vision® Cleaner. The device is indicated for use to clean daily wear and extended wear soft (hydrophilic) contact lenses before rinsing and disinfection. The application includes authorization from Allergan Optical, Irvine, CA 92715-1599, to incorporate information contained in its approved

premarket approval application and related supplements for the Lens Clear™ Soft Lens Cleaner (formerly LC-65 Daily Contact Lens Cleaner).

On August 14, 1990, 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 Managemnet 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.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the 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) (21CFR 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 October 19, 1990, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food , Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53)

Dated: September 5, 1990.

Elizabeth D. Jacobson,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 90-22138 Filed 9-18-90; 8:45 am]

BILLING CODE 4160-01-M

Meeting on an Abbreviated New Drug Application Deficiency Study and Generic Drug Policy and Procedure Guides

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is holding a meeting on a study that it is conducting on deficiencies in abbreviated new drug applications (ANDA's) and on policy and procedure guides that the Office of Generic Drugs has prepared. The goal of this initiative is to provide the generic drug industry with information that can be used to improve the quality of submissions.

DATES: The meeting will be held from 1 p.m. tp 4:30 p.m. on Monday, September 24, 1990.

ADDRESSES: The meeting will be held in Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockveille, MD.

FOR FURTHER INFORMATION CONTACT:

Thomas J. McGinnis, Office of Generic Drugs (HFD-604), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2784.

SUPPLEMENTARY INFORMATION: FDA's Center for Drug Evaluation and Research (CDER) and Office of Planning and Evaluation (OPE) are conducting a study to identify and categorize deficiencies in ANDA's that contribute to their nonapproval. The goal of this initiative is to provide the generic drug industry with information that can be used to improve the quality of submissions, which in turn will help reduce the number of review cycles and the review time required to approve ANDA's.

The study is based on a random sample of 45 ANDA's that had been the subject of at least 2 not approvable letters during the period from January 1, 1988, to May 31, 1990. CDER and OPE are analyzing the first two not approvable letters on each ANDA in the sample to identify the major types of deficiencies encountered (*e.g.*, raw material tests and specifications) and the reasons for the deficiencies (*e.g.*, missing or incomplete information).

This meeting will focus on the chemistry and manufacturing deficiencies in ANDA's. Analysis of deficiencies involving labeling and other matters will be available later.

In addition, CDER will provide an open forum on the policy and procedure guides prepared by the Office of Generic Drugs. (For more information about the guides and their availability, see the **Federal Register** of February 21, 1990 (55 FR 6049).) Division staff will provide a brief overview of the guides, which will be followed by a question and answer period about the information contained in the guides.

Dated: September 14, 1990.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-22338 Filed 9-17-90; 3:22 am]

BILLING CODE 4160-01-M

Advisory Committees; Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Endocrinologic and Metabolic Drugs Advisory Committee

Date, time, and place. October 22, 1990, 9 a.m., and October 23, 1990, 8 a.m., Ramada Inn, Embassy Ballroom, 8400 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open public hearing, October 22, 1990, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m., open public hearing, October 23, 1990, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 4 p.m.; John R. Short, Center for Drug Evaluation and Research (HFD-510), Food and Drug Administration, 5600

Fishers Lane, Rockville, MD 20857, 301-443-3510.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in endocrine and metabolic disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal persentations should notify the contact person before October 12, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On October 22, 1990, the committee will discuss the treatment of hypercalcemia due to malignancy with Aredia™ (pamidronate disodium) and the treatment of Gauchers disease with Ceredase® (macrophase-targeted glucocerebrosidase). On October 23, 1990, the committee will discuss the use of Pravacho® (pravastatin) as a lipid-altering agent.

Gastrointestinal Drugs Advisory Committee

Date, time, and place. October 22 and 23, 1990, 9 a.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, October 22, 1990, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; open committee discussion, October 23, 1990, 9 a.m. to 5 p.m.; Joan Standaert, Center for Drug Evaluation and Research (HFD-180), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-0479 or 419-259-6211.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in gastrointestinal diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 12, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On October 22, 1990, the committee will discuss Tagamet® (cimetidine) for use in the treatment of gastroesophageal reflux disease, new drug application 17-920, Supplement #74, sponsored by SmithKline Beecham Pharmaceutical, and guidelines for the Study of Motility Modifying Disorders. On October 23, 1990, the committee will discuss guidelines for the Study of Inflammatory Bowel Disease.

Ear, Nose, and Throat Devices Panel

Date, time, and place. October 25, 1990, 12:30 p.m., and October 26, 1990, 8:30 a.m., First Floor Conference Rm., Piccard Bldg., 1390 Piccard Dr., Rockville, MD.

Type of meeting and contact person. Open public hearing, October 25, 1990, 12:30 p.m. to 2:30 p.m.; open committee discussion, 2:30 p.m. to 5 p.m.; open public hearing, October 26, 1990, 8:30 a.m. to 9:30 a.m.; open committee discussion 9:30 a.m. to 5 p.m.; Celeste F. Bove, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 1390 Piccard Dr. Rockville, MD 20850, 301-427-1230. For Telecommunications Device for the Deaf (TDD), contact the Federal Information Relay Service at 1-800-877-8339 or 708-9300 (Local). Interested persons who are hearing impaired and require interpreter services should contact Carlton Coleman, at 301-443-3310 (Voice), 301-443-1818 (TDD), by October 12, 1990.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 10, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss the classification of the following preamendments devices as time permits: Assistive listening device (ALD), tactile hearing aid, visual reinforcement audiometric apparatus, vestibular analysis apparatus, laryngeal stent or keel, nasal dilator; intranasal split, nasal septal button, and the bone pate collector.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, Rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (5 U.S.C. App. 2) and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: September 13, 1990.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-22139 Filed 9-18-90; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Open Meeting; San Francisco District

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: San Francisco District Office, chaired by Janet McDonald, Consumer Affairs Officer. The topic to be discussed is food labeling. Because of space limitations, reservations are necessary.

DATES: Wednesday, September 26, 1990, 5:30 p.m. to 9 p.m.

ADDRESSES: Pagoda Hotel, 1525 Rycroft St., Honolulu, HI 96814.

FOR FURTHER INFORMATION AND RESERVATIONS CONTACT BY SEPTEMBER 20: Janet McDonald, Consumer Affairs Officer, Food and Drug Administration, 50 United Nations Plaza, Rm. 524, San Francisco, CA 94102, 415-556-1458.

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: September 12, 1990.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-22140 Filed 9-18-90; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Open Meeting; Philadelphia District

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: Philadelphia District Office, chaired by Loren Y. Johnson, District Director. The topic to be discussed is food labeling.

DATES: Thursday, September 20, 1990, 9:30 a.m.

ADDRESSES: U.S. Food and Drug Administration, Rm 1001, U.S. Customhouse, 2nd & Chestnut Sts., Philadelphia, PA 19106.

FOR FURTHER INFORMATION CONTACT: Theresa A. Young, Consumer Affairs Officer, Food and Drug Administration, Rm. 900, U.S. Customhouse, 2nd & Chestnut Sts., Philadelphia, PA 19106, 215-597-0837.

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: September 12, 1990.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-22141 Filed 9-18-90; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Open Meeting; Detroit District

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: Detroit District Office, chaired by Carl Reynolds, District Director. The topic to be discussed is cholesterol labeling on food products.

DATES: Sunday, September 23, 1990, 2 p.m. to 2:30 p.m.

ADDRESSES: Listeners of WTLC (105.7) are invited to participate in a live talk-show format by calling 317-239-1057 during the program. WTLC Radio Program, WTLC-FM, 2126 North Meridian, Indianapolis, IN 46206.

FOR FURTHER INFORMATION CONTACT: Janet LeClair, Consumer Affairs Officer, Food and Drug Administration, 101 West Ohio St., Indianapolis, IN 46204, 317-226-6500.

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: September 12, 1990.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-22142 Filed 9-18-90; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 35). Copies of the explanatory material for the proposed collection of information may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Office of Management and Budget, Paperwork Reduction Project (1076-0100), Washington, DC 20503; Telephone No. (202) 395-7340.

Title: Land Acquisitions, 25 CFR 151.9.

OMB Approval Number: 1076-0100.

Abstract: Respondents are Native American tribes or individuals who request real property acquisitions in trust status. No specific form is used but respondents supply information and data so that the Secretary may make an evaluation and determination in

accordance wtih established Federal factors, rules and policies.

Bureau Form Number: None; no specific form required.

Frequency: As needed.

Description of Respondents: Native American tribes and individuals desiring acquisition of lands in trust status.

Estimated Completion Time: 4 hours.

Annual Responses: 9,200.

Annual Burden Hours: 36,800.

Bureau Clearance Officer: Gail Sheridan, (202) 208-2685.

Dated: August 15, 1990.

Marshall M. Cutsforth,

Acting Deputy to the Assistant Secretary—Indian Affairs (Trust and Economic Development.

[FR Doc. 90-22149 Filed 9-18-90; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[UT-020-00-5101-09-XJAA]

Salt Lake District; Notice of Availability

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the record of decision on the final EIS for the USPCI Incineration Facility, Tooele County, Utah.

SUMMARY: Notice is hereby given that the Bureau of Land Management, Salt Lake District, has completed the Record of Decision (ROD) on the final Environmental Impact Statement for the USPCI Clive Incineration Facility, and has made copies of the document available for public review.

Approved by the State Director, the ROD deemed it was in the public interest to approve the Clive site in Tooele County, Utah for the location of an incineration facility. The authorizations required to use the public lands for construction of the USPCI Clive Incineration Facility are also approved. These land use authorizations include right-of-way grants for temporary access roads, a temporary railroad spur, power transmission line, a well and access road, a water pipeline, and a telephone line. No transportation of hazardous or toxic materials will be allowed under the temporary access right-of-way. A proposed land exchange would allow for the transfer out of Federal ownership all public lands containing private haul roads and railroad spurs. A copy of the ROD may be obtained from: Salt Lake District Office, Bureau of Land Management, *Attn:* P&EC Coordinator, 2370 South 2300 West, Salt Lake City, Utah 84119, phone: (801) 977-4300.

FOR FURTHER INFORMATION CONTACT: Howard Hedrick, Pony Express Resource Area Manager.

Dated: September 10, 1990.

Deane H. Zeller,

District Manager.

[FR Doc. 90-22163 Filed 9-18-90; 8:45 am]

BILLING CODE 4310-DQ-M

[NM-910-00-GPO-410-4214-10; NM NM 55234]

Record of Decision; Waste Isolation Pilot Plant (WIPP)

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Record of decision. WIPP.

SUMMARY: As a cooperating agency with the Department of Energy (DOE) on the Final Supplemental Environmental Impact Statement (FSEIS) for the WIPP project, the BLM has reviewed the FSEIS and will implement the DOE's Proposed Action by recommending that the Secretary of the Interior approve the DOE's request for an amended administrative withdrawal for the WIPP. This would allow the DOE to continue the phased development of the WIPP. The next phase of the development of the WIPP is the Test Phase which will demonstrate the safe disposal of post-1970 transuranic (TRU) waste resulting from defense activities and programs of the United States. The Test Phase will involve emplacing, in a fully retrievable manner, a limited quantity of the TRU waste underground at the WIPP to conduct tests designed to collect data to reduce uncertainties associated with performance assessment predictions that are necessary to determine whether the WIPP would comply with Environmental Protection Agency. The Department of the Interior through the BLM, will proceed with an amended administrative land withdrawal for the Test Phase. The amended administrative land withdrawal would change the existing withdrawal to accommodate the storage of the TRU waste and would increase the DOE exclusive area from 640 acres to 1,453.90 acres. Approval of the administrative withdrawal would occur only when the DOE has certified that they have met all of the environmental and safety requirements of all State and Federal agencies. Adoption of the DOE FSEIS is in compliance with the regulations of the Council on Environmental Quality (40 CFR part 1506).

FOR FURTHER INFORMATION CONTACT: Clarence F. Hougland, BLM, New Mexico State Office, P.O. Box 1449, Santa Fe, New Mexico 87504-1449, 505-988-6071.

SUPPLEMENTARY INFORMATION: Record of Decision.

Record of Decision for the Final Supplemental Environmental Impact Statement Waste Isolation Pilot Plant January 1990

A. Decision

As a cooperating agency on the Department of Energy (DOE) Final Supplemental Environmental Impact Statement (FSEIS) for the Waste Isolation Pilot Plant (WIPP), the Bureau of Land Management (BLM) has reviewed the FSEIS and will implement the DOE's Proposed Action by recommending that the Secretary of the Interior approve the DOE's request for an amended administrative withdrawal for the WIPP. This would allow the DOE to continue the phased development of the WIPP. The next phase of the development of the WIPP is the Test Phase which will demonstrate the safe disposal of post-1970 transuranic (TRU) waste resulting from defense activities and programs of the United States. The Test Phase involves emplacing, in a fully retrievable manner, a limited quantity of TRU waste underground at the WIPP. The Test Phase will allow the DOE to conduct tests designed to collect data to reduce uncertainties associated with performance assessment predictions that are necessary to determine whether the long-term WIPP would comply with the Environmental Protection Agency (EPA) requirements.

B. Alternatives Including the Proposed Action

In the FSEIS, the DOE has analyzed the Proposed Action and two alternatives.

Proposed Action

The Proposed Action is to continue with a phased approach to the development of the WIPP to demonstrate the safe disposal of post-1970 defense-generated TRU waste by proceeding with the Test Phase. The Test Phase would involve transportation to and emplacement, in a fully retrievable manner, of a limited quantity of TRU waste underground at the WIPP. The Proposed Action would allow the DOE to conduct bin-scale tests and alcove tests designed to provide data to reduce the uncertainties of long-term performance of the WIPP site. The second element of the Test Phase

analyzed in the FSEIS would involve the conduct of an Operation Demonstration. The purpose of this demonstration would be to show the ability of the waste management system to safely and efficiently certify and package waste at generator/storage sites, transport waste to the WIPP, and emplace it underground. Considering the short-term and long-term impacts, the BLM believes that continued development of the WIPP is the environmentally preferred alternative.

No Action Alternative

Under the No Action Alternative, the DOE would not proceed with the phased development of the WIPP to demonstrate the safe disposal of TRU waste. TRU waste would not be shipped to or emplaced in the WIPP for the Test or Disposal Phases. The WIPP would be decomissioned as a facility for the demonstration of the safe disposal of TRU waste and potentially put to other uses. Temporary storage of TRU waste at various DOE sites would continue indefinitely. Treatment of newly generated mixed waste might be required to avoid conflict with the Resource Conservation and Recovery Act land disposal restrictions. Currently, capacity for such treatment does not exist at the DOE or at commercial facilities. The No Action Alternative would result in the indefinite continuation of extensive TRU waste storage, site monitoring, surveillance, and maintenance. An amended withdrawal would not be processed by the BLM.

Alternative Action

This alternative is to conduct the bin-scale tests at locations other than the WIPP site. There would be no emplacement of TRU waste in the WIPP underground until a determination was made of compliance with the EPA standards for the disposal of TRU waste. The bin-scale tests would be conducted in a specially-engineered aboveground facility, at another location, that could be constructed for this purpose. Since the alcove tests could not be performed practically or usefully at a location other than the WIPP underground, the results of the alcove tests would not be available to increase confidence regarding extrapolation from laboratory and bin-scale results to full-scale representative repository loading. An amended withdrawal application would not be processed by the BLM.

C. Management Considerations

The WIPP was authorized by Public Law 96–164, the "National Security and Military Applications of Nuclear Energy Act of 1980," to provide a research and development facility for demonstrating the safe disposal of radioactive waste produced by national defense activities. The DOE issued a Final Environmental Impact Statement (FEIS) on the proposed development of the WIPP in 1980. On March 23, 1982, Public Land Order (PLO) 6232 withdrew 8,960 acres of public land for research and development in connection with the WIPP. Of the total, 160 acres were reserved for the exclusive jurisdiction of the DOE. The withdrawal was for the purpose of performing a Site and Preliminary Design Validation Program for the WIPP. This withdrawal was for 8 years and expired in March 1990. On June 29, 1983, PLO 6403 withdrew the same 8,960 acres for the next phase of the WIPP, the construction of full facilities. Six hundred and forty acres (640) were reserved for the exclusive use of the DOE. On April 7, 1989, the DOE submitted an application to amend its existing withdrawal (PLO 6403) to conduct tests using retrievable radioactive waste at the site and to increase the exclusive use area to 1,453.90 acres. The proposed amended withdrawal is for 10,240 acres which includes two State sections which have been subsequently acquired through an exchange with the State of New Mexico. Because the original withdrawal had restricted the use of the site to design and construction, an amendment was necessary and a supplemental environmental assessment was also necessary. The FSEIS has analyzed the short-term and long-term environmental consequences of the Proposed Action, No Action, and the Alternative Action alternatives. Under the No Action alternative, TRU waste would continue to be generated and stored at existing facilities; no waste would be emplaced in the WIPP underground. Leaving the waste in surface storage over the long-term rather than disposing of it in a mined geologic repository could lead to higher radiation exposures to the general public and the environment. Under the Alternative Action, only the bin-scale tests would be completed. The results of the alcove-scale tests would not be available to increase knowledge and confidence regarding representative repository loading. The Proposed Action continues the phased approach to the development of the WIPP to demonstrate the safe disposal of post-1970, defense-generated TRU waste. The facilities needed to organize, instrument, and record the large amounts of required data are already in place at the WIPP. No new surface disturbing activities would occur.

D. Mitigation and Monitoring

As a cooperating agency with the DOE, the BLM has reviewed the FSEIS and has agreed with all mitigation measures within the FSEIS. A Cooperative Agreement and a Memorandum of Understanding will be prepared between the DOE and the BLM. The administrative withdrawal will not be processed until the DOE has submitted all required State and Federal permits and has met all the EPA requirements.

E. Public Involvement

The public has been involved in the preparation and completion of the FSEIS. A Notice of Availability of the FSEIS was published in the **Federal Register** (FR) on February 2, 1990. Comments on the FSEIS were received and were considered by the DOE in preparing their Record of Decision (ROD) and this ROD. The notice of amended withdrawal has also been published in the FR and allowed a 90-day comment period. During the hearings on the FSEIS, public comment was solicited in a series of hearings held in eight locations nationwide. This ROD is hereby approved as the decision of the Department of the Interior, BLM.

Issued at Santa Fe, New Mexico, this 22 day of August, 1990.

Larry L. Woodard,

State Director.

[FR Doc. 90–22097 Filed 9–18–90; 8:45 a.m.]

BILLING CODE 4310–FB–M

Fish and Wildlife Service

Extension to the Comment Period on Scoping Process for the Environmental Impact Statement on the Balcones Canyonlands Habitat Conservation Plan, Burnet, Travis, and Williamson Counties, TX

AGENCY: Fish & Wildlife Service, Interior.

ACTION: Notice of extension to the comment period.

SUMMARY: This Notice announces the extension of the public comment period which appeared in the **Federal Register** on August 2, 1990 (55 FR 31453–4). The period for written comments from the public on the EIS for Balcones Canyonlands Habitat Conservation Plan is extended from September 4, 1990, to October 1, 1990. A previously scheduled

public hearing was held on August 16, 1990. Written comments may be sent to Robert M. Short, Field Supervisor, Ecological Services, U.S. Fish and Wildlife Service, 711 Stadium Drive East, suite 252, Arlington, Texas 76011.

Dated: September 7, 1990.

Russell D. Earnest,

Acting Regional Director.

[FR Doc. 90-22164 Filed 9-18-90; 8:45 am]

BILLING CODE 4310-55-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-448, 449, & 450 (Final)]

Sweaters, Wholly or in Chief Weight of Manmade Fibers, From Hong Kong, the Republic of Korea, and Taiwan

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Hong Kong, the Republic of Korea ("Korea"), and Taiwan of sweaters, wholly or in chief weight of manmade fibers ("manmade-fiber sweaters"),[3] provided for in subheadings 6103.23.00, 6103.29.10, 6103.29.20, 6104.23.00, 6104.29.10, 6104.29.20, 6110.30.10, 6110.30.20, and 6110.30.30 of the Harmonized Tariff Schedule of the United States (HTS), that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

[1] The record is defined in sec. 207.2(h) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(h)).

[2] Commissioner Newquist dissenting. Acting Chairman Brunsdale did not participate.

[3] For purposes of these investigations, "sweaters of manmade fibers" are defined as knitted or crocheted outerwear garments wholly or in chief weight of manmade fibers, in a variety of forms including jackets, vests, cardigans with button or zipper fronts, and pullovers, usually having ribbing around the neck, bottom, and cuffs on the sleeves (if any), encompassing garments of various lengths. The phrase "in chief weight of manmade fibers" covers sweaters where the manmade fibers predominate by weight over each other single textile material. Sweaters by manmade fibers, as defined here, do not include sweaters 23 percent or more by weight of wool or sweaters for infants 24 months of age or younger. Sweaters of manmade fibers include all such sweaters regardless of the number of stitches per centimeter, but with regard to sweaters having more than nine stitches per two linear centimeters horizontally, only those with a knit-on rib at the bottom are included.

Background

The Commission instituted these investigations effective April 27, 1990, following preliminary determinations by the Department of Commerce that imports of manmade-fiber sweaters from Hong Kong, Korea, and Taiwan were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the appropriate notices in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notices in the **Federal Register** on May 9, 1990 (55 FR 19369) and June 15, 1990 (55 FR 24331). The hearing was held in Washington, DC, on August 9, 1990, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on September 10, 1990. The views of the Commission are contained in USITC Publication 2312 (September 1990), entitled "Sweaters, Wholly or in Chief Weight of Manmade Fibers, from Hong Kong, the Republic of Korea, and Taiwan: Determinations of the Commission in Investigations Nos. 731-TA-448, 449, & 450 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

Issued: September 12, 1990.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-22187 Filed 9-18-90; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31721]

MNVA Railroad, Inc.—Continuance in Control Exemption—Buffalo Ridge Railroad, Inc., & Dakota, Missouri Valley and Western Railroad, Inc.

MNVA Railroad, Inc. (MNVA), has filed a notice of exemption under 49 CFR 1180.4(g) to continue to control Buffalo Ridge Railroad, Inc. (Buffalo), and Dakota, Missouri Valley and Western Railroad, Inc. (Dakota), upon the commencement of rail operations by Dakota. Dakota, a wholly owned noncarrier subsidiary of MNVA, has filed concurrently a notice of exemption in Finance Docket No. 31720, *Dakota, Missouri Valley and Western Railroad, Inc.—Lease and Operation Exemption—Soo Line Railroad Company.* There, Dakota seeks an exemption to lease and operate 298.4 miles of rail line owned by Soo Line Railroad Company. The transaction also involves the assignment to Dakota of Soo's trackage rights over 63.7 miles of rail line owned by Burlington Northern Railroad Company (BN) or jointly by BN and Soo. Commission previously exempted the continuance in control by MNVA of Buffalo in Finance Docket No. 31389 (Sub-No. 1), *MNVA Railroad, Inc.—Continuance in Control Exemption—Buffalo Ridge Railroad, Inc.* (not printed), served February 27, 1989.

MNVA indicates that: (1) MNVA, Buffalo, and Dakota will not connect with each other or any railroad in their corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a Class I carrier. Therefore, this transaction involves the continuance in control of nonconnecting carriers, and is exempt from the prior review requirements of 49 U.S.C. 11343, *See* 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Any comments must be filed with the Commission and served on John D. Heffner, Gerst, Heffner, Carpenter & Podgorsky, suite 1107, 1700 K Street, NW., Washington, DC 20006.

Decided: September 13, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-22178 Filed 9-18-90; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-6 (Sub-No. 321X)]

Burlington Northern Railroad Company—Abandonment Exemption—in King County, WA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by Burlington Northern Railroad Company of 37.38 miles of rail line in King County, WA, subject to standard labor protective conditions, an endangered species condition, and an historic preservation condition.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on October 19, 1990. Formal expressions of intent to file an offer[1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by September 29, 1990, petitions to stay must be filed by October 1, 1990, and petitions for reconsideration must be filed by October 11, 1990. Requests for a public use condition must be filed by October 1, 1990.

ADDRESSES: Send pleadings referring to Docket No. AB–6 (Sub-No. 321X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and

(2) Petitioner's representative: Sarah J. Whitley, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired: (202) 275–1721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. *Telephone:* (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 275–1721.]

Decided: September 12, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90–22177 Filed 9–18–90; 8:45 am]

BILLING CODE 7035-01-M

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[Finance Docket No. 31720]

Dakota, Missouri Valley & Western Railroad, Inc.—Lease and Operation Exemption—Soo Line Railroad Co.

Dakota, Missouri Valley and Western Railroad, Inc. (Dakota) has filed a notice of exemption to lease and operate 298.4 miles of rail line owned by Soo Line Railroad Company (Soo) in North Dakota and Montana: (1) Between milepost 264.37, at Oakes, ND, and milepost 391.38, near Moffit, ND; (2) between milepost 417.98, at Bismarck, ND, and milepost 516.02 at Washburn, ND; (3) between milepost 341.8, near Wishek, and milepost 361.0, at Ashley, ND; (4) between mileposts 391.27 and 393.33, at Moffit; (5) between milepost 541.0, at Flaxton, ND, and milepost 549.64, at Rival, ND; (6) between milepost 582.3, at Crosby, ND, and milepost 676.83, at Whitetail, MT; (7) between mileposts 557.68 and 558.31, at Columbus, ND; and (8) between mileposts 581.19 and 582.35, enear Crobsy.

This transaction also involves the assignment to Dakota of Soo's trackage rights over 63.7 miles of rail line: (1) Owned by Burlington Northern Railroad Company (BN), between Soo milepost 391.38, at Moffit, and Soo milepost 417.98, at Bismarck; and (2) owned jointly by BN and Soo, between Soo milepost 549.64, at Rival, and Soo milepost 582.3, at Crosby, and over the short branch connecting the Flaxton-Whitetail mainline with the track at Columbus, ND.[1]

Any comments must be filed with the Commission and served on John D. Heffner, Gerst, Heffner, Carpenter & Podgorsky, Suite 1107, 1700 K Street NW., Washington, DC 20006, and Barry McGrath, Soo Line Railroad Company, Box 530, Soo Line Building, Minneapolis, MN 55440.

Dakota shall retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: September 13, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90–22179 Filed 9–18–90; 8:45 am]

BILLING CODE 7035-01-M

[1] Dakota's parent, MNVA Railroad, Inc., has filed a notice of exemption under 49 CFR 1180.4(g) to continue to control Dakota and another non-contiguous class III shortline railroad, Buffalo Ridge Railroad, Inc. *See* Finance Docket No. 31721, *MNVA Railroad, Inc.—Continuance in Control Exemption—Buffalo Ridge Railroad, Inc., and Dakota, Missouri Valley and Wetern Railroad, Inc.*

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Appellate Rules

AGENCY: Judicial Conference of the United States.

ACTION: Notice of open meeting.

SUMMARY: There will be a one-day meeting of the Advisory Committee on Appellate Rules to consider proposed amendments to the Federal Rules of Appellate Procedure. The meeting will be open to public observation.

DATES: October 23, 1990—9 a.m.

ADDRESSES: Administrative Office of the United States Courts, 811 Vermont Avenue, NW.—room 638, Washington, DC 20544.

FOR FURTHER INFORMATION CONTACT: James E. Macklin, Jr., Secretary, Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Washington, DC 20544, Telephone: (202) 633–6021.

Dated: September 13, 1990.

James E. Macklin, Jr.,

Secretary, Committee on Rules of Practice and Procedure.

[FR Doc. 90–22169 Filed 9–18–90; 8:45 am]

BILLING CODE 2210-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree, Sharon Steel Corp.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 14, 1990, a Partial Consent Decree in *United States* v. *Sharon Steel Corp.*, Civil Action Nos. 86–C–924J (the "Tailings case") and 89–C–136J (the "Slag case"), was lodged with the United States District Court for the District of Utah. A Partial Consent Decree between the United States and Sharon Steel Corporation, the present owner and operator, was lodged August 20, 1990.

The United States' Complaint was filed under sections 104, 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9604, 9606 and 9607, seeking injunctive relief and

reimbursement for the United States' response costs at the Midvale Tailings Site and Midvale Slag Site in Midvale, Utah. Further, the Complaint seeks judgment for the United States' future response costs not inconsistent with the National Contingency Plan.

The defendants in the Tailings case are Sharon Steel Corporation ("Sharon"), which presently owns the Tailings Site and approximately 11 acres of the Slag Site; UV Industries, Inc. ("UV"), a dissolved corporation which had owned and operated both Sites under the name of United States Smelting, Refining and Mining Company between 1906 and 1971; UV Industries, Inc. Liquidating Trust (the "Liquidating Trust"), a nonbusiness liquidating trust formed in 1980 to receive on behalf of UV's stockholders, prior to the dissolution of UV, all assets of UV not then susceptible to pro-rata distribution among UV's shareholders' and the Atlantic Richfield Corporation ("ARCO"), a generator and alleged operator at the Tailings Site between 1958 and 1971.

The defendants in the Slag case, other than Sharon, UV and the Liquidating Trust, are Valley Materials Corporation, Littleson, Inc., Century Terminals, Inc., and Blackhawk Slag Products, Inc., all of whom allegedly are either owners, operators or generators at the Slag Site.

The Partial Consent Decree at issue will resolve the United States' claims against UV and the Liquidating Trust in the two federal district court actions cited above. Under it, if the Decree becomes final and no longer appealable within one year of the date that the Court enters it, the United States will have received (i) A payment equalling 60 percent of all cash, direct United States Treasury Obligations, and any cash equivalents under control of the Liquidating Trustees calculated as of the 25th business day following entry of the Decree, less $750,000 (to provide one year's operating expenses for the Liquidating Trust); and (ii) payments equalling 60 percent of any additional cash thereafter obtained by the Liquidating Trust, including, any cash received (a) From Sharon and/or (b) from certain comprehensive general liability insurers as a result of a settlement or judgment with respect to claims against those carriers for indemnification, less the reasonable costs expended by the Liquidating Trust in collecting that cash. If any appeal or challenge continues beyond twelve months from the Court's entry of the Decree, the amounts payable to the United States will be reduced by $50,000 per month (representing an allowance for a share of administrative expenses of the Liquidating Trust if more than one year should elapse before the Decree becomes final and non-appealable) until the Decree becomes final and no longer appealable. In exchange, UV and the Liquidating Trust will receive (i) A release and covenant not to sue from the United States for any matters alleged in the Tailings or Slag cases, including future liability and any liability arising as a result of implementation of the remedy, and dismissal from the Tailings and Slag cases; (ii) a release and covenant not to sue for any matters relating to the Re-Solve, Inc. Superfund site in North Dartmouth, Massachusetts (a CERCLA matter which is in litigation in which neither the Liquidating Trust nor UV has been named as a defendant); (iii) a release by the State of Utah of all environmental claims; and (iv) contribution protection afforded under section 113(f) of CERCLA, 42 U.S.C. 9613(f).

The United States has incurred thus far approximately $6,000,000 in costs at the Tailings and Slag Sites. It has expended these funds, *inter alia*, to investigate conditions at the Sites, in order to determine suitable long-term remedial action and in preparing for the trial of the Tailings case. If the Decree is approved, the United States estimates that between $15 million and $20 million will be recovered from the Liquidating Trust.

Presently pending before the Court at this time as well is the proposed Partial Consent Decree which would settle these cases as between the United States and Sharon, in return for payments by Sharon totalling $22 million (the "Sharon Consent Decree"). It is uncertain how much money will have to be spent on long-term remediation at the Sites, although it is very likely that the ultimate costs will substantially exceed the amounts that would be obtained from the Liquidating Trust under the terms of the present Decree.

Docket No. 86-C-924], relating to the Tailings Site, is scheduled for trial on October 9, 1990 on liability issues only. Should the Court approve this Consent Decree, and the Sharon Consent Decree, prior to commencement of trial, trial will proceed with only ARCO as a defendant.

The Department of Justice will receive for a period of thirty days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Sharon Steel Corporation* Partial Consent Decree with UV, DOJ Ref. No. 90-11-2-146.

The proposed Consent Decree may be examined at the Environmental Enforcement Section Document Center, 1333 F Street NW., Suite 600, Washington, DC 20004, (202) 347-2072. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $20.50 (25 cents per page reproduction costs) payable to Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90-22209 Filed 9-18-90; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Richard G. Casey, M.D.: Revocation of Registration

On March 16, 1989, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued two Orders to Show Cause to Richard G. Casey, M.D. at 324 DeBaliviere, St. Louis, Missouri 63105, and 5572 Bartmer, St. Louis, Missouri, 63105, proposing to revoke his DEA certificate of Registration, AC8399710, and to deny any pending applications for renewal of such registration as a practitioner under 21 U.S.C. 823(f). The proposed action was predicated on Dr. Casey's lack of authorization to handle controlled substances in the State of Missouri. 21 U.S.C. 824(a)(3).

The Orders to Show Cause were sent to Dr. Casey by registered mail and were returned to DEA unclaimed. On June 6, 1989, an attorney representing Dr. Casey accepted service of an Order to Show Cause on Dr. Casey's behalf. More than thirty days have passed since the Order to Show Cause was received and the Drug Enforcement Administration has received no response thereto. Therefore, the Administrator concludes that Dr. Casey has waived his opportunity for a hearing on the issues raised in the Order to Show Cause and, pursuant to 21 CFR 1301.54(d) and 1301.54(e), enters this final order based on the information contained in the DEA investigative file. 21 CFR 1301.57.

The Administrator finds that on April 29, 1988, the Missouri Bureau of

Narcotics and Dangerous Drugs terminated Dr. Casey's registration to handle controlled substances in the State of Missouri. On April 24, 1989, Dr. Casey surrendered his state medical license.

The Administrator further finds that on January 19, 1990, in the United States District Court for the Eastern District of Missouri, Dr. Casey was convicted of two counts of mail fraud and two counts of tax evasion in violation of 18 U.S.C. 2, 18 U.S.C. 1341, and 26 U.S.C. 7201, respectively. He was sentenced to two years imprisonment and put on three years probation.

On March 6, 1990, the Department of Health and Human Services excluded Dr. Casey from participation in the Medicare program and any state health case program as defined in section 1128(h) (42 U.S.C. 1320a-7(h)) of the Social Security Act for a period of five years. The Board determined that Dr. Casey was convicted of a criminal offense which related to the delivery of an item or service under the Medicare program.

The Administrator concludes that DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances. See 21 U.S.C. 823(f); *Myong S. Yi, M.D.*, 54 FR 30618 (1989); *Clifford E. Bigott, D.M.D.*, Docket No. 88-24, 53 FR 28711 (1988); *Howard J. Reuben, M.D.*, 52 FR 8375 (1987); *Ramon Pla, M.D.*, Docket No. 86-54, 51 FR 41168 (1986); and cases cited therein. The Administrator further finds that DEA may revoke a registration if the registrant has been excluded from participation in a program pursuant to section 1320a-7(a) of title 42. See 21 U.S.C. 824(a)(5).

Having considered the facts and circumstances in this matter, the Administrator concludes that Dr. Casey's DEA Certificate of Registration should be revoked due to his lack of authorization to handle controlled subtances in the State of Missouri and his exclusion from participation in the Medicare program. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of registration, AC8399710, previously issued to Richard G. Casey, M.D., be, and it hereby is, revoked. The Administrator further orders that all pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective October 19, 1990.

Dated: September 11, 1990.

Robert C. Bonner,

Administrator.

[FR Doc. 90-22158 Filed 9-18-90; 8:45 am]

BILLING CODE 4410-09-M

Roy R. Kinder, Jr., M.D.; Denial of Application

On March 26, 1990, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Roy R. Kinder, Jr., M.D. of Ludlow Street and Brandon Road, Upper Darby, Pennsylvania 19082, proposing to deny his application, executed on March 20, 1989, for registration as a practitioner under 21 U.S.C. 823(f). The proposed action was predicated on Dr. Kinder's felony conviction relating to controlled substances and the suspension of his medical license by the Pennsylvania State Board of Medical Education and Licensure (Board). In addition, the Order to Show Cause alleged that Dr. Kinder's materially falsified a previous application for registration.

The Order to Show Cause, sent by registered mail, was delivered on March 29, 1990. Under 21 CFR 1301.54, an applicant has thirty days from the date of receipt of the Order to Show Cause in which to file a written request for a hearing. In the alternative, an applicant may file a waiver of the opportunity for a hearing together with a written response to the allegations contained in the Order to Show Cause. 21 CFR 1301.54(c). If, however, one fails to timely request a hearing, he shall be deemed to have waived his request for a hearing, unless he shows good cause for such failure. When an applicant is deemed to have so waived his opportunity for a hearing, the Administrator may issue his final order without a hearing pursuant to 21 CFR 1301.57. 21 CFR 1301.54 (d), (e).

Dr. Kinder has failed to respond in any way to the Order to Show Cause. More than ample time has been provided for a response. Therefore, the Administrator hereby enters his final order in this matter based upon the investigative file before him. 21 CFR 1301.57.

The Administrator finds that Dr. Kinder was the subject of an earlier DEA proceeding. In that case, then-Administrator John C. Lawn denied his application for registration. *See* 52 FR 24352 (June 30, 1987). The bases for that denial were Dr. Kinder's felony conviction relating to controlled substances and his material misrepresentation of the status of his state medical license on his application. The previous final order discussed in detail the underlying circumstances of his felony conviction, and is incorporated by reference herein. Generally, during an investigation of a local pharmacy, DEA investigators discovered a large number of prescriptions, written by Dr. Kinder, for Dilaudid and Quaalude. Dilaudid is a Schedule II narcotic controlled substance containing hydromorphone. Quaalude, which contains methaqualone, was then a Schedule II controlled substance. It has since been moved into Schedule I. The investigation revealed that of the 74,500 dosage units of Quaalude purchased by this pharmacy in 1980, 62,830 dosage units were purportedly dispensed pursuant to prescriptions issued by Dr. Kinder. During this same time period, the pharmacy purchased 13,100 dosage units of Dilaudid 4 mg., of which 12,480 dosage units were purportedly dispensed pursuant to Dr. Kinder's prescriptions.

Many of the individuals in whose names the subject prescriptions were issued informed DEA investigators that they never received the drugs allegedly prescribed for them by Dr. Kinder, a dermatologist. Indeed, these individuals were not even his patients, but were the patients of another dermatologist who practiced in the same building. Further, their medical charts showed that they had not been prescribed controlled substances and has not seen Dr. Kinder on the dates the drugs were allegedly prescribed for them. It was determined that Dr. Kinder wrote these fraudulent prescriptions to cover any shortages resulting from the diversion of controlled substances from the pharmacy.

On January 25, 1984, Dr. Kinder was indicted in the United States District Court for the Eastern District of Pennsylvania, and was charged with violations of 21 U.S.C. 841, 843, and 846. On March 20, 1984, Respondent pled guilty to and was convicted of one count of conspiracy to possess with intent to distribute controlled substances outside the course of professional medical practice and for no legitimate medical need, and one count of furnishing fraudulent material information. Both are felony offenses relating to controlled substances.

The former Administrator concluded that the felony conviction and the underlying circumstances alone constituted sufficient grounds to deny Dr. Kinder's application. Additionally,

he found that Dr. Kinder materially falsified his application for registration with respect to the status of his state medical license. By order dated October 30, 1985, the Pennsylvania State Board of Medical Education and Licensure suspended Dr. Kinder's license to practice medicine and surgery for three years, thereby terminating his ability to handle controlled substances. The application for registration was submitted on August 12, 1986. In response to a question on the application, Dr. Kinder stated that he was then authorized to handle controlled substances. However, his license remained on active suspension and he was not in fact authorized to handle controlled substances until December 14, 1986.

Based on the above-described felony convictions, as well as Dr. Kinder's material misrepresentation of the status of his state license on his previous application for registration, the Administrator concludes that the registration of Roy R. Kinder, Jr., M.D., would be inconsistent with the public interest pursuant to 21 U.S.C. 823(f), and, therefore, the instant application must be denied.

Pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b), the Administrator of the Drug Enforcement Administration hereby orders that the application of Roy R. Kinder, Jr., M.D., dated March 20, 1989, for registration as a practitioner under the Controlled Substances Act be, and it hereby is, denied. This order is effective September 19, 1990.

Dated: September 11, 1990.

Robert C. Bonner,

Administrator.

[FR Doc. 90-22162 Filed 9-18-90; 8:45 am]

BILLING CODE 4410-09-M

A Little Walnut Pharmacy, Inc., d/b/a A Little Walnut Pharmacy: Revocation of Registration

On February 22, 1990, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to A Little Walnut Pharmacy, Inc., d/b/a A little Walnut Pharmacy, of 10801 North Lamar Boulevard, Austin, Texas. The Order to Show Cause proposed to revoke the pharmacy's DEA Certificate of Registration, AA6656992, and to deny any pending applications for renewal of such registration on the grounds that the pharmacy's continued registration was inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4), and for further reason that the United States Department of Health and Human Services has excluded the pharmacy from participation in the Medicare program based upon the pharmacy corporation's conviction on charges relating to Medicare fraud.

The Order to Show Cause was sent to the pharmacy by registered mail, return-receipt requested. The return receipt indicates that the Order to Show Cause was received on March 16, 1990. More than 30 days have elapsed since that date and DEA has not received any response to the Order to Show Cause. Therefore, the Administrator concludes that A Little Walnut Pharmacy, Inc., has waived its opportunity for a hearing on the issues raised in the Order to Show Cause and, in accordance with 21 CFR 1301.54(d) and 1301.54(e), he enters this final order based upon the information contained in the DEA investigate file.

The Administrator finds that A Little Walnut Pharmacy, Inc., is owned and operated by Jack W. Seely, R.Ph. On March 13, 1987, the Texas State Board of Pharmacy revoked both the pharmacy license for A Little Walnut Pharmacy, Inc., and Mr. Seely's personal pharmacist's license. In its order, the Board concluded that Mr. Seely engaged in unprofessional conduct, acted outside the course of his professional practice and was negligent in filling prescriptions for more than 68,000 dosage units of Preludin 75 mg. during the period from August 12, 1985 to December 15, 1986. On April 8, 1987, the Travis County District Court granted a stay of the revocations pending appeal. On March 18, 1988, the District Court reversed the Board's order. On April 18, 1988, the Board appealed the District Court's decision to the Texas Civil Court of Appeals. The Court of Appeals reversed the District Court's decision and remanded the case to the Board. Mr. Seely and the pharmacy filed a writ of error with the Texas Supreme Court. That request was denied on September 13, 1989. At this time, there is no final resolution of the Board's revocation action.

The Administrator finds that for the period from August 12, 1985 to December 15, 1985, A Little Walnut Pharmacy, Inc., was one of the largest purchasers and dispensers of Preludin in the State of Texas. The pharmacy filled more than 2,000 Preludin prescriptions (for a total of 68,495 dosage units) during that time, accounting for 21.68% of all Preludin dispensed in the entire state. As compared with other Austin pharmacies, A Little Walnut Pharmacy, Inc., dispensed 98.13% of all the Preludin dispensed in that city.

The Administrator also finds that A Little Walnut Pharmacy, Inc., indiscriminately filled a multitude of Preludin prescriptions in 1985 and 1986. Diversion Investigators in the DEA Houston Field Division received reliable information that the pharmacy was filling multiple prescriptions for Preludin presented by persons other than those named on the prescriptions. A review of the pharmacy's prescription records confirmed this information. An overwhelming majority of the prescriptions were issued by two physicians in San Antonio, which is approximately 140 miles from Austin, and were filled for alleged patients who lived at least 75 miles from the pharmacy. In addition, DEA received information in 1986 and 1987, that the pharmacy has purchased excessive quantities of several drugs, including Preludin, Talwin NX and PBZ-SR (pyribenzamine). Although pyribenzamine is not a controlled substance, it is often abused in combination with Talwin.

The Administrator further finds that on January 11, 1989, in the Travis County District Court, A Little Walnut Pharmacy, Inc., was convicted, after entering a plea of no contest, of two counts of deceptive business practice in tampering with government records. The pharmacy was fined $5,000.00 and was ordered to pay court costs. The conviction resulted from an investigation which revealed that the pharmacy dispensed generic drugs, including controlled substances, to welfare patients but billed the state as though it dispensed trade name drugs. The pharmacy also labeled the prescription bottles as if the trade name drugs were dispensed.

As a result of the pharmacy's conviction, on July 28, 1989, the United States Department of Health and Human Services excluded A Little Walnut Pharmacy, Inc., from participation in the Medicare program for a minimum of five years, under 42 U.S.C. 1320a-7(a).

Pursuant to 21 U.S.C. 824(a), the Administrator may revoke a registrant's DEA Certificate of Registration upon a finding that the registrant:

(1) Has materially falsified any application filed pursuant to or required by this subchapter or subchapter II of this chapter;

(2) Has been convicted of a felony under this subchapter or subchapter II of this chapter or any other law of the United States, or of any State, relating to any controlled substance defined in this subchapter as a controlled substance;

(3) Has had his State license or registration suspended, revoked, or denied by competent State authority and is no longer authorized by State law to engage in the manufacturing,

distribution, or dispensing of controlled substances or has had the suspension, revocation, or denial of his registration recommended by competent State authority;

(4) Has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section; or

(5) Has been excluded (or directed to be excluded) from participation in a program pursuant to Section 1320–7(a) of title 42.

A Little Walnut Pharmacy, Inc., has been convicted of an offense relating to Medicare fraud, based upon its fraudulent billing of the state medical assistance program for trade name drugs it did not dispense to welfare patients. As a result, it has been excluded from participation in the Medicare and Medicaid program, pursuant to 42 U.S.C. 1320–7(a). This exclusion is sufficient to support the revocation of the pharmacy's DEA Certificate of Registration.

In determining whether the pharmacy's continued registration is inconsistent with the public interest, the Administrator considers the following five factors enumerated in 21 ULS.C. 823(f):

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with appliable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

In this case, all but the third factor are relevant in evaluating whether A Little Walnut Pharmacy, Inc.'s, continued registration is consistent with the public interest. The Texas State Board of Pharmacy has attempted to revoke the pharmacy's state license and Mr. Seely's pharmacist's license based upon controlled substance violations. In addition, the pharmacy dispensed dangerous controlled substances in excessive quantities under circumstances which would indicate they were to be used for other than legitimate medical purposes. Also, the pharmacy dispensed generic drugs, including controlled substances, yet billed the state and intentionally mislabeled the drug vials as if trade name drugs were dispensed. Clearly, by dispensing large quantities of dangerous drugs indiscriminately, the pharmacy also threatened the public health and safety.

Neither Mr. Seely nor any other person acting on behalf of the pharmacy submitted any evidence in mitigation or explanation of the pharmacy's activities. Therefore, the only evidence before the Administrator is negative. Based upon that evidence, the Administrator finds that there are sufficient grounds under 21 U.S.C. 824 to revoke the pharmacy's current DEA registration and to deny any pending applications for renewal. In addition, the Administrator concludes that the pharmacy's continued registration would be inconsistent with the public interest and its DEA registration must be revoked. 21 U.S.C. 823(f).

Therefore, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), the Administrator of the Drug Enforcement Administration orders that DEA Certificate of Registration, AA6656992, previously issued to A Little Walnut Pharmacy, Inc., be, and it hereby is, revoked. It is further ordered that any pending applications for renewal of such registration be, and they hereby are, denied.

This order is effective October 19, 1990.

Dated: September 11, 1990.

Robert C. Bonner,

Administrator.

[FR Doc. 90–22159 Filed 9–18–90; 8:45 am]

BILLING CODE 4410–09–M

Pharmaceutical Distribution Systems: Revocation of Registration

On April 21, 1989, the Administrator of the Drug Enforcement Administration (DEA) issued an Order to Show Cause to Pharmaceutical Distribution Systems (PDS), 2180 N.W. 18th Avenue, Pompano Beach, Florida 33069, proposing to revoke DEA Certificate of Registration, BP0630017, and to deny any pending applications for renewal of that registration. The Order to Show Cause alleged that the PDS's continued registration would be inconsistent with the public interest, as set forth in 21 U.S.C. 823(f) and 824(a)(4). Additionally, citing his preliminary finding that PDS's continued registration posed an imminent danger to the public health and safety, the Administrator ordered the immediate suspension of its registration pending the outcome of these proceedings. 21 U.S.C. 824(d).

On April 24, 1989, the Order to Show Cause and Immediate Suspension of Registration was served at the pharmacy. More than thirty days have passed since the Order to Show Cause was received by the pharmacy and the Drug Enforcement Administration has received no response thereto. Pursuant to 21 CFR 1301.54(a) and 1301.54(d), PDS is deemed to have waived its opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based upon the investigative file. 21 CFR 1301.57.

On March 14, 1988, DEA Diversion Investigators conducted an accountability audit of Dilaudid tablets at the pharmacy for the period from November 26, 1986 to March 14, 1988. The audit revealed an unexplained shortage of 10,489 dosage units and two missing order forms. Revised audit figures were prepared following verification with PDS's suppliers which revealed additional purchases. The revised audit figures show that PDS was unable to account for approximately 18,100 dosage units of Dilaudid. The results of the audit were presented to Frank Wretzel, PDS's owner and managing pharmacist, who explained that he had diverted a portion of the Dilaudid tablets in order to obtain money to get his business started.

In a related investigation, DEA Special Agents learned that a known drug dealer was obtaining controlled substances directly from DEA registrants. Between December 1988 and April 1989, controlled deliveries of controlled substances were made which revealed that the drug dealer had been receiving controlled substances from Frank Wretzel.

As a result of this investigation, on April 19, 1989, DEA Special Agents executed a search warrant at the pharmacy. At that time, Frank Wretzel admitted that he illegally sold Percodan and Dilaudid. He further admitted that he diverted controlled substances and then falsely reported that those drugs had been stolen. When questioned about the order forms, Frank Wretzel stated that he destroyed them for the purpose of hiding purchases of Schedule II controlled substances.

While DEA Special Agents executed the search warrant, DEA Diversion Investigators inventoried the controlled substances and removed the prescription files, order forms, invoices and business records. An audit was subsequently conducted for the period from November 26, 1986 to April 19, 1989. The audit revealed unexplained shortages of 91,997 dosage units of Percocet; 13,633 dosage units of Percodan; 15,810 dosage units of Dilaudid, 4 mg.; and, 3,130 dosage units of Dilaudid 2 mg. The audit also disclosed that the pharmacy was unable to account for thirty-nine DEA order forms.

On or about October 19, 1989, Frank Wretzel was indicated by a Federal grand jury in the United States District Court for the Southern District of Florida, and was charged with conspiracy to distribute Dilaudid and Percodan, in violation of 21 U.S.C. 841(a)(1) and 846.

In determining whether a registration would be inconsistent with the public interest, the Administrator must consider the following factors:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety. 21 U.S.C. 823(f).

The Administrator is not required to make findings with respect to all of the factors enumerated above. The Administrator has the discretion to give each factor the weight he deems appropriate, depending upon the facts and circumstances in each case. See *David E. Trawick, D.D.S.*, Docket No. 86-69, 53 FR 5326 (1988); *England Pharmacy*, 52 FR 1674 (1987); and *Paul Stepak, M.D.*, 51 FR 17556 (1986).

In this case, the second, fourth and fifth factors are relevant. After reviewing the entire investigative file, the Administrator finds that PDS's continued registration would be inconsistent with the public interest. The results of the accountability audits revealed huge shortages of highly abused controlled substances. Further, by his own admission, Frank Wretzel intentionally diverted controlled substances for other than a legitimate medical purpose and then falsely reported the theft of those substances. The public cannot tolerate such actions by a DEA registrant, whose position as a member of the health profession requires absolute compliance with the law and complete accountability for controlled substances with which it is entrusted. Therefore, in order to protect the public from further diversion of controlled substances, the Administrator concludes that the DEA Certificate of Registration currently held by Pharmaceutical Distribution Systems should be revoked, and that any pending applications for renewal of that registration should be denied.

Accordingly, having concluded that there is a lawful basis for the revocation of the pharmacy's registration, and for the denial of any pending application for renewal, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, BP063017, previously issued to Pharmaceutical Distribution Systems, be, and it hereby is, revoked. The Administrator further orders that any pending applications for renewal of that registration be, and they hereby are, denied. This order is effective September 19, 1990.

When the Order to Show Cause and Immediate Suspension was served on Pharmaceutical Distribution Ssytems, all controlled substances possessed by the pharmacy under the authority of its registration were placed under seal and removed for safekeeping. 21 U.S.C. 824(f) provides that no disposition may be made of such controlled substances under seal until all appeals have been concluded or until the time for taking an appeal has elapsed.

Accordingly, these controlled substances shall remain under seal until October 19, 1990 or until any appeal of this order has been concluded. At that time, all such controlled substances shall be forfeited to the United States and shall be disposed of pursuant to 21 U.S.C. 881(e).

Dated: September 11, 1990.

Robert C. Bonner,

Administrator.

[FR Doc. 90-22160 Filed 9-18-90; 8:45 am]

BILLING CODE 4410-09-M

Wobbe's Pharmacy; Revocation of Registration

On March 19, 1990, the Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause and Immediate Suspension to Wobbe's Pharmacy, 2406 Frankfort Avenue, Louisville, Kentucky. The Order to Show Cause immediately suspended the pharmacy's authority to handle controlled substances based on the Administrator's finding of imminent danger to the public health and safety. The Order to Show Cause further proposed to revoke the DEA registration of Wobbe's Pharmacy pending a final determination in these proceedings.

Pursuant to 21 CFR 1301.54(a), Wobbe's Pharmacy was allowed thirty days to request a hearing or otherwise respond to the Order to Show Cause. The Order to Show Cause was served on Wobbe's Pharmacy on March 20, 1990. More than thirty days have passed and the pharmacy has failed to request a hearing. The Administrator therefore deems Wobbe's Pharmacy to have waived its right to a hearing pursuant to 21 CFR 1301.54(d). Based on the pharmacy's waiver of its opportunity for a hearing on the issues raised in the Order to Show Cause, the Administrator issues this final order on the record as it appears pursuant to 21 CFR 1301.54(e).

The Administrator finds that on January 26, 1990, DEA Investigators visited Wobbe's Pharmacy to conduct an accountability audit of Schedule II controlled substances. This audit covered a period from May 28, 1987 to January 26, 1990. Investigators also audited Schedule III-V controlled substances covered a period between January 1, 1989 and January 26, 1990. The Schedule II audit revealed that Wobbe's Pharmacy could not account for over 2,500 tablets containing oxycodone, over 1,400 Tylox tablets, and over 700 tablets containing hydromorphone. The Schedule III-V audit revealed a shortage of over 17,000 dosage units containing diazepam, over 2,000 tablets containing alprazolam, and over 20,000 dosage units of codeine products. Some of these shortages represented between 70 and 85 percent of the pharmacy's controlled substance inventory of those drugs.

On February 14, 1990, the Investigators interviewed a customer who had been purchasing Dilaudid, a Schedule II narcotic, from Wobbe's Pharmacy for two years. The customer was required to pay an exorbitant price for the Dilaudid but could always obtain the drug even if the store was closed. The customer cooperated with investigators by agreeing to record his next purchases from Wobbe's Pharmacy and turn the drugs over to the Investigators.

On February 21, 1990, the customer purchased 11 Tylox tablets and 5 Dilaudid tablets for $240.00. On February 25, 1990 (a Sunday when the pharmacy was closed), the customer purchased 3 syringes of injectable morphine and 4 Tylox tablets for $200.00. On March 3, 1990, the customer purchased 4 Tylox tablets and 1 Dilaudid tablet for $60.00. On March 4, 1990, the customer purchased 2 Dilaudid tablets and 2 levodromoran tablets for $200.00. The customer had no prescriptions for any of these purchases and there was no legitimate medical purpose for dispensing the controlled substances.

The Administrator may revoke a DEA Certificate of Registration and deny any application for such registration, if he determines that the continued

registration of the registrant would be inconsistent with the public interest. 21 U.S.C. 823(f) and 824(a)(4). Pursuant to 21 U.S.C. 823(f), the Administrator considers the following factors in determining the public interest: 1. The recommendation of the appropriate State licensing board or professional disciplinary authority. 2. The applicant's experience in dispensing, or conducting research with respect to controlled substances. 3. The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances. 4. Compliance with applicable State, Federal, or local laws relating to controlled substances. 5. Such other conduct which may threaten the public health and safety. The Administrator may rely on any one, or any combination of, those enumerated factors. He may give such factors the weight he deems appropriate in determining whether a registration should be revoked or an application denied. See, for example, *Henry J. Schwarz, Jr., M.D.*, Docket No. 88–42, 54 FR 16422 (1989).

The Administrator finds that Wobbe's Pharmacy has engaged in the intentional and unlawful sale of controlled substances in violation of 21 U.S.C. 841(a) and 21 U.S.C. 842(a)(1). The large shortages found during the accountability audit suggest that Wobbe's Pharmacy intentionally diverted large amounts of controlled substances into illegal channels. Along with violating Federal law, Wobbe's Pharmacy has engaged in conduct which threatens the public health and safety. The dispensing of narcotic controlled substances without a prescription poses an immediate danger to all ultimate users. Without the physician's independent examination and judgment, the ultimate user risks addiction and overdose. The continued registration of Wobbe's Pharmacy is not in the public interest.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AW2997748, previously issued to Wobbe's Pharmacy, be, and it hereby is, revoked. It is further ordered that any pending applications for renewal of said registration be, and they hereby are, denied.

When the Order to Show Cause and Immediate Suspension of Registration was served on Wobbe's Pharmacy, all controlled substances possessed by the pharmacy under the authority of its then-suspended registration were placed under seal and removed for safekeeping. 21 U.S.C. 824(f) provides that no disposition may be made of such controlled substances under seal until all appeals have been concluded or until the time for taking an appeal has elasped. Accordingly, these controlled substances shall remain under seal until October 19, 1990, or until any appeal of this order has been concluded. At that time all such controlled substances shall be forfeited to the United States and shall be disposed of pursuant to 21 U.S.C. 881(e).

This order is effective September 19, 1990.

Dated: September 11, 1990.

Robert C. Bonner,

Administrator.

[FR Doc. 90–22161 Filed 9–18–90; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act; Native American Programs' Advisory Committee; Change of Meeting Date

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and section 401(h)(1) of the Job Training Partnership Act, as amended (29 U.S.C. 1671(h)(1)), notice is hereby given of a change of meeting date of the Job Training Partnership Act Native American Programs' Advisory Committee. Due to scheduling conflicts, the meeting dates previously published in the **Federal Register** on August 29, 1990 (55 FR 35380) have been changed.

Time and Date: The meeting will begin at 9 a.m. on October 4, 1990, and continue until close of business that day; and will reconvene at 9 a.m. on October 5, 1990, and adjourn at 12 p.m. that day. The final hour of the meeting on October 5 will be reserved for participation and presentations by members of the public.

Place: Department of Labor, 200 Constitution Avenue NW., rooms N–3437 A, B and C, Washington, DC.

Status: The meeting will be open to the public.

Matters to be Considered: The agenda will focus on the review of recommendations from the second Committee meeting, reports from the subcommittees and discussion of long range planning.

Contact person for more information: Paul A. Mayrand, Director, Office of Special Targeted Programs, Employment and Training Administration, United States Department of Labor, room N–4641, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: 202–535–0500 (this is not a toll-free number).

Signed at Washington, DC this 12th day of September, 1990.

Roberts T. Jones,

Assistant Secretary for Employment and Training.

[FR Doc. 90–22103 Filed 9–18–90; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-90-133-C]

C & L Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

C & L Coal Company, Inc., Box 1767, Narrowbone Creek Road, Elkhorn City, Kentucky 41522, has filed a petition to modify the application of 30 CFR 75.1710 (canopies or cabs; electric face equipment) to its No. 2 Mine (I.D. No. 15–16233) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that electric face equipment be provided with substantially constructed canopies, or cabs, to protect the miners operating such equipment from roof falls and from rib and face rolls.

2. The coal seam has ascending and descending grades which create dips in the coal bed.

3. The installation of canopies would result in limited visibility for the equipment operator and would create a diminution of safety for the employees.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 19, 1990. Copies of the petition are available for inspection at that address.

Dated: September 7, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90–22101 Filed 9–18–90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-130-C]

Cyprus Empire Corp.; Petition for Modification of Application of Mandatory Safety Standard

Cyprus Empire Corporation, P.O. Box 68, Craig, Colorado 81626 has filed a petition to modify the application of 30 CFR 75.507 (power-connection points) to its Eagle No. 5 Mine (I.D. No. 05-01370) located in Moffat County, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that except where permissible power connection units are used, all power-connection points outby the last open crosscut be in intake air.

2. As an alternate method, petitioner proposes to use a non-permissible pump in the 7 North Angle borehole in the mine.

3. In support of this request, petitioner states that:

(a) The pump cannot start or operate if water is below the low water probe level;

(b) The inlet valve would be located so that it would be physically impossible for water to be pumped down to expose the motor;

(c) All probe circuits would be protected by MSHA approved intrinsically safe barriers; and

(d) The surface pump control and power circuits would be examined monthly.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 19, 1990. Copies of the petition are available for inspection at that address.

Dated: September 10, 1990.

Patricia W Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-22102 Filed 9-18-90; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL SCIENCE FOUNDATION

Committee Management; Establishment

The Assistant Director for Computer and Information Sciences has determined that the establishment of the Special Emphasis Panel in Cross Disciplinary Activities is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF) by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: Special Emphasis Panel in Cross Disciplinary Activities.

Purpose: Primarily, to advise on the merit of special emphasis proposals or applications submitted to the Office of Cross Disciplinary Activities for financial support.

Balanced Membership Plan: Membership will be selected on an "as needed" basis in response to specific proposals/applications/sites to be reviewed. About 120 individual panelists will be used each year. Members will be selected for their demonstrated scientific and engineering expertise so as to represent a reasonable balance of capability in the various subfields of the proposals to be reviewed. Consideration will also be given to achieving geographic balance and to enhancing representation for women, minority, younger and disabled scientists.

Responsible NSF Official: Dr. Harry Hedges, Head, Office of Cross Disciplinary Activities National Science Foundation, Room 304, 1800 G Street NW., Washington, DC 20550.

Dated: September 13, 1990.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90-22100 Filed 9-18-90; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations; Biweekly Notice

Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission the Commission) is publishing this regular biweekly notice. P.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 biweekly notice includes all notices of amendments issued, or proposed to be issued from August 24, 1990 through September 7, 1990. The last biweekly notice was published on September 5, 1990 (55 FR 36337).

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 probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document

Room, the Gelman Building, 2120 L Street, NW, Washington, DC The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 19, 1990, 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. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, DC 20555 and at the Local Public Document Room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment 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 Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to **(Project Director)**: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for 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, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document room for the particular facility involved.

Alabama Power Company, Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of requested amendments: August 16, 1990

Description of requested amendments: The proposed amendments would modify a portion of the Technical Specifications to specify the requirements for the repair of a steam generator tube by installation of sleeves with laser welded joints. Currently, the Joseph M. Farley Nuclear Plant (Farley), Units 1 and 2 Technical Specifications include requirements for repair using sleeves with mechanical joints for those steam generator tubes with eddy current indications showing greater than 40% through wall degradation. The proposed Technical Specification changes would specify the requirements for repairing degraded or defective tubes utilizing sleeves with laser welded joints in the Farley Units 1 and 2 steam generators. The proposed amendments also include criteria for allowable wall degradation in the sleeve and in the tube in the region of the sleeve to tube joint.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Alabama Power Company (the licensee) has reviewed the proposed changes and has determined that the requested amendments do not involve a significant hazards consideration for the following reasons:

1. Operation of the Farley Units 1 and 2 in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The supporting technical and safety evaluations of the subject amendment (Westinghouse WCAP 12672, "Farley Units 1 and 2, Steam Generator Sleeving Report, (Laser Welded Sleeves)" (Proprietary) and WCAP 12673, "Farley Units 1 and 2, Steam Generator Sleeving Report, (Laser Welded Sleeves)" (Non-Proprietary)) demonstrate that repair of degraded tubes using sleeves will result in tube bundle integrity consistent with the original design basis.

The sleeve configuration has been designed and analyzed in accordance with the rules of the ASME Boiler and Pressure Vessel Code. Fatigue and stress analyses of the sleeved tube assemblies produced acceptable results. Mechanical testing has shown that the structural strength of the sleeves under normal, faulted and upset conditions is within acceptable limits. Leak rate testing has demonstrated that the leak rates of the joints between the sleeve and the existing tube under normal, faulted and upset conditions are well below acceptable rates. The existing Technical Specification leakage rate requirements and accident analysis assumptions remain unchanged in the event significant leakage from the sleeve would occur. Any leakage through the sleeved region of the tube due to hypothetical localized tube degradation is fully bounded by leak-before-break considerations and ultimately the existing steam generator tube rupture analysis included in the Farley Units 1 and 2 Final Safety Analysis Report Update. The proposed Technical Specification change to support the installation of laser welded joint sleeves does not adversely impact any other previously evaluated design basis accident or the results of LOCA [loss of coolant accident] and Non-LOCA accident analyses. The results of the qualification testing, analyses, and plant operating experience demonstrate that the sleeve assembly is an acceptable means of maintaining tubes in service. Furthermore, per Regulatory Guide 1.83 recommendations, the sleeved tube can be monitored through periodic inspections with present eddy current techniques. Plugging limit criteria are established in the technical specifications for the tube in the region of the sleeve and the sleeve. These measures demonstrate that installation of sleeves which span degraded areas of the tube will restore the tube to its original design basis.

2. The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Implementation of the proposed tube degradation repair method does not introduce significant changes to the plant design basis. Repair of tubes does not provide a mechanism to result in an accident outside of the sleeved area. Any hypothetical accident as a result of potential tube or sleeve degradation in the repaired portion of the tube would be bounded by the existing tube rupture accident analysis.

3. The proposed license amendment does not involve a significant reduction in a margin of safety.

The sleeve repair of degraded steam generators tubes as identified in sleeving report has been demonstrated to restore the integrity of the tube bundle under normal and postulated accident conditions. The safety factors used in the design of sleeves for the repair of degraded tubes are consistent with the safety factors in the ASME Boiler and Pressure Vessel Code used in steam generator design. The plugging limit criteria for the sleeve has been established using the method of Regulatory Guide 1.121. The design of the sleeve joints has been verified by testing to preclude significant leakage during normal and postulated accident conditions. Use of the ASME Code and Regulatory Guide 1.121 criteria and methods assures that the margin to safety with respect to structural integrity is the same for the sleeves as for the original steam generator tubes.

The effect of sleeving on the design transients and accident safety analyses has been reviewed based on the installation up to the level of the licensed plugging level. The installation of sleeves can be evaluated as the equivalent of some level of steam generator tube plugging. The Farley Units 1 and 2 steam generators are currently licensed to 10 percent steam generator tube plugging (SGTP). An evaluation is being completed to support an increase of the licensed plugging level to an average of 15 percent with up to 20 percent in the most plugged steam generator. Evaluation of the installation of sleeves is based on the determination that LOCA evaluations for the licensed tube plugging level bound the effect of a combination of tube plugging and sleeving up to an equivalent of the licensed SGTP. For the purpose of assessing the impact on the non-LOCA safety analyses and the design transients, it has been determined that the analyses and evaluations for the licensed plugging level bound the effect of up to the equivalent SGTP due to a combination of sleeving and plugging, therefore, the non-LOCA safety analyses and design transients are not adversely impacted by steam generator sleeving.

The safety margins in the analysis of postulated accident conditions and design transients are provide in the assumptions and conservatism in the calculations and computer codes used and in the requirements and recommendations of the NRC. Accordingly, based on the information outlined above, there is no decrease in the safety margins defined in the bases of the plant Technical Specifications.

Implementation of tube repair by sleeving will decreases the number of tubes which must be taken out of service with tube plugs. Installation of tube plugs reduces the RCS flow margin, thus implementation of tube repair by sleeving will maintain the margin of flow that would otherwise be reduced in the event of increased plugging. Based on the above, it is concluded that the proposed change does not result in a significant reduction in a loss of margin with respect to plant safety as defined in the Updated Final Safety Analysis Report or the bases of the plant technical specifications.

The licensee has concluded that the proposed amendments meet the three standards in 10 CFR 50.92 and, therefore, involve no significant hazards consideration.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendments do not involve a significant hazards consideration.

Local Public Document Room location: Houston-Love Memorial

Library, 212 W. Burdeshaw Street, P. O. Box 1369, Dothan, Alabama 36302

Attorney for licensee: Ernest L. Blake, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Elinor G. Adensam

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of amendment request: December 7, 1989

Description of amendment request: The amendment revises the Technical Specifications (TS) by removing the existing footnote on the Limiting Condition of Operation to Section 3.6.4.1 of the TS which deals with Suppression Chamber Vacuum Breakers.

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)] for a proposed amendment to a facility operating license. 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 licensee has evaluated the proposed change against the above standards required by 50.92. The licensee concluded the following:

(1) The proposed change does not involve a significant increase in the possibility or consequences of an accident previously evluated because the proposed change is more conservative. The existing Technical Specification allows the suppression chamber to drywell vacuum breakers to be manually opened for inerting the containment and does not require closure of these vacuum breakers for up to two (2) hours after inerting is completed. The proposed change prevents this operation by deleting the LCO's footnote. Manually opening these breakers bypasses the pressure suppression feature of the suppression chamber. The containment was not designed to contain the effects of a LOCA if these vacuum breakers are open prior to start of a LOCA.

(2) The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated because this change enforces a more conservative mode of operation, as described in item 1, and does not involve a physical modification to the plant.

(3) The proposed changes does not involve a significant reduction in safety because the change deletes the LCO footnote that allows manual opening of the suppression chamber to drywell vacuum breakers during inerting. This enforces a more conservative mode of operation as described in item 1.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Project Director: Robert Pierson.

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: August 30, 1990.

Description of amendment request: The proposed amendments would replace the existing McGuire Units 1 and 2 reactor coolant system heatup and cooldown limit curves with revised curves (TS Figures 3.4-2, 3.4-3, 3.4-4, and T3.4-53), as well as revise the reactor vessel surveillance capsule withdrawal schedule (TS Table 4.4-5).

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 consideration 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 previously evaluated; or (3) involve a significant reduction in a margin of safety.

With regard to the proposed amendments, the licensee states that the changes do not involve a significant hazards consideration and has provided the following in support of that determination:

The proposed revision to replace the existing Unit 1 NC system cooldown curve with a new curve (Figure 3.4-4) that allows a maximum cooldown rate of 100 degrees-F is consistent with the Westinghouse analysis provided by Attachment No. 5 of our letter to the NRC dated January 22, 1989. The new curve is based on the results of the reactor vessel surveillance capsule analysis which was performed in accordance with NRC methodology contained in Regulatory Guide 1.99, Revision 2 "Radiation Embrittlement of Reactor Vessel Materials". The revision to correct the material basis data on the Unit 1 heatup limit curve is an administrative change to correct a previous revision error. This revision is also based on data provided in the capsule analysis. Implementation of the proposed Unit 1 cooldown limit curve and the corrected heatup limit curve in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated, nor will it create the possibility of a new or different kind of accident from any previously evaluated, nor will a margin in safety be reduced because the curves are based on analysis performed in compliance with Regulatory Guide 1.99, Rev 2. Compliance with this NRC approved methodology when calculating the new pressure-temperature limits ensures reactor vessel integrity is maintained. Shifting the cooldown limit to reflect the change in material toughness due to irradiation using NRC approved methodology meets the requirements of 10 CFR 50 Appendix G, "Fracture Toughness Requirements" to provide adequate margins of safety during any condition of normal operation, including operational occurrences and system hydrostatic tests, to which the pressure boundary may be subjected over its service lifetime.

The proposed revision to replace the existing Unit 2 NC system heatup and cooldown limit curves with new curves (Figures 3.4-3 and 3.4-5) incorporates new pressure-temperature operating limits based on the Unit 2 reactor surveillance capsule (X) analysis. These curves are conservative with respect to the existing pressure-temperature operating limits. The new curves reflect the change in material toughness of the reactor vessel due to irradiation effects. Additionally, the curves are based on the results of reactor surveillance capsule analyses performed by Westinghouse using the NRC approved methods described in Regulatory Guide 1.99, Revision 2. Implementation of the proposed curves in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated, nor will it create the possibility of a new or different kind of accident from any previously evaluated, nor will a margin in safety be reduced because the curves are based on analysis performed in compliance with Regulatory Guide 1.99, Rev 2. Compliance with this NRC approved methodology when calculating the new pressure-temperature limits ensures reactor vessel integrity is maintained. Shifting the heatup and cooldown limit to reflect the change in material toughness due to irradiation using NRC approved methodology meets the

requirements of 10 CFR 50 Appendix G "Fracture Toughness Requirements" to provide adequate margins of safety during any condition of normal operation, including operational occurrences and system hydrostatic tests, to which the pressure boundary may be subjected over its service lifetime.

The proposed revision to TS Table 4.4-5 will update the reactor vessel surveillance capsule withdrawal schedule which identifies the capsules already removed and future capsule withdrawal dates. The table has also been updated to include the Unit 2 lead factors based on the Westinghouse analysis of the Unit 2 reactor surveillance capsule (X). Updating the capsule removal schedule would not involve a significant increase in the probability or consequences of an accident previously evaluated, nor will it create the possibility of a new or different kind of accident from any previously evaluated, nor will a margin in safety be reduced because this revision complies with ASTM E185-82, "Standard Practice for Conducting Surveillance Tests for Light Water Cooled Nuclear Powered Reactor Vessels" which is approved by NRC as described in 10 CFR 50 Appendix H, "Reactor Vessel Material Surveillance Program Requirements."

The Commission has made a preliminary review of the licensee's no significant hazards consideration and agrees with the licensee's determination. Accordingly, the Commission proposes to determine that the proposed amendments do not involve a significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242-0001

NRC Project Director: David B. Matthews

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: June 12, 1990

Description of amendment request: The proposed amendment would modify Technical Specification Section 3.4.9.3 relating to Overpressure Protection Systems. Specifically, the amendment would replace the single maximum setpoint specified for the power-operated relief valves (PORVs) with a variable setpoint which would be a function of reactor coolant system temperature. A new Figure 3.4-4 would be added to specify the temperature dependent maximum PORV setpoint.

Bases Sections 3/4 4.9 and 3/4 4.11 would also be revised to reflect the change described above.

Basis for proposed no significant hazards consideration determination: The Commission has made a proposed determination that the amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92(c), this means that the 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 Commission has evaluated the proposed changes against the above standards as required by 10 CFR 50.91(a) and has concluded that:

A. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because the proposed changes provide a variable setpoint for the PORVs to protect the reactor coolant system from low-temperature overpressure transients. The variable setpoint proposed would still prevent exceeding the temperature-pressure operating limits determined in accordance with Appendix G to 10 CFR Part 50. As such, the variable setpoint affords the same protection against low temperature overpressure transients as the single setpoint.

B. The changes do not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because the proposed changes would still provide protection to the reactor coolant system against brittle fracture.

C. The changes do not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because the proposed changes would still provide protection against brittle fracture of the reactor coolant system in accordance with Appendix G to 10 CFR Part 50.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: John F. Stolz

Duquesne Light Company, Docket No. 50-412, Beaver Valley Power Station, Unit No. 2, Shippingport, Pennsylvania

Date of amendment request: June 11, 1990

Description of amendment request: The proposed amendment would revise certain provisions in the Beaver Valley Power Station, Unit No. 2 Technical Specifications (TSs) relating to the heatup and cooldown rates and reactor coolant system pressure/temperature limits. Specifically, the proposed amendment would modify TS Figures 3.4-2 and 3.4-3.

Basis for proposed no significant hazards consideration determination: The Commission has made a proposed determination that the amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92(c), this means that the 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 Commission has evaluated the proposed changes against the above standards as required by 10 CFR 50.91(a) and has concluded that:

A. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) The proposed operating limits account for the cumulative effects of radiation on the reactor pressure vessel material properties. The proposed limits have been developed using the methods presented in Regulatory Guide 1.99 (Rev. 2), which presents an approved method for determining the heatup/cooldown operational limits. Application of this regulatory guide ensures an adequate margin of safety to prevent non-ductile failure of the reactor pressure vessel.

B. The changes do not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because application of Regulatory Guide 1.99 (Rev. 2) provides sufficient margin to ensure that the failure probability of the reactor pressure vessel is sufficiently low and can be excluded from consideration in accident analyses.

C. The changes do not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)). The required margins for safety are specified by Appendix G to 10 CFR Part 50 and are maintained by the proposed amendment.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: John F. Stolz

Duquesne Light Company, Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of amendment request: June 14, 1990

Description of amendment request: The proposed amendments would modify the Beaver Valley Power Station Unit 1 and Unit 2 Appendix A Technical Specifications (TSs) relating to shutdown electrical power systems as follows:

1. The LIMITING CONDITIONS FOR OPERATION of TS Section 3.8.2.2 would be revised to clearly specify the trains of equipment to be operable, and a requirement would be added for the 120-Volt A.C. Vital Bus to be energized from its associated inverter connected to a D.C. bus.
2. The LIMITING CONDITIONS FOR OPERATION of TS Section 3.8.2.4 would be revised to clearly specify the trains of equipment to be operable.
3. The APPLICABILITY of TS Sections 3.8.1.2, 3.8.2.2, and 3.8.2.4 would be extended to include when either irradiated fuel is being moved or when other loads are being moved over irradiated fuel while no fuel is in the reactor vessel.
4. The ACTION statements of TS Sections 3.1.8.2, 3.8.2.2 and 3.8.2.4 would be extended to include limitations on the movement of irradiated fuel or loads over irradiated fuel, and the requirement to establish containment integrity would be deleted.

Bases Sections 3.8.1.2, 3.8.2.2, and 3.8.2.4 also would be modified to reflect the proposed changes described above.

Basis for proposed no significant hazards consideration determination: The Commission has made a proposed determination that the amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92(c), this means that the 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 Commission has evaluated the proposed changes against the above standards as required by 10 CFR 50.91(a) and has concluded that:

A. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because the proposed changes would not diminish the reliability or availability of the A.C. or D.C. distribution systems or otherwise affect the manner by which these systems are operated. The changes clarify equipment operability and add additional applicability requirements.

B. The changes do not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because they do not affect the manner by which the facility is operated. The proposed changes merely clarify operability and add applicability requirements.

C. The changes do not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because the proposed changes do not affect the manner by which the facility is operated or diminish the availability or reliability of the electrical distribution systems.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: John F. Stolz

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit 1, Pope County, Arkansas

Date of amendment request: August 8, 1990

Description of amendment request: The proposed amendment would revise License Condition 2.c.(1) to increase the authorized steady-state reactor core power level to a maximum of 2568 megawatts thermal (100% of full power) from the current restriction of 2054 megawatts thermal (80% of full power). Two separate issues are involved in the return to 100% power; a High Pressure Injection (HPI) line break mitigation and the adequacy of Net Positive Suction Head (NPSH) for the Low Pressure Injection (LPI) pump and the Reactor Building Spray (RBS) pump. Additionally, the proposed amendment would revise the Technical Specifications to reflect an increase in the Borated Water Storage Tank (BWST) level and to revise the number of High Pressure Injection motor operated valves referenced in the Technical Specifications. This amendment request supersedes the September 26, 1989 request which was previously noticed on November 1, 1989 (54 FR 46140).

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(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 licensee provided an analysis that addressed the above three standards in the amendment application.

Criterion 1 - Does Not Involves [SIC] a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated since previously analyzed events remain essentially unaffected, as described previously in the discussion of the proposed changes. Increasing reactor power to 100% will not involve a significant increase in the probability or consequences of an accident previously evaluated, as the proposed modification to the HPI system ensures adequate flow to provide for accident mitigation. The increase in BWST level along with operator action to throttle RBS valves to a specified flow will provide adequate NPSI [SIC] for RBS and LPI pumps thus not increasing the consequences or probability of an accident previously evaluated. Modifications to the HPI system piping have been designed to the same criteria as the currently installed components such that these changes to the facility design will not increase the probability or consequences of an accident previously evaluated. The reanalysis [SIC] performed demonstrate that the ANO-1 HPI configuration along with specified operator actions provide adequate core cooling in the event of a complete HPI line-break at an operating power level of 100% in accordance with our Appendix K LOCA evaluation model.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

A change in the reactor building spray flow or the borated water storage tank inventory requirements does not establish a new accident precursor.

The increase of reactor power to 100% will not create the possibility of a new or different kind of accident as the design changes and changes in operator actions under accident conditions are consistent with or bounded by the analyzed actions. Changes to the HPI system serve, to reestablish the design basis and provide no new release paths and introduce no new failure mechanisms. Therefore no new or different kind of accident is created by these changes.

Criterion 3 - Does Not Involve a Significant Reduction in the Margin of Safety

The proposed changes do not involve a significant reduction in a margin of safety since the anticipated system responses, as summarized in the discussion of the proposed

changes, are conservative with respect to the accident analyses and represent only minor changes to the previously analyzed results.

Increasing reactor power to 100% will not significantly reduce the margin of safety as the proposed modifications and associated operator actions will mitigate the consequences of an accident as previously analyzed. Increasing the inventory in the BWST along with operator action to throttle the RBS valves to a specified flow will provide adequate NPSH during RB sump recirculation such that adequate margin will be maintained. The reanalysis of the Appendix K LOCA Evaluation model has shown that the current margin to safety for 100% power operation is preserved, therefore no significant reduction in the margin to safety is incurred. An acceptable margin has been demonstrated by analysis such that the previous power restriction is no longer required.

Therefore, based on the reasoning presented above and the previous discussion of the amendment request, the licensee determined that the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's no significant hazards consideration determination analysis and agrees with its conclusion. Therefore, the staff proposed to determine that the requested amendment involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell, & Reynolds, 1400 L Street, N.W., Washington, DC 20005-3502

NRC Project Director: Theodore R. Quay, Acting

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit 1, Pope County, Arkansas

Date of amendment request: August 8, 1990

Description of amendment request: The proposed amendment revises portions of Technical Specification 2.1 (Safety Limits, Reactor Core), 2.3 (Limiting Safety System Settings, Protective Instrumentation), 3.1.7 (Moderator Temperature Coefficient of Reactivity), and 3.5.2 (Control Rod Group and Power Distribution Limits). The proposed changes are needed to support the reload for Cycle 10.

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(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 licensee provided an analysis that addressed the above three standards in the amendment application.

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

Section 7 of the Cycle 10 Reload Report presents the results of an evaluation of accidents addressed in the ANO-1 FSAR. The evaluation demonstrates that changes in the fuel cycle design and the corresponding proposed Technical Specification changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. All of the radiological consequences are lower than the NRC acceptance criteria of NUREG-0800. The transient evaluation of Cycle 10 is bounded by previously accepted analyses.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Accident Previously Evaluated

The proposed changes would not create the possibility of a new or different kind of accident from any previously analyzed. The Technical Specification changes are minor limit and setpoint changes and result in no significant changes to the operation of the unit.

Criterion 3 - Does Not Involve a Significant Reduction in a Margin of Safety

The proposed changes do not involve a significant reduction in a margin of safety since, as shown in the Reload Report, Cycle 10 setpoints, safety limits and limiting safety system settings provide the same margins of safety as previous core reloads. The NRC accepted methodology for establishing Technical Specification Limiting Conditions for Operation assure that the Final Acceptance Criteria ECCS limits will not be exceeded nor will the thermal design criteria be violated.

Therefore, based on the reasoning presented above and the previous discussion of the amendment request, the licensee determined that the requested changes do not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's no significant hazards consideration determination analysis and agrees with its conclusion. Therefore, the staff proposes to determine that the requested amendment involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell, & Reynolds, 1400 L Street, N.W., Washington, DC 20005-3502

NRC Project Director: Theodore R. Quay, Acting

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: August 22, 1990

Description of amendment request: License Condition C.5.a to Facility Operating License NPF-47 for the River Bend Station (RBS) prohibits use of the steam condensing mode (SCM) of Residual Heat Removal (RHR) without prior written NRC approval. Gulf States Utilities Company (GSU) has determined that the SCM of RHR is not required for safe operation of RBS and does not intend to use this mode of operation in the future. GSU plans to permanently disable the SCM of RHR by welding an ASME III, Division I qualified plug in both the steam lines to the RHR heat exchangers. The proposed amendment would modify Technical Specifications 3/4.3.7.4 and 3/4.3.2 to delete maintenance and surveillance requirements for three of the disabled valves on the remote shutdown panel and to establish a final trip setpoint and allowable value for the High RHR/Reactor Coolant Isolation Cooling (RCIC) steam line flow for RCIC isolation.

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(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 licensee provided an analysis that addressed the above three standards in the amendment application.

1. The proposed change would not significantly increase the probability or consequences of an accident because:

The only accident involving the steam condensing mode of RHR is the high energy line break (HELB) in the steam tunnel and auxiliary building. Blanks will be welded in the steam supply lines to the RHR heat

exchangers. The blanks will be fabricated and installed to the same quality requirements as the original piping and have been analytically qualified to the requirements of ASME III, Div. I Subsections NA and NC (GSU Calculation No. 12210-NP(C)-AX-13A- 5 Rev. 4, Addendum B). The steam line piping supports were reviewed for the added weight of the blanks and found acceptable. Normally open drain lines will be installed to keep the line drained in the event that the downsteam valves leak.

Since the blanks are installed in the steam tunnel, a HELB in the auxiliary building due to the rupture of steam line to the RHR heat exchangers is no longer possible. The HELB of the steam lines in the steam tunnel and of the RCIC [Reactor Core Isolation Cooling] steam supply line in the auxiliary building have been previously evaluated and this analysis is not affected.

The HELB of the steam supply line is terminated by the closure of the containment isolation valves 1E51*MOVF063 and 064. This modification does not affect the operability of these valves or associated instrumentation. CSU has re-evaluated the setpoint of the RHR/RCIC steam line flow-high isolation instrumentation and concluded that the existing setpoint is adequate. This conclusion is based upon the mass and energy release calculations for steam line breaks in the steam tunnel and auxiliary building (GSU Calculations 12210-ES-162-1, ES-211 and ES-212). These calculations indicate that for a break of the 4" RCIC steam supply line in the auxiliary building, the existing trip setpoint would be exceeded within 0.1 seconds after the break and that flow would be terminated by closure of the containment isolation valves within 12 seconds. Lowering the existing setpoint would not significantly increase the response time of the containment isolation valves or decrease the inventory lost through the break. All equipment in the area is qualified based on the existing setpoint and calculated inventory loss. No increase in offsite release rates in excess of those previously calculated would occur as a result of maintaining the existing setpoint. Based upon the above GSU concludes that the current setpoint of 60.7 inches H_2 is adequate and should become the permanent setpoint.

Valves 1E12*MOVF052A, 1E12*MOVF052B, and 1E12*MOVF026A were identified in the Fire Hazards Analysis as valves that must not spuriously reposition during a fire event. To ensure that these valves could be placed in the correct position during a fire event, control switches for these valves were included on the remote shutdown panel. Spurious repositioning of 1E12*MOVF052A or TB could result in an interfacing system LOCA [Loss of Coolant Accident] (Wash 1400, Event V). Spurious repositioning of 1E12*MOVF026A could result in an overpressurization of the RCIC pump suction piping.

With the implementation of MR 88-0208, the above events are no longer possible. The welded blank in the RHR steam supply lines remove the possibility of the interfacing system LOCA, regardless of the position of 1E12*MOVF052A or B. Electrically disabling 1E12*MOVF026A ensures that the valve can not spuriously open during a fire event.

A review of the transient analyses (Chapter 15 of SAR [Safety Analysis Report]) indicates that no credit has been taken for the TSCM. In particular, a review of Calculation 12210-ES-146-0 indicates that the radiological consequences of an MSIV isolation event as analyzed in SAR Section 15.2.4.2 did not take credit for TSCM of RHR. Therefore, the elimination of this mode of operation will not affect the radiological consequences as reported in the SAR Section 15.2.4.5 for the MSIV isolation event.

The only analysis which may be impacted by the permanent disabling of SCM is the number of main steam SRV cycles following an MSIV isolation. The SRV cycle analysis has been reperformed assuming that the SCM is unavailable (GSU Calculation No. G13.18.14.0*16-0). The value obtained is not greater than the current value of 15 used in Section A.6A.9 of the SAR.

It is, therefore, concluded that this modification does not involve a significant increase in the probability or consequence of an accident.

2. The proposed change would not create the possibility of a new or different kind of accident from any previously evaluated because:

The design, fabrication and installation of welded blank will be to the same requirements as the original piping. Design has been analytically qualified to the requirements of ASME III, Div. I Subsections NA and NC (Calculation No. 12210-NP(C)-AX-13A-5, Rev. 4, Addendum B). Measures have been taken to ensure that the piping designed for steam service remains drained. No new or different relationships or interfaces with other systems or components have been created which could result in a new or different type of accident.

3. The proposed change would not involve a significant reduction in the margin of safety because:

There are no Technical Specification requirements for the SCM of RHR to be operable. Also, this mode is not a requirement for any other system required to be operable per the Technical Specifications.

Technical Specification Section 3/4.3.2, "Isolation Actuation Instrumentation," specifies that the RHR/RCIC steam line flow-high trip setpoint be less than or equal to 60.7 inches of water. This setpoint has been re-evaluated based on a lower [than] normally expected maximum flow with the SCM of RHR disabled. A review of the mass and energy release calculations for a break of the 4" RCIC steam supply line in the auxiliary building (GSU Calculations 12210-ES- 162-1, ES-211-0 and ES-212-0) indicates that the containment isolation valves would perform their function within the same time frame as previously analyzed. There would be no increase in offsite release rates. Environmental conditions in the RCIC steam line areas are not affected.

Based on the above it is [the licensee] concluded that the margins of safety as defined in the basis of the Technical Specifications is not affected. In conclusion the proposed change does not increase the probability or consequences of a previously evaluated accident nor will it create a new or different type of accident based on the following:

1. The existing RHR/RCIC High Steam Flow trip setpoint is acceptable and will continue to work properly to isolate the steam supply line in a timely manner.
2. Possibility of a HELB in the auxiliary building due to a rupture of the supply steam RHR line for SCM has been eliminated.
3. Design, fabrication, and installation of the welded blanks has been analytically qualified to the requirements of the ASME Code.
4. SRV cycle analysis has been reperformed and found to match the current value given in the USAR.
5. SCM of RHR is not a Technical Specification requirement nor is it required to be operable to support any other system.
6. The SCM of RHR is not required by the USAR to support any transient or accident analysis. Its deletion will not affect the safe shut-down of the plant or the capability to maintain the plant in a safe shutdown condition.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Attorney for licensee: Mark Wetterhahn, Esq., Bishop, Cook, Purcell and Reynolds, 1401 L Street, N.W., Washington, DC 20005

NRC Project Director: Christopher I. Grimes

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of amendment request: August 22, 1990

Description of amendment request: The proposed change to the Technical Specifications (TS) would revise the definition of surveillance in TS 1.0.X by deleting the requirement that the combined time interval for any three consecutive surveillance intervals is not to exceed 3.25 times the specific surveillance interval. This TS change request was made in response to Generic Letter (GL) 89-14, "Line-Item Improvements in Technical Specifications - Removal of the 3.25 Limit on Extending Surveillance Intervals."

Basis for proposed no significant hazards consideration determination: The licensee has reviewed the proposed change, in accordance with 10 CFR 50.92, and has concluded that it does not involve a significant hazards

consideration in that this change would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed. The proposed change would remove the 3.25 limit on extending surveillance intervals in accordance with the guidance contained in Generic Letter 89-14. This change would not involve any change to the actual surveillance requirements, other than a small increase in the maximum allowable average surveillance interval. The increase in the probability of failure of components and systems that would result from longer average surveillance intervals are within the range of expected variations in the calculated failure probabilities associated with anticipated changes in plant configuration during normal operation and would not significantly impact the probability of any accident. The reliability ensured through surveillance activities following the proposed change would not be significantly degraded beyond that obtained from surveillances performed within the 3.25 limit. Therefore, this change would not significantly increase the probability of occurrence or the consequences of an accident previously evaluated.
2. Create the possibility of a new or different kind of accident from any previously analyzed. The proposed change would not alter the method of operating the plant or change the way the surveillance requirement is performed. The proposed change would allow a surveillance interval to be extended at a time that conditions are not suitable for performing the surveillance. No new failure modes are introduced. Therefore, this change would have no effect on the possibility of creating a new or different kind of accident from any accident previously evaluated.
3. Involve a significant reduction in a margin of safety. This change would not involve any change to the actual surveillance requirements. The reliability ensured through surveillance activities would not be significantly degraded beyond that obtained from the specified surveillance interval. Therefore, it is concluded that operation of the facility in accordance with the proposed change would not involve a significant reduction in the margin of safety.

The NRC staff has reviewed, and concurs in, the licensee's statement regarding significant hazards considerations associated with this proposal. Accordingly, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: August 7, 1990

Description of amendment request: The proposed amendment would change the Technical Specification Section 3.9.3.2 to require the Spent Fuel Pool (SFP) bulk temperature be maintained below 140 degrees F at all times. Action statements would be added to require immediate actions to restore the temperature below 140 degrees F and to record SFP temperature at least once per 4 hours if the Limiting Condition for Operation (LCO) would not be satisfied. The surveillance requirement would also be revised to monitor the SFP temperature every 12 hours. In addition, the Bases Section 3/4.9.3 would be modified to reflect the proposed changes to Technical Specification 3.9.3.2.

Basis for proposed no significant hazards consideration determination: The licensee has reviewed the proposed change in accordance with 10 CFR 50.92 and has concluded and the staff agrees that it does not involve a significant hazards consideration in that the change would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The current Technical Specification LCO is applicable in Modes 5 and 6 with the most recent 1/3 core offload decayed less than 504 hours from subcriticality. There is no LCO on SFP cooling for times greater than 504 hours or in other modes. Since the proposed change requires that the SFP temperature be maintained below 140 degrees F at all times, this LCO is more restrictive for times greater than 504 hours in Modes 5 and 6, or at any times in all other modes.

The only design basis accident considered for the SFP is the fuel-handling accident. The proposed changes do not affect the consequences of the fuel-handling accident. The other relevant event analyzed in the design basis of the SFP cooling system is a complete loss of the SFP cooling (Final Safety Analysis Report (FSAR Section 9.5.3.3). Two trains of the SFP cooling system can maintain the SFP temperature below 131 degrees F. However, even assuming the initial pool temperature is at 140 degrees F when the SFP cooling is lost, the minimum time to boiling (212 degrees F) is estimated to be 8.5 hours. This estimate assumes a normal 1/3 core off-load and does not credit any passive heat losses. With the emergency heat load (i.e., complete core off-load) on the SFP under the same circumstances, the minimum time to boiling is estimated to be 3.5 hours. Both times to boiling (8.5 and 3.5 hours) are sufficient for the operator to reinitiate the SFP cooling or line up [Shutdown Cooling] SDC. It should be noted, Technical Specification 3.9.3.3 requires that the reactor be maintained in Modes 5 and 6 for at least 504 hours from subcriticality. Therefore, the SDC system would remain available for at least 504 hours for SFP cooling.

The SFP liner, building structures, and racks have been qualified for a maximum water temperature under accident conditions of 212 degrees F. The SFP cooling system is qualified for a design temperature of 200 degrees F. Therefore, even in the worst-case scenario, the proposed change would allow sufficient time to ensure the design limits of the SFP, spent fuel racks, or associated cooling systems are not exceeded.

The existing one-hour action statement to isolate the SFP cleanup demineralizers is still applicable and will protect the demineralizers from the increased temperature. Since there is no fuel movement permitted during this time period, the SFP area can be evacuated to ensure personnel safety in case of SFP heat-up.

The proposed Technical Specification will mitigate the thermal consequences of the SFP cooling system failure to the spent fuel racks by requiring immediate action, thereby reducing the duration of the event and restoring the temperature in the SFP to less than or equal to 140 degrees Also, the proposed Technical Specification does not significantly increase the probability of a loss of cooling event to the spent fuel pool due to the continued availability of the SDC system within the 504 hours from reactor shutdown (subcriticality).

As stated in the proposed bases for the proposed Technical Specification, limiting the SFP temperature to 140 degrees F preserves personnel comfort and safety and prevents degradation of demineralizer resins. This Technical Specification has an impact on the design limits since the SFP structure, racks and all components of the SFP main cooling loop are designed to withstand temperature of at least 200 degrees F. The requirement to immediately initiate corrective action in all modes to restore pool temperature to 140 degrees F, if the limit is exceeded, assures that corrective actions will be taken to maintain the SFP temperature below the design limits.

2. Create the possibility of a new or different kind of accident. The proposed change does not affect the way the plant is operated or alter its response to any accident. The current Technical Specification specifies no temperature limit for the SFP, whereas the proposed Technical Specification limits the temperature to 140 degrees F. The pool temperature may exceed 140 degrees F for a short period of time, while the corrective actions are being taken. However, because of slow heat-up rate of the SFP cooling even in the worst case, there would be sufficient time available to reinitiate pool cooling which assures the pool design limits will not be exceeded. Therefore, the proposed

change does not create the possibility of a new or different kind of accident.

3. Involve a significant reduction in the margin of safety. As stated above, the current Technical Specification has no requirement that assures SFP cooling in Modes 1 through 4, or greater than 504 hours after subcriticality in Modes 5 and 6. The proposed change would specify that the SFP be maintained below 140 degrees F at all times. The pool temperature may exceed 140 degrees F for a short period of time if a failure occurs in the SFP cooling system: however, the existing actions specified in the proposed change assure that temperature is maintained below the design temperature of the pool, its components, fuel racks and the SFP cooling system. There is no increase in the consequences of any accident and therefore no significant reduction in the margin of safety.

Based on the above, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: July 31, 1990

Description of amendment request: The proposed amendment would change Millstone Unit 3 Technical Specification (TS) 3.7.12.3, "CO_2 Systems" to clarify the remedial actions to be taken when one or more CO_2 fire suppression systems become inoperable.

Basis for proposed no significant hazards consideration determination: At the present time, Action Statement "a" for TS 3.7.12.3 requires that,

With one or more of the above required CO_2 Systems inoperable, within 1 hour establish a continuous fire watch with backup fire suppression equipment for those areas in which redundant systems or components could be damaged; for other areas, establish an hourly fire watch patrol.

In the case of TS 3.7.12.3, the "... above required CO_2 systems" is a list of systems which does not distinguish between (1) "... areas in which redundant systems or components could be damaged" and (2) "... other areas." The licensee states in their July 31, 1990 application that the cable spreading room contains the only CO_2 system which protects redundant systems or components. Accordingly, the licensee has proposed that Action Statement "a" be divided as follows:

a. With the cable spreading room CO_2 system not OPERABLE, within 1 hour establish a continuous fire watch with backup fire suppression equipment.

b. With one or more of the above required CO_2 systems (as indicated by asterisk (*)) not OPERABLE, within 1 hour verify that the fire barrier between adjacent areas is OPERABLE, and:

1. If the fire barrier is OPERABLE, establish an hourly fire watch patrol for the affected area, or
2. If the fire barrier is not OPERABLE, establish a continuous fire watch for the affected area.

In the case of the above, the systems indicated by an asterisk are all TCO_2 systems except the CO_2 system in the cable spreading room.

Title 10 CFR Part 50, Section 50.92 contains standards for determining whether a proposed license amendment involves significant hazards considerations. In this regard, the licensee states in their July 31, 1990 application that, the proposed change does not involve a significant hazards consideration because the change would not:

1. Involve a significant increase in the probability of occurrence or the consequences of an accident previously identified. The proposed changes only provide clarification of the current requirements and have no impact on the probability of occurrence or consequences of an accident previously identified.
2. Create the possibility of a new or different kind of accident from any previously analyzed. No new failure modes are introduced by these proposed changes, and since there is no change in the way the plant is operated, the potential for an unanalyzed accident is not created.
3. Involve a significant reduction in a margin of safety. The proposed changes do not impact any safety limits and do not affect the consequences of any accident previously analyzed. Therefore, there is no reduction in a margin of safety.

The NRC staff has reviewed, and concurs in, the licensee's statement regarding significant hazards considerations associated with the application. Accordingly, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Tennessee Valley Authority, Docket No. 50-328, Sequoyah Nuclear Plant, Unit 2, Hamilton County, Tennessee

Date of amendment request: August 27, 1990 (TS 90-17)

Description of amendment request: The Tennessee Valley Authority (TVA) proposed to delete Table 4.4-5, Reactor Vessel Material Surveillance Program T-Withdrawal Schedule, from the Sequoyah (SQN) Unit 2 Technical Specifications (TSs). The table which specifies the schedule to remove reactor vessel material irradiation surveillance specimens would be deleted from TS 3/4.4.9.1, Pressure/Temperature Limits, on the Unit 2 reactor coolant system. Surveillance Requirement 4.4.9.1.2 would be revised to (1) delete references to Table 4.4-5 and (2) specify that the removal of these specimens would be in accordance with Appendix H, Reactor Vessel Material Surveillance Program Requirements, of 10 CFR Part 50. The requirements in Table 4.4-5 are the same requirements in Appendix H. This table was deleted from the Unit 1 TSs in Amendment 87 which was issued in the staff's letter dated October 14, 1988.

Basis for proposed no significant hazards consideration determination: In its application, TVA provided the following reasons and justification for its proposed change to the Unit 2 TSs:

TVA is required to comply with 10 CFR Part 50, Appendix H, "Reactor Vessel Material Surveillance Program Requirements." The requirements of Appendix H provide for NRC approval of a proposed withdrawal schedule before implementation [of that schedule.] The requirements also identify the applicable American Society for Testing Materials (ASTM) and American Society of Mechanical Engineers (ASME) Codes and the applicable reporting requirements. Therefore, inclusion of Table T4.4-5 in TS 3/4.4.9.1 is redundant to requirements of 10 CFR Part 50, Appendix H. The deletion of Table 4.4-5 is consistent with [the] improvement of TSs by removing specifications that are redundant to regulation[s], as recommended by both the NRC Technical Specification Improvement Project and the Atomic Industrial Forum (AIF) Subcommittee on Technical Specification Improvements in October 1985.

In addition, the data of Table 4.4-5 is contained in Section 5.4.3.7, "Reactor Vessel Material Surveillance Program Requirements," of the SQN Final Safety Analysis Report. Thus, the surveillance schedule is available to NRC in an administratively controlled document that is reviewed and revised on a regular basis.

The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide

to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change revises TS 3/4.4.9.1 of the SQN Unit 2 TSs by deleting Table 4.4-5, "Reactor Vessel Material Surveillance Program - Withdrawal Schedule." Deletion of the subject table from the TSs will not affect the reactor vessel surveillance program requirements as specified in 10 CFR Part 50, Appendix H, "Reactor Vessel Material Surveillance Program Requirements"; rather, the deletion will eliminate a license requirement that is redundant to regulation requirements. The proposed amendment is therefore administrative in nature and does not change plant hardware, plant operating setpoints or limits, or plant operating procedures. The potential for reactor vessel embrittlement affecting a postulated transient or accident conditions that have been previously evaluated is not increased as TVA is [still] required to comply with 10 CFR Part 50, Appendix H. Therefore, the proposed change involves no increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed amendment is administrative in nature and does not change plant hardware, plant operating setpoints or limits, or plant operating procedures. Also, the evaluation of reactor vessel embrittlement is not affected as TVA is required to comply with 10 CFR Part 50, Appendix H. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Involve a significant reduction in a margin of safety.

The proposed amendment is adminstrative in nature and does not involve a change in plant hardware, plant operating setpoints or limits, or plant operating procedures. The evaluation of reactor vessel embrittlement is not affected as TVA is required to comply with 10 CFR Part 50, Appendix H. Therefore, the proposed amendment involves no reduction in the margin of safety of the plant.

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 an amendment to the Unit 2 TSs involves no significant hazards considerations.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Project Director: Frederick J. Hebdon

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: July 17, 1990

Description of amendment request: The proposed amendment would add the Centerior Service Company as a licensee in the Facility Operating License for Davis-Besse Nuclear Power Station, Unit 1 (DBNPS).

The proposed addition would authorize both the Toledo Edison Company and Centerior Service Company to act as agent for the Cleveland Electric Illuminating Company, and have exclusive responsibility and control over the construction, operation and maintenance of the facility. It also specifies that the Toledo Edison nuclear organization reports to the existing Centerior Service Company.

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 consideration 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, (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 provided the following analysis of no significant hazards considerations using the Commission's standards.

Toledo Edison has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station, Unit No. 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no accident initiators or assumptions are affected. The licensee being added to the Facility Operating License is a wholly-owned subsidiary of the same corporation to which the current owner/operator (Toledo Edison) belongs. The organizational change is purely administrative and has no direct effect on any plant systems.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because no accident conditions or assumptions are affected. The licensee being added to the Facility Operating License is a wholly-owned subsidiary of the same corporation to which the current owner/operator (Toledo Edison) belongs. The organizational change is purely administrative and has no direct effect on any plant systems.

2a. Not create the possibility of a new kind of accident from any accident previously evaluated because no accident initiators are created. The organizational change is purely administrative and has no direct effect on any plant systems. The change does not affect the reactor coolant system pressure boundary and does not affect any system functional requirements, plant maintenance, or operability requirements.

2b. Not create the possibility of a different kind of accident from any accident previously evaluated because the organizational change is purely administrative and has no effect on any plant systems. The change does not affect the reactor coolant system pressure boundary and does not affect any system functional requirements, plant maintenance, or operability requirements.

3. Not involve a significant reduction in a margin of safety because the organizational change is purely administrative and has no effect on any plant systems. Accordingly, no Updated Safety Analysis Report (USAR) design or accident assumptions are affected, and no margins to Technical Specification Bases are affected.

Based on the previous discussions, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated; does not create the possibility of a new or different kind of accident from any accident previously evaluated; and does not involve a reduction in the required margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. The staff, therefore, proposes to determine that the licensee's request does not involve a significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts

and Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: John N. Hannon

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: May 16, 1990

Description of amendment request: The proposed change would delete the operability requirement for one pressurizer safety valve (PSV) in Mode 5 (cold shutdown) as currently specified in the NA-1&2 Technical Specification 3.4.2 "Safety Valves-Shutdown." The requirement to have one safety valve operable in Mode 4 (hot shutdown) would be unaffected.

Pressurization of the Reactor Coolant System (RCS) during Mode 5 operation to pressures near the PSV lift setpoint would be in violation of low temperature operating limits and would likely result in damage to RCS components such as piping or reactor coolant pump seals. The current TS 3.4.2 for NA-1&2 requires that a minimum of one pressurizer code safety valve shall be operable in Modes 4 and 5 with a lift setting of 2485 psig. The current requirement for an operable safety valve in Mode 5 can be deleted since overpressure protection in the Mode 5 temperature range (less than or equal to 200°F) is provided by the Low Temperature Overpressure Protection (LTOP) system. The NA-1&2 Technical Specification 3.4.9.3 requires that two independent power operated relief valve (PORV) systems be operable during Mode 5, which are part of the LTOP system. This system is designed to insure that pressure is maintained within the limits defined by reactor vessel material considerations. The LTOP system is addressed separately in TS 3.4.9.3, which requires that two independent PORV systems be operable in Mode 5 for the purpose of overpressure protection. Those systems are designed to ensure that pressure is maintained within the limits defined by reactor vessel materials embrittlement analyses. No credit is taken for the safety valves to provide this protection. If credit were taken for pressure relief via the safety valves, no protection is afforded because pressure greater than that permitted by the materials analyses would be achieved while in cold shutdown before pressure could be relieved by a safety valve. The LTOP setpoint is significantly lower than the safety valve setpoint and affords the necessary protection.

Therefore, the requirement for an operational PORV during Mode 5 operation is unnecessary since overpressure protection at low temperatures is provided by the PORVs of the LTOP system. Those transients described in the NA-1&2 UFSAR which experience pressures that challenge the pressurizer safety relief valves are: loss of normal feedwater, main feedline break, locked rotor, and loss of load transients. The limiting cases for these transients assume the reactor is initially operating at hot full power conditions. In Mode 5, the reactor is shut down and decay heat removal is being accomplished by the Residual Heat Removal System. The licensee's analysis demonstrates that the identified design basis accidents described in the NA-1&2 UFSAR and overpressure protection for the RCS in cold shutdown are unaffected by having no safety relief valve operable during cold shutdown, and that the current TS requiring one operable safety valve in Mode 5 (cold shutdown) may be deleted.

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.

The licensee has evaluated the proposed change request against the standards provided above and has determined that this change will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The safety issue raised by the removal of the Mode 5 requirement is whether or not appropriate overpressure protection is provided. Overpressure protection during Mode 5 is provided by the LTOP system and its pressurizer PORV's. The design basis accidents identified in the NA-1&2 UFSAR are unaffected by having no safety relief valves operable in Mode 5 (cold shutdown). Therefore, the PSVs are unnecessary in Mode 5, and eliminating the operability requirement does not increase the probability or consequences of any accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. The purpose of an operable safety valve is to provide overpressure protection to the system. Given that overpressure protection is provided by the LTOP system when in Mode 5, an operable PSV is unnecessary during this time. The design basis accidents described in the NA-1&2 UFSAR which experience pressures that challenge the safety relief valves are unaffected by having no safety relief valves operable in Mode 5 (cold shutdown). Therefore, removal of this operability requirement would not create the possibility of a new or different kind of accident previously evaluated.

(3) Involve a significant reduction in the margin of safety. Given that overpressure protection is provided by the LTOP system when in Mode 5, an operable PSV is unnecessary in Mode 5. Therefore, removal of this operability requirement would not involve a significant reduction in the margin of safety.

The NRC staff has made a preliminary review of the licensee's analyses of the proposed changes and agrees with the licensee's conclusion that the three standards in 10 CFR 50.92(c) are met. Therefore, the staff proposes to determine that the proposed amendments do not involve a significant hazards consideration.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Herbert N. Berkow

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of amendment request: June 4, 1990

Description of amendment request: The proposed amendment would modify page T3/4 1-27, Surveillance Requirement 4.1.3.4.a, to delete reference to control Trod Group A as a control group and change the term "regulating group" to "control group" for consistency with the wording provided in Technical Specification 3.1.3.5.

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 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; (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.

The licensee addressed the above three standards in the amendment application. In regard to the three standards, the licensee provided the following analysis.

This change is requested to delete an inconsistent reference to control rod group A as a control group and to change the term "regulating" to "control" for consistent terminology within the Technical Specifications. As such, this proposed change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. This change is administrative only and has no impact on the accident analysis which supports the safe operation of the Yankee Nuclear Power Station.
2. Create the possibility of a new or different kind of accident from any previously analyzed. This modification does not change any systems or plant components or change the manner in which the plant is operated. Therefore, the possibility of a new or different accident does not exist.
3. Involve a significant reduction in a margin of safety. This modification only provides an administrative wording change and has no bearing on the current margin of safety for the Yankee plant as no change in operating limits or practice are being implemented.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based upon this review, the staff agrees with the licensee's no significant hazards analysis. Based upon the above discussion, the staff proposed to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02111

NRC Acting Project Director: Victor Nerses

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License 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 assessment, 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, the Gelman Building, 2120 L Street, N.W., Washington, D.C., 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, DC 20555, Attention: Director, Division of Reactor Projects.

Alabama Power Company, Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama.

Date of amendments request: June 12, 1990

Brief Description of amendments: The amendments change the Technical Specifications to redefine the fully withdrawn position of all rod cluster control assembly (RCCA) banks to minimize localized RCCA wear. Currently, the fully withdrawn position for the control and shutdown RCCA banks is defined as 228 steps above rod bottom. The amendments allow the control and shutdown RCCA banks to be designated as fully withdrawn between steps 225 and 231, inclusive. These changes are consistent with Westinghouse's recommendation to axially reposition the RCCAs up to three steps to distribute wear to other locations on the RCCA rodlets in order to extend rod life.

Date of issuance: September 7, 1990

Effective date: September 7, 1990

Amendment Nos.: 83 and 76

Facility Operating License Nos. NPF-2 and NPF-8. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** July 11, 1990 (55 FR 28472) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 7, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, P. O. Box 1369, Dothan, Alabama 36302

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: June 26, 1990

Brief description of amendment: The amendment would allow steam generator tube inspection to be performed from either the hot-leg or cold-leg side of the channel head.

Date of issuance: September 6, 1990

Effective date: September 6, 1990

Amendment No. 129

Facility Operating License No. DPR-23. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** July 25, 1990 (55 FR 30292) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 6, 1990.

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, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: December 18, 1989, as supplemented January 12, 1990.

Brief description of amendment: The amendment revises Table 3.7-6, Item 19, Maximum Temperature for the Tank Area from 122°F to 104°F and deletes Item 17, Maximum Temperature for the

Fuel Pool Cooling Pump and Heat Exchanger Area.

Date of issuance: September 6, 1990

Effective date: September 6, 1990

Amendment No. 21

Facility Operating License No. NPF-63. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** April 18, 1990 (55 FR 14503) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 6, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: January 31, 1990, as supplemented August 30, 1990

Brief description of amendments: The amendments to the Technical Specifications which would: (1) reduce the residual heat removal (RHR) minimum flowrate during refueling operations, (2) remove the RHR autoclosure interlock on the RHR system suction isolation valves, and (3) allow one safety injection pump to be available for injection purposes if normal heat removal capability were lost.

Date of issuance:

Effective date for Byron: August 31, 1990

Effective date for Braidwood: August 31, 1990, to be implemented by December 15, 1990.

Amendment Nos.: Byron, 38 and 38; Braidwood, 25 and 25

Facility Operating License Nos. NPF-37, NPF-66, NPF-72 and NPF-77: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 13, 1990 (55 FR 23994) The August 30, 1990 supplement provided an implementation date and did not change the initial no significant hazards consideration. The Commission related evaluation of the amendments is contained in a Safety Evaluation dated August 31, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: For Byron, the Byron Public Library, 109 N. Franklin, P. O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

NRC Project Director: Richard J. Barrett

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: July 24, 1989

Brief description of amendment: This amendment revises Technical Specification Sections 6.2.2.f, 6.2.3.4, 6.5.1.2, 6.5.2.5, and 6.5.2.6 to allow scheduling of 8- or 12-hour shifts; to ensure that the recommendations of the Independent Safety Engineering Group are received by the Vice President of Nuclear Engineering and Services; to reflect the title change for the Superintendent-Maintenance and Modifications to Superintendent-Maintenance; to remove Nuclear Safety Review Group (NSRG) meeting frequency requirements applicable for the initial year of operation; and to clarify quorum requirements for the NSRG, respectively.

Date of issuance: August 27, 1990

Effective date: August 27, 1990

Amendment No.: 54

Facility Operating License No. NPF-43. The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** March 7, 1990 (55 FR 8222) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 27, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: September 21, 1988.

Brief description of amendment: This amendment revises Technical Specification (TS) 3/4.3.4, Anticipated Transient Without Scram Recirculation Pump Trip System Instrumentation. The proposed TS changes provide appropriate provisions for the two-out-of-two-trip logic and will Tallow Fermi-2 to better reflect the as-built plant design.

Date of issuance: August 30, 1990

Effective date: August 30, 1990

Amendment No.: 55

Facility Operating License No. NPF-43. The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** May 17, 1989 (54 FR 21302) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 30, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: December 21, 1987, as supplemented July 14, 1989, April 19, and June 12, 1990.

Brief description of amendments: The amendments modify the TSs for the Control Room Area Ventilation System. These changes clarify the Action Statement for Modes 5 and 6 (Cold Shutdown and Refueling) by eliminating a statement regarding flow through the HEPA filters and activated carbon adsorbers; replace the Unit 1 bypass leakage acceptance criteria with the more conservative Unit 2 criteria; replace the methyl iodide penetration testing criteria with more conservative criteria to meet the intent of Regulatory Guide 1.52; and extend the sampling interval of the carbon adsorbers of the Control Room Area Ventilation System from 720 hours to 1440 hours.

Date of issuance: August 30, 1990

Effective date: August 30, 1990

Amendment Nos.: 78 & 72 Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 8, 1989 (54 FR 6190) and February 7, 1990 (55 FR 4263). Since the dates of the Commission's initial notices, the licensee submitted supplemental information dated April 19 and June 12, 1990. This supplemental information clarified certain aspects of the request but did not change the substance of the changes noticed in the **Federal Register** and did not affect the Commission's proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 30, 1990

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: February 20, 1990

Brief description of amendments: The amendments add a footnote to Technical Specification 4.6.1.2 which would permit the containment integrated leak rate test on McGuire Unit 1, required by Section III.D.1(a) of 10 CFR Part 50, Appendix J, to be performed during the 10-year inservice inspection (ISI) outage (i.e., during the 1991 end-of-fuel cycle (EOC) 7 outage), to be performed instead during the EOC 6 outage. These amendments only affect McGuire Unit 2 administratively because it shares a common TS document with Unit 1.

Date of issuance: August 28, 1990

Effective date: August 28, 1990

Amendment Nos.: 111 and 93

Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 21, 1990 (55 FR 10532) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 28, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: June 11, 1990

Brief description of amendment: The amendment modifies the Appendix A Technical Specifications (TSs) for the Overpressure Protection System. Specifically, the amendment deletes Surveillance Requirements 4.4.9.3.1.d which requires stroking each operable power-operated relief valve (PORV) each time the plant enters Mode 5 unless stroke testing was performed previously on the PORV within three months.

Date of issuance: August 30, 1990

Effective date: August 30, 1990

Amendment No. 32

Facility Operating License No. DPR-66. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 30, 1990 (55 FR 31006) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 30, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: June 5, 1989, as supplemented July 12, 1989, November 3, 1989, February 13, 1990, May 1, 1990, June 21, 1990 and July 20, 1990.

Brief description of amendments: These amendments replace the current custom Technical Specifications with a set of revised Technical Specifications which are based on the standard Technical Specifications for Westinghouse-designed plants.

Date of issuance: August 28, 1990

Effective date: August 28, 1990

Amendment Nos. 137 and 132

Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** A Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing was published in the **Federal Register** on December 5, 1989 (54 FR 50295). The Commission's Notice of Proposed No Significant Hazards Consideration Determination was published in the **Federal Register** on May 15, 1990 (55 FR 20218).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 28, 1990.

The June 21 and July 20, 1990 letters provided supplemental information which did not alter the staff's initial determination of no significant hazards consideration.

No significant hazards consideration comments received: No

Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: February 20, 1990, revised April 11, 1990 and superseded July 24, 1990.

Brief description of amendment: The amendment revises sections 4.7.B.3, 4.7.B.4.C, and Section 4.7 Basis, of the Technical Specifications. Specifically, the revision adds the Service Test to the Station and Diesel Batteries and revises the capacity and Annunciator Surveillance from 18 to 24 months.

Date of Issuance: September 4, 1990

Effective date: September 4, 1990

Amendment No.: 142

Provisional Operating License No. DPR-16. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 1, 1990 (55 FR 31260) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated September 4, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: March 2, 1990

Brief description of amendments: The amendments make a number of miscellaneous changes to the TSs for Units 1 and 2.

Date of issuance: August 30, 1990

Effective date: August 30, 1990

Amendment Nos.: 170 and 108

Facility Operating License Nos. DPR-57 and NPF-5. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 16, 1990 (55 FR 20356) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 30, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: May 29, 1990

Brief description of amendments: The amendments revise TS Tables 2.2-1 and 3.3-3 to add a second set of values for steam generator low-low and high-high instrumentation.

Date of issuance: August 30, 1990

Effective date: August 30, 1990

Amendment Nos.: 34 & 14

Facility Operating License Nos. NPF-68 and NPF-81: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 25, 1990 (55 FR 30299)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 30, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: September 30, 1988, and supplemented by two letters dated June 6, 1990, and letters dated June 26, 1990, and August 22, 1990

Brief description of amendment: The amendment modifies Technical Specifications (TS) 3.0.4, 4.0.3, and 4.0.4 based on recommendations provided in Generic Letter 87-09.

Date of issuance: August 31, 1990

Effective date: August 31, 1990, to be implemented no later than September 29, 1990

Amendment No.: Amendment No. 47

Facility Operating License No. NPF-47. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 7, 1988 (53 FR 44966) and July 11, 1990 (55 FR 28476)

The August 22, 1990, submittal provided an implementation date and did not change the initial no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 31, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: May 11, 1990

Brief description of amendments: The amendments change the Technical Specifications by adding a specific technical specification for the main feedwater isolation valves.

Date of issuance: August 31, 1990

Effective date: August 31, 1990

Amendment Nos.: Amendment Nos. 19 and 9

Facility Operating License Nos. NPF-76 and NPF-80. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 25, 1990 (55 FR 30300). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 31, 1990.

No significant hazards consideration comments received: No.

Local Public Document Rooms Location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: February 5, 1988

Description of amendment request: This amendment revised the applicable operational conditions for the containment building fuel transfer pool ventilation plenum radiation monitor.

Date of issuance: August 23, 1990

Effective date: August 23, 1990

Amendment No.: 44

Facility Operating License No. NPF-62. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 13, 1988 (53 FR 26524) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 23, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Indiana Michigan Power Company, Dockets Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Units Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: February 6, 1990 (as supplemented May 29, and July 23, 1990) and May 11, 1990.

Brief description of amendments: The amendments modified the Technical Specifications for Unit 2 Cycle 8 to allow for a transition to Westinghouse 17 x 17 VANTAGE 5 fuel as a replacement for some 17 x 17 Advanced Nuclear Fuel (ANF) Corporation fuel. They also made numerous administrative changes to the Technical Specifications and certain changes to Unit 1 Technical Specifications to achieve consistency with Unit 2.

Date of issuance: August 27, 1990

Effective date: August 27, 1990

Amendments Nos.: 148/134

Facility Operating Licenses Nos. DPR-58 and DPR-74. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 18, 1990 (55 FR 14511) and June 27, 1990 (55 FR 26287).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 27, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Indiana Michigan Power Company, Docket No. 50-315, Donald C. Cook Nuclear Plant, Unit No. 1, Berrien County, Michigan

Date of application for amendment: February 9, 1990

Brief description of amendment: This amendment changes Technical Specification (TS) 3/4.7.8, "Snubbers," to provide a one-time extension of the required interval for visual inspection of inaccessible snubbers until the end of the Unit 1 Cycle 11 refueling outage.

Date of issuance: September 6, 1990

Effective date: September 6, 1990

Amendment No.: 149

Facility Operating License No. DPR-58. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 18, 1990 (55 FR 14507). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 6, 1990

No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy, Center, Linn County, Iowa

Date of application for amendment: June 19, 1990

Brief description of amendment: The amendment revised the Duane Arnold Energy Center Technical Specifications (TSs) to reflect the use of advanced TGE 8X8NB-3 fuel for Cycle 11 operation. Specifically, the change increased the safety limit Minimum Critical Power Ratio (MCPR) from 1.04 to 1.07 for two recirculation loop operation, and from 1.07 to 1.10 for single loop operation.

Date of issuance: August 28, 1990

Effective date: August 28, 1990

Amendment No.: 168

Facility Operating License No. DPR-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 25, 1990 (55 FR 30301) The Commission's related evaluation of the

amendment is contained in a Safety Evaluation dated August 28, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S. E., Cedar Rapids, Iowa 52401.

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: June 19, 1990

Brief description of amendment: The amendment establishes a specification for maximum reactor coolant primary-to-secondary leakage from any one steam generator of 0.15 gallons per minute.

Date of issuance: August 30, 1990

Effective date: August 30, 1990

Amendment No.: 117

Facility Operating License No. DRP-36: Amendment revised the Technical Specifications and/or License.

Date of initial notice in **Federal Register:** July 25, 1990 The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 30, 1990

No significant hazards consideration comments received: No

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment:

Brief description of amendment: The amendment modifies TS 3/4.6.6.1, "Supplemental Leak Collection and Release System", (SLCRS), to incorporate a revised SLCRS flow rate.

Date of issuance: August 22, 1990

Effective date: August 22, 1990

Amendment No.: 53

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes (55 FR 31917 dated August 6, 1990). The notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by September 5, 1990, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment. The Commission's related evaluation of the amendment and final no significant hazards consideration determination is contained in a Safety Evaluation dated August 22, 1990.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: July 11, 1990

Brief description of amendment: The amendment modified the Technical Specifications to reflect a modification the licensee is planning to implement during the fall 1990 refueling outage to install new suppression pool water level indication at the Remote Shutdown Panel (RSP) to support safe shutdown of the plant in the event of a fire.

Date of issuance: September 4, 1990

Effective date: October 1, 1990

Amendment No.: 44

Facility Operating License No. NPF-39. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 25, 1990 (55 FR 30306) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 4, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Portland General Electric Company et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: February 10, 1989

Brief description of amendment: The amendment revises the Trojan Technical Specification (TTS) 3/4 6.1, "Containment Integrity.' The amendment relieves Trojan Nuclear Power Plant from verifying the closure and seal of the equipment hatches at least once every 31 days.

Date of issuance: August 27, 1990

Effective date: August 27, 1990

Amendment No.: 162

Facilities Operating License No. NPF-1: Amendment changed the Technical Specifications.

Date of initial notice in **Federal Register:** July 25, 1990 (55 FR 30307). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 27, 1990.

No Significant hazards consideration comments received: No.

Local Public Document Room location: Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207

Portland General Electric Company et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: August 12, 1988. By letter dated August 16, 1988, the licensee provided clarifying information that was within the scope of the action originally noticed in the **Federal Register** and it did not alter the staff's proposed No Significant Hazards Consideration determination.

Brief description of amendment: The amendment revises the surveillance requirements of Table 3.4.6-1 of the Technical Specifications Section 3/4.4.6.2 regarding leakage from the reactor coolant system pressure isolation valves to require that when leakage tests are performed using a test differential pressure lower than the functional maximum, observed leakage rates are adjusted from the actual test differential pressure in a prescribed manner.

Date of issuance: August 27, 1990

Effective date: August 27, 1990

Amendment No.: 163

Facilities Operating License No. NPF-1: Amendment changed the Technical Specifications.

Date of initial notice in **Federal Register:** October 19, 1988 (53 FR 40999) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 27, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151 Portland, Oregon 97207.

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: February 22, 1990 and supplemented by letter dated May 29, 1990. The May 29, 1990 supplemental letter did not increase the scope of the original amendment request and did not affect the staff's original no significant hazards determination.

Brief description of amendments: These amendments modified Technical Specifications Section 3.1.1.4 for Unit 1 and 3.1.1.3 for Unit 2 and the associated bases by changing the end-of-cycle

negative moderator temperature coefficient.

Date of issuance: August 27, 1990

Effective date: Units 1 and 2 are effective as of the date of issuance to be implemented within 60 days of the date of issuance.

Amendment Nos. 113 and 94

Facility Operating License Nos. DPR-70 and DPR-75. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 30, 1990 (55 FR 21978) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 27, 1990

No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: May 9, 1989 as supplemented on February 20, 1990.

Brief description of amendment: The proposed amendment would revise Technical Specifications, to incorporate additional Specifications and Action Statements for the operability and testing requirements of the motor-driven and turbine-driven auxiliary feedwater pumps.

Date of issuance: August 24, 1990

Effective date: September 24, 1990

Amendment No.: 40

Facility Operating License No. DPR-18: Amendment revised the Technical Specifications and/or License.

Date of initial notice in **Federal Register:** September 6, 1989 (54 FR 37052) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 24, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Tennessee Valley Authority, Docket No. 50-328, Sequoyah Nuclear Plant, Unit 2, Hamilton County, Tennessee

Date of application for amendment: May 21, 1990 (TS 90-09)

Brief description of amendment: The amendment modifies the Sequoyah Nuclear Plant, Unit 2, Technical Specifications (TSs) on containment Type A or integrated leak rate tests (CILRTs). The change adds a footnote to Surveillance Requirement (SR) 4.6.1.2.b regarding accelerated CILRT test schedules. Because the two consecutive tests performed on Unit 2 during the Unit 2 Cycle 2 refueling outage (November 1984) and the Unit 2 Cycle 3 refueling outage (March 1989) are classified as failed tests, SR 4.6.1.2.b required an accelerated test frequency. This change provides an exemption from the accelerated test frequency in SR 4.6.1.2.b for the Unit 2 Cycle 2 and Cycle 3 test failures so that a Unit 2 CILRT is not required in the upcoming Cycle 4 refueling outage which is scheduled to begin in October 1990. An exemption to Appendix J of 10 CFR Part 50 was issued on August 27, 1990.

Date of issuance: August 27, 1990

Effective date: August 27, 1990

Amendment No.: 126

Facility Operating Licenses No. DPR-79. Amendment revised the Unit 2 Technical Specifications.

Date of initial notice in **Federal Register:** June 27, 1990 (55 FR 26296) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 27, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: March 6, 1990

Brief description of amendment: The amendment revised the Technical Specifications by deleting the power range, neutron flux, high negative rate trip. This change is consistent with Westinghouse WCAP-11394(P) which was approved by the staff on October 23, 1989.

Date of issuance: August 23, 1990

Effective date: August 23, 1990

Amendment No.: 56

Facility Operating License No. NPF-30. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: June 13, 1990 (55 FR 24007) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 23, 1990. No significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: June 11, 1990

Brief description of amendment: The amendment modifies the Technical Specifications by adding several NRC reviewed and approved methodologies for use in generating the limits in the Core Operating Limits Report

Date of issuance: August 24, 1990

Effective date: August 24, 1990

Amendment No. 126

Facility Operating License No. DPR-28. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 25, 1990 (55 FR 30315) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 24, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

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: June 8, 1990, as superseded June 13, 1990

Brief description of amendments: The amendments enhance RHR reliability by including a reduction in the minimum residual heat removal flow rates from 3000 gpm to 2000 gpm during reactor coolant system partial drainage (mid-loop) operation for which the temperature is maintained below 140°F and the reactor has been shut down for at least 100 hours.

Date of issuance: August 27, 1990

Effective date: August 27, 1990

Amendment Nos.: 137 and 120

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 25, 1990 (55 FR 30319) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 27, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: 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, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: April 30, 1990

Brief description of amendments: The amendments revise the requirements governing the operability of the Individual Rod Position Indication (IRPI) system. The change shifts the emphasis from the IRPI system to the demand position indication system (the step counters) for rod group position information during shutdown and certain transient operational modes such as reactor startup.

Date of issuance: August 27, 1990

Effective date: August 27, 1990

Amendment Nos.: 138, 121

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 25, 1990 (55 FR 30318) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 27, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: 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, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: January 15, 1990, as supplemented August 15, 1990

Brief description of amendments: The amendments increase the maximum Tallowable rod drop time needed to accommodate a new fuel assembly design designated North Anna Improved Fuel (NAIF).

Date of issuance: September 6, 1990

Effective date: September 6, 1990

Amendment Nos.: 139 and 122

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 21, 1990 (55 FR 6122) The August 15, 1990 letter provided additional information which did not alter the staff's initial determination of no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 6, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: April 19, 1990 as supplemented on June T7, 1990

Brief description of amendment: This amendment modifies Technical Specification Surveillance Requirement to bring the High Pressure Safety Injection (HPSI) and LPSI pump surveillance frequency requirements in line with the Standard Technical Specifications for Westinghouse Pressurized Water Reactors (PWRs) contained in NUREG-0452, Revision 4, while providing for re-establishment of ASME XI inservice testing reference values as provided for in the code. NUREG-0452 requires surveillance of these pumps only when they are being tested to meet the inservice testing required by Section XI of the ASME Boiler and Pressure Vessel Code in effect for each specific plant.

Date of issuance: September 6, 1990

Effective date: September 6, 1990

Amendment No.: 135

Facility Operating License No. DPR-28: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 27, 1990 (55 FR 26299) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 6, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

NOTICE OF ISSUANCE OF 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 biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action.

Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., 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 Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By October 19, 1990, 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. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, DC 20555 and at the Local Public Document Room for the particular facility involved.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to **(Project Director)**: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: July 5, 1990

Brief description of amendment: The amendment rewords Technical Specifications (TS) Section 3.4.6.2.f to better define which sections of piping need to be included under Surveillance 4.4.6.2.1.g. Surveillance requirement 4.4.6.2.1.g has been changed to allow this surveillance requirement for portions of the high pressure injection safety

injection (HPSI) system, charging and residual heat removal (RHR) suction piping to be performed at lower pressures. A new surveillance requirement 4.4.6.2.1.i will require the performance of an operational leakage rate test at operating pressures under accident conditions for those portions of the THPSI, charging and RHR systems outside containment used for or pressurized during recirculation at least once per refueling outage has been added. Specification 4.0.4 has been determined to be not applicable for entry into MODE 4 for this surveillance requirement for the HPSI system. As a clarification, the note at the end of Surveillance requirement 4.4.6.2.1.h has been modified to explicitly state that it is only applicable to surveillance item "h." Bases section "Low Temperature Overpressurization Protection System" has been changed to describe the requirement to lock out one centrifugal charging pump and both HPSI pumps in MODES 4, 5, and 6 with the reactor vessel head installed.

Date of issuance: August 23, 1990

Effective date: August 23, 1990

Amendment No.: 130

Facility Operating License No DPR-61: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes (55 FR 32963 dated August 13, 1990). The notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by September 12, 1990, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment. The Commission's related evaluation of the amendment and final no significant hazards consideration determination is contained in a Safety Evaluation dated August 23, 1990.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

NRC Project Director: John F. Stolz

Dated at Rockville, Maryland, this 12th day of September, 1990.

For the Nuclear Regulatory Commission

Gus C. Lainas,

Acting Director, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation

[FR Doc. 90-22036 Filed 9-18-90; 8:45 am]

BILLING CODE 7590-01-D

Virginia Electric and Power Co. Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an exemption from the requirements of Appendix J to 10 CFR part 50 to Virginia Electric and Power Company (the licensee) for Surry Power Station, Unit No. 2, located in Surry County, Virginia.

Environmental Assessment

Identification of Proposed Action

The proposed exemption would grant a one-time relief from the schedular requirements of 10 CFR part 50, Appendix J, paragraph III.D.3 to perform Type C tests within a 2-year interval. In addition, related changes to the Technical Specifications would be forthcoming. The requested exemption would allow the licensee to defer the Type C testing until the next refueling outage scheduled for early April 1991, but no later than June 30, 1991.

The licensee's request for exemption and bases therefor are contained in a letter dated September 14, 1990.

The Need for the Proposed Action

The proposed exemption would allow a one-time relief from performing Type C tests for valves which would otherwise require testing between September 18, 1990 and April 1991 and enable Surry Unit 2 to continue normal plant operation and therefore prevent the premature shutdown of the Surry Power Station, Unit 2.

The purpose of the Type C testing is to measure and ensure that the leakage through the primary reactor containment does not exceed the maximum allowable leakage rate. It also provides assurance that periodic surveillance, maintenance and repairs are made to systems or components penetrating the containment. During the last two Type C tests, the licensee took corrective actions for valve repair to reduce valve leakage. In addition, the licensee has provided projected valve leakage estimates which the NRC has reviewed. The staff finds that the methodology used for estimating the leakage for the extended period is acceptable.

Environmental Impacts of the Proposed Action

The proposed exemption would allow a one-time relief from the schedular requirements to perform Type C tests within a 2-year period. The licensee has taken corrective action to repair valves during the last two Type C tests to minimize valve leakage. The proposed exemption will not negatively impact containment integrity and will not significantly change the risk from facility accidents. Therefore, post-accident radiological releases will not be significantly greater than previously determined, nor does the proposed exemption otherwise affect radiological plant effluents, or result in any significant occupational exposure. Likewise, the proposed exemption would not affect nonradiological plant effluents and would have no other environmental impacts. Therefore, the staff concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Because it has been concluded that there are no measurable impacts associated with the proposed exemption, any alternative to the exemption will have either no environmental impacts or greater environmental impacts.

The principal alternative would be to deny the requested exemption. Such action would not reduce environmental impacts of the Surry Unit 2 operations and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement for the Surry Power Station, Unit 2 which was issued in June 1972.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The staff has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption from 10 CFR part 50, appendix J, dated September 14, 1990, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Dated at Rockville, Maryland this 17th day of September 1990.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II-2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90-22306 Filed 9-18-90; 8:45 am]

BILLING CODE 7590-01-M

Licensing Support System Advisory Review Panel Meeting

Notice is hereby given pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 94-463, 86 Stat. 770-776), that the Licensing Support System Advisory Review Panel (LSSARP) will hold a meeting on October 10 and 11, 1990. The meeting will convene at 8:30 a.m. on October 10, 1990, in the Zephyr Room of the Quality Inn, 3800 South Virginia Street, Reno, Nevada. The Nuclear Regulatory Commission (NRC) established the LSSARP to provide advice and recommendations to the Nuclear Regulatory Commission and to the Department of Energy (DOE) on topics, issues, and activities related to the design, development, and operation of an electronic information management system known as the Licensing Support System (LSS). This system is being designed to contain information relevant to the Commission's future licensing proceeding for a geologic repository for the disposal of high-level radioactive waste (HLW).

The agenda for the two-day meeting is as follows:

Agenda, LSS Advisory Review Panel Meeting, October 10-11, 1990

Wednesday, October 10, 1990:

8:30	Discussion of Administrative Matters (Committee Chairman).
8:45	Status of DOE's LSS Development Activity and Schedule, and Status of HLW Repository Program (DOE).
10	LSS Design Documentation (DOE/Science Applications International Corporation).
2	Revised Topical Guidelines for Determining What Information Goes Into the LSS (NRC).

Thursday, October 11, 1990:

9	Continuation of June 7, 1990, Discussion of Recommended Fields for the Bibliographic "Headers" Required for all Graphic LSS Records (NRC).
1:30	Handling of Technical Data in the LSS (NRC/Center for Nuclear Waste Regulatory Analyses).
3:45	Status of Compliance Evaluation Program and Status of Priority Document Production Schedule (NRC/LSSA).
5	Adjourn.

The meeting will be open to the public. Interested persons may make oral presentations to the Panel or file written statements. Requests for oral presentations should be made to the contact person listed below as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for oral statements.

For further information regarding this matter, contact Marilee Rood, Office of the LSS Administrator, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone 301-492-4003.

Dated at Rockville, Maryland, this 14th day of September 1990.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 90-22201 Filed 9-18-90; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, and of the ACNW, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published August 22, 1990 (55 FR 34359). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS full Committee and ACNW meetings designed by an asterisk (*) will be open or whole or in part to the public. ACRS full Committee and ACNW meetings begin at 8:30 a.m. and ACRS Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS full Commitee and ACNW meetings and when ACRS Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the October 1990 ACRS and ACNW full Committee meetings can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committees (telephone: 301/492-4600 (recording) or 301/492-7288, Attn: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., Eastern Time.

ACRS Committee Meetings

Advanced pressurized water reactors, September 20, 1990, Bethesda, MD. The Subcommittee will review the draft SER for the Westinghouse RESAR SP-90 design.

Advanced pressurized water reactors, September 21, 1990, Bethesda, MD. The Subcommittee will meet with AAB Combustion Engineering, Inc., to discuss design feedback for System 80 Plus from operational experience at CE plants, in particular Palo Verde.

Plant license renewal, October 2, 1990, Bethesda, MD. The Subcommittee will review the draft Regulatory Guide on Standard Format and Content for License Renewal Application and the draft Standard Review Plan for the Review of License Renewal applications.

Joint severe accidents, extreme external phenomena, and probabilistic risk assessment, October 3, 1990, Bethesda, MD. The Subcommittee will continue their review of NUREG-1150, "Severe Accident Risks: An Assessment for Five U.S. Nuclear Power Plants" in the areas of seismic and fire analysis.

TVA plant licensing and restart, October 31, 1990, Huntsville, AL. The Subcommittee will review the planned restart of Browns Ferry Unit 2.

Thermal hydraulic phenomena, November 6, 1990, Bethesda, MD. The Subcommittee will discuss the status of the NRC staff's program on interfacing systems loss of coolant accidents (ISLOCA).

Joint containment systems and structural engineering, November 7, 1990, Bethesda, MD. The Subcommittees will discuss containment design criteria for future plants.

Joint advanced pressurized water reactors and advanced boiling water reactors, Date to be determined (October), Bethesda, MD. The Subcommittees will discuss the licensing review basis documents for CE System 80+ and GE ABWR designs.

Joint computers in nuclear power plant operations and instrumentation and control systems, Date to be determined (October/November), Bethesda, MD. The Subcommittees will discuss the use of computers and solid-

state control logic in nuclear power plant operations.

Auxiliary and secondary systems, Date to be determined (November/December), Bethesda, MD. The Subcommittee will discuss matters concerning fire protection and mitigation in nuclear power plants.

Materials and metallurgy, Date to be determined (November/December), Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 29, "Bolting Degradation or Failure in Nuclear Power Plants."

Joint plant operations and probabilistic risk assessment, Date to be determined, Bethesda, MD. The Subcommittee will begin review of the NRC staff's Action Plan to evaluate the risk from nuclear power plant shutdown operatioins.

Quality and quality assurance, Date to be determined, Bethesda, MD. The Subcommittee will discuss the performance-based concept of quality, what it means, its implementation, and preliminary results.

Auxiliary and secondary systems, Date to be determined, Bethesda, MD. The Subcommittee will discuss: (1) Criteria being used by utilities to design Chilled Water Systems, (2) regulatory requirements for Chilled Water Systems design, and (3) criteria being used by the NRC staff to review the Chilled Water Systems design.

Joint regulatory activities and containment systems, Date to be determined, Bethesda, MD. The Subcommittee will review the proposed final revision to appendix J to 10 CFR part 50, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors," and an associated Regulatory Guide.

Occupational and environmental protection systems, Date to be determined, Bethesda, MD. The Subcommittee will review the Advance Notice of Proposed Rulemaking on hot particles.

Severe accidents, Date to be determined, Bethesda, MD. The Subcommittee will discuss elements of the Severe Accident Research Program (SARP).

ACRS Full Committee Meetings

366th ACRS meeting, October 4–6, 1990, Bethesda, MD. Items are tentatively scheduled.

*A. *Reactor operatoring experience (open)*—Briefing by representatives of the NRC staff regarding reactor operating expereience and events, including the status of activities regarding the impact of non-consensable gases on operation of safety-related systems and components.

*B. *Quality assurance (open)*—Briefing by representatives of the NRC staff on the status of activities regarding performance-based quality assurance at nuclear facilities and the related proposed revision of the NRC Standard Review Plan.

*C. *International activities (open/closed)*—Briefing regarding recent visit and meetings of the US-USSR Joint Coordinating Committee on Civilian Nuclear Reactor Safety and visit of U.S. representatives to the Loviisa Nuclear Power Plant in Finland.

*D. *License renewal standard review plan (open)*—Review and comment on proposed revision to the NRC Standard Review Plan and assocaited Regulatory Guide regarding guidance for license renewal reviews of nuclear power plants. Representatives of the NRC staff will participate in the discussion.

*E. *Severe accident risk assessment for five U.S. nuclear power plants (NUREG–1150) (open)*—The members will hear and discuss the report of the ACRS joint subcommittee meeting on Severe Accidents, Extreme External Phenomena, and Probabilistic Risk Assessment (fires and seismic events) as they relate to NUREG–1150 evaluations. The members will discuss proposed Committee comments and recommendations regarding the nature and use of NUREG–1150 and severe accident risk assessment in the regulatory process. Representatives of the NRC staff will participate as appropriate.

*F. *Reactor safety research (open)*—The members will discuss the scope and content of the annual ACRS report to Congress on the NRC Safety Research Program.

*G. *ACRS subcommittee activities (open)*—The members will hear reports and discuss activities of cognizant ACRS subcommittee meetings regarding safety-related and regulatory activities including the status of the NRC staff review of standardized nuclear plants, such as the Combustion Engineering CESSAR Systems 80+ nuclear power plant and use of bleed and feed cooling in nuclear power plants. Representatives of the NRC staff will participate as appropriate.

*H. *Westinghouse standard plant design (SP/90) (open)*—Review and report on the proposed preliminary design for this standardized nuclear power-plant. Representatives of the NRC staff and the Westinghouse Electric Corporation will participate as appropriate.

*I. *Impact of regulatory activities on nuclear power plant operations (open)*—Briefing by representatives of the NRC staff regarding conclusions/recommendations resulting from NRC regulatory impact surveys and discussion of proposed ACRS report related to the impact of the regulatory process.

*J. *ACRS procedures and practices (open)*—The members will discuss ACRS use of part-time consultants in support of ACRS activities. Administrative matters such as a proposed update and revision of the ACRS Bylaws will be discussed as appropriate.

*K. *Advanced reactor designs (open)*—Briefing by representatives of the NRC staff regarding the resource commitment that is being devoted to review and evaluation of advanced reactor designs. Representatives of DOE may participate to the degree appropriate.

L. *Appointment of ACRS members (closed)*—The members will discuss the qualifications of candidates proposed for appointment to the Committee.

*M. *Anticipated ACRS activities (open)*—The members will discuss anticipated ACRS subcommittee activities. Topics proposed for consideration by the full Committee will also be discussed. Incomplete items from previous Committee meetings will be discussed as time and availability of information permit. Anticipated dates for ACRS full Committee meetings during CY 1991 will be discussed.

367th ACRS Meeting, November 8–10, 1990—Agenda to be announced.

368th ACRS Meeting, December 6–8, 1990—Agenda to be announced.

ACNW Full Committee Meetings

24th ACNW meeting, September 19–20, 1990, Bethesda, MD. Items are tentatively scheduled.

*A. The Committee will discuss a response to the EPA's request for clarification of the comments made by ACNW which critique the EPA's high-level waste standards.

*B. The Committee may review the NRC staff's evaluation of the NAS/NRC report on "Rethinking High-Level Radioactive Waste Disposal."

*C. The Committee will hear a presentation on EPRI's performance assessment methodology for a HLW repository.

*D. The Committee will define the strategy and schedule for responding

to recent requests to review technical issues involved in the disposal of mixed waste with an emphasis on the resolution of conflicts between NRC's and EPA's regulations, and to review subsystem requirements within 10 CFR part 60 to determine their conformance with the EPA high-level waste standards.

*E. The Committee will review the "Public Comment" version of the Format and Content Guide for High-Level Waste Repository Licensing Applications.

*F. The Committee will discuss anticipated and proposed Committee activities, meeting agenda, administrative, and organizational matters, as appropriate. The members will also discuss matters and specific issues which were not completed during previous meetings as time and availability of information permit.

ACNW working group meeting, October 23, 1990, Bethesda, MD. Items are tentatively scheduled.

*A. *Human intrusion (open)*—An ACNW Working Group will examine how human intrusion at a high-level waste repository will be dealt with under 10 CFR part 60 considerations and guidance from 40 CFR 191 Appendix B. This will include discussion of the WIPP experience and will be designed to explore the range of current thinking from various groups.

25th ACNW meeting, October 24–26, 1990, Bethesda, MD. Items are tentatively scheduled.

*A. The Committee will be briefed by the DHLWM staff on the "Phase I Demonstration of the Nuclear Regulatory Commission's Capability to Conduct a Performance Assessment for an HLW Repository.

*B. The Committee will be briefed on a recent report by Sandia National Laboratories which concluded that there is reasonable confidence that compliance of the WIPP facility with the EPA standards is achievable.

*C. The Committee will hear a briefing for information on Performance Assessment Methodology for an LLW site by NMSS.

*D. The Committee will be briefed by members of NRC's Nucler Safety Research Review Committee relative to its findings on the NRC's radioactive waste research program.

*E. The Committee will select meeting dates for CY 1991.

*F. The Committee will select a nominating Committee for ACNW officers (Chairman and Vice-Chairman) for CY 1991.

*G. The Committee will discuss the complexities and problems associated with licensing an LLW disposal facility, particularly with respect to siting and the NRC-state interface.

*H. The Committee will be briefed on their progress by the Carbon-14 and Human Intrusion Working Groups.

*I. The Committee will discuss anticipated and proposed Committee activities, meeting agenda, administrative, and organizational matters, as appropriate. The members will also discuss matters and specific issues which were not completed during previous meetings as time and availability of information permit.

ACNW working group meeting, October 26, 1990. Bethesda, MD. Items are tentatively scheduled.

*A. *Migration of carbon-14 (open)*—An ACNW Working Group will be briefed on the potential problems that could arise at a high-level repository as a result of carbon-14 release and migration. This will include a discussion of EPA release limits for this radionuclide.

ACNW Meeting scheduled for November 26–27, 1990 has been cancelled.

26th ACNW Meeting, December 12–14, 1990—Agenda to be announced.

Dated: September 13, 1990.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 90–22181 Filed 9–18–90; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on October 4–6, 1990, in room P–110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the **Federal Register** on August 22, 1990.

Thursday October 4, 1990, room P–110, 7920 Norfolk Avenue, Bethesda, Md.

8:30 a.m.–8:45 a.m. Chairman's Remarks (Open)—The ACRS Chairman will make opening remarks and report briefly regarding items of current interest.

8:45 a.m.–11:30 a.m.: Severe Accident Risk Assessment (NUREG–1150) (Open)—The members will hear and discuss a report of a joint ACRS subcommittee meeting regarding consideration of external events such as fire and seismic issues in severe accident risk assessment.

The members will also discuss a proposed ACRS report to the NRC regarding NUREG–1150, Severe Accident Risks: Assessment for Five U.S. Nuclear Power Plants, and its use in the regulatory process.

11:30 a.m.–12:15 p.m.: Anticipated ACRS Activities (Open)—The Committee will discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee. Proposed dates for ACRS meetings during CY 1991 will also be discussed.

1:15 p.m.–3:15 p.m.: License Renewal Standard Review Plan (Open)—The Committee will review and report on the NRC staff proposed Standard Review Plan and an associated NRC Regulatory Guide for nuclear power plant license renewal.

Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

3:30 p.m.–5 p.m.: Advanced Reactors (Open)—The Committee will be briefed by representatives of the NRC staff and DOE, as appropriate, regarding the scope and schedule for review of advanced nuclear power plant designs.

5 p.m.–6 p.m.: ACRS Procedures and Practices (Open)—The Committee will discuss proposed ACRS comments to the NRC regarding use of part-time consultants in support of ACRS activities and a proposed update and revision of the ACRS Bylaws.

Friday, October 5, 1990, room P–110, 7920 Norfolk Avenue, Bethesda, Md.

8:30 a.m.–10:30 a.m.: Westinghouse Standard Plant (SP/90) (Open)—The Committee will review and report on the preliminary design of this standardized Westinghouse nuclear plant. Representatives of the NRC staff and the Westinghouse Electric Corporation will participate, as appropriate.

10:45 a.m.–12 noon: Performance Based Quality Assurance (Open)—The Committee will be briefed by the NRC staff on the proposed revision of the NRC Standard Review Plan to address performance based quality assurance.

1 p.m.–2:30 p.m.: Impact of Regulatory Activities (Open)—A briefing will be given by representatives of the NRC staff regarding proposed action in response to regulatory impact surveys regarding the impact of regulatory activities on the operation of nuclear facilities.

2:45 p.m.–3:45 p.m.: Reactor Operating Experience and Events (Open)—A briefing will be given by representatives of the NRC staff regarding the impact of noncondensable gases on operation of safety-related systems and components.

3:45 p.m.–4:30 p.m.: NRC Research Program (Open)—The members will hold a discussion on the scope and

nature of its annual report to the U.S. Congress on the NRC Safety Research Program.

4:30 p.m.–5:30 p.m.: Preparation of ACRS Reports (Open)—The members will discuss proposed reports to the NRC regarding items considered during this meeting.

Saturday, October 6, 1990, room P–110, 7920 Norfolk Avenue, Bethesda, Md.

8:30 am.–11:30 a.m.: Preparation of ACRS Reports (Open)—The members will discuss proposed reports to the NRC regarding items considered during this meeting as well as items which were not completed at previous meetings as time and availability of information permit.

11:30–12 noon: New Members (Closed)—The members will discuss the qualifications of candidates proposed for appointment to the Committee.

This session will be closed to discuss information of a personal nature where disclousre would constitute a clearly unwarranted invasion of personal privacy.

1 p.m.–1:45 p.m.. ACRS Subcommittee Activities (Open)—The members will hear and discuss the reports of cognizant subcommittees regarding the status of assigned activities, including decay heat removal in nuclear plants and the status of the CESSAR System 89+ nuclear power plant project review.

1:45 p.m.–2:30 p.m.: Miscellaneous (Open)—The members will complete discussion of items considered during this meeting and administrative matters related to the conduct of Committee activities.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 27, 1989 (54 FR 39594). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during his meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Public Law 92–463 that it is necessary to close portions of this meeting noted above to discuss information the release of which would represent an unwarranted invasion of personal privacy [5 U.S.C. 552b(c)(6)].

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Exercutive Director, Mr. Raymond F. Fraley (telephone 301/492–8049), between 7:45 a.m. and 4:30 p.m.

Dated: September 13, 1990.

John C. Hoyle,

Advisory, Committee Management Officer

[FR Doc. 90–22182 Filed 9–18–90; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–369 and 50–370]

Duke Power Co., et al.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 113 to Facility Operating License No. NPF–9 and Amendment No. 95 to Facility Operating License No. NPF–7 issued to Duke Power Company, et al., (the licensee) which revised the Technical Specifications for operation of the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg, North Carolina.

The amendments are effective as of the date of issuance.

The amendments revised the Technical Specifications regarding the Auxiliary Building Filtered Ventilation Exhaust system, including related changes associated with the modified Waste Handling area.

The applications for the amendments comply 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 amendments.

Notices of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action were published in the **Federal Register** on April 4, 1988 (53 FR 10957) and July 27, 1989 (54 FR 31269). No request for a hearing or petition for leave to intervene was filed following this notice. By letters of December 8, 1989, June 18, 1990, and September 4, 1990, the licensee provided supplemental information that did not change the technical substance of the previously noticed requests and, thus, did not warrant renoticing.

The Commission has prepared Environmental Assessments related to the action and has determined not to prepare environmental impact statements. Based upon the environmental assessments, the Commission has concluded that the issuance of these amendments will not have a significant effect on the quality of the human environment (54 FR 37515, September 11, 1989; 55 FR 31258, August 1, 1990).

For further details with respect to the action see (1) The applications for amendment dated October 15, 1987, as supplemented October 22, 1987, and September 4, 1990; and May 11, 1989, as supplemented June 14 and December 8, 1989, and June 18, 1990, (2) Amendment No. 113 to License No. NPF–9 and Amendment No. 95 to License No. NPF–17 and (3) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223. 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 Reactor Projects—I/II.

Dated at Rockville, Maryland this 12th day of September 1990.

For the Nuclear Regulatory Commission.

Darl S. Hood,

Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90–22183 Filed 9–18–90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–219]

GPU Nuclear Corp.; Consideration of Issuance of Amendment to Provisional Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is

considering issuance of an amendment to Provisional Operating License No. DPR-16, issued to GPU Nuclear Corporation (GPUN, the licensee), for operation of the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey.

The amendment would revise Technical Specification § 3.4 to incorporate the 10 CFR 50.46 LOCA Analysis that is the basis for the MAPLHGR limits provided in Technical Specification Section 3.10 "Core Limits." The Limiting Conditions for Operation (LCOs) and Bases would be changed as appropriate. A note would be added to account for the more restrictive LCO for the Automatic Depressurization System (ADS) when one core spray loop is declared inoperable.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By October 19, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and 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. Interested persons should consult a copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the Local Public Document Room located at Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753. 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 of 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.

No later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, 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 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 200 N Street NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated August 14, 1990, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the Local Public Document Room, Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Dated at Rockville, Maryland, this 12th day of September, 1990.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I-4, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90-22184 Filed 9-18-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-116 Facility Operating License No. R-59; Amdt. No. 6]

Iowa State University (Iowa State University Argonant-Type Training Reactor); Order Modifying License

I.

Iowa State University (the licensee) is the holder of Facility Operating License No. R-59 (the license) issued on October 16, 1959, and subsequently renewed on October 21, 1983, by the U.S. Nuclear Regulatory Commission (the Commission). The license authorize operation of the Iowa State University Argonaut-Type Training Reactor (the facility) at a power level of up to 10 kilowatts (kw) (thermal). The facility is a training reactor located in Ames, Iowa, and is contained in the Nuclear Engineering Laboratory, which is located on the west edge of the main campus of Iowa State University. The mailing address is Nuclear Engineering Department, Iowa State University, 261 Sweeney Hall, Ames, Iowa 50010.

II.

On February 25, 1986, the Commission promulgated a final rule in § 50.64 of title 10 of the Code of Federal Regulations (10 CFR) limiting the use of high-enriched uranium (HEU) fuel in domestic research and test reactors (non-power reactors) (see 51 FR 6514). The rule, which became effective on March 27, 1986, requires that each licensee of a non-power reactor replace HEU fuel at its facility with low-enriched uranium (LEU) fuel acceptable to the Commission (1) Unless the Commission has determined that the reactor has a unique purpose and (2) contingent upon Federal Government funding for conversion-related costs. The rule is intended to promote the common defense and security by reducing the risk of theft and diversion of HEU fuel used in non-power reactors and the adverse consequences to public health and safety and the environment from such theft or diversion.

Sections 50.64(b)(2) (i) and (ii) require that a license of non-power reactor (1) Not initiate acquisition of additional HEU fuel, if LEU fuel that is acceptable to the Commission for that reactor is available when the licensee proposes that acquisition, and (2) replace all HEU fuel in its possession with available LEU fuel accepable to the Commission for that reactor, in accordance with a schedule determined pursuant to 10 CFR 50.64(c)(2).

Section 50.64(c)(2)(i) of the rule, among other things, requires each licensee of a non-power reactor, authorized to possess and to use HEU fuel, to develop and to submit to the Director of the Office of Nuclear Reactor Regulation (Director) by March 27, 1987, and at 12-month intervals thereafter, a written proposal (proposal) for meeting the rule's requirements.

Section 50.64(c)(2)(i) also requires the licensee to include the following in its proposal: (1) A certification that Federal Government funding for conversion is available through the U.S. Department of Energy (DOE) or another appropriate Federal agency and (2) a schedule for conversion, based upon availability of fuel acceptable to the Commission for that reactor and upon consideration of other factors such as the availability of shipping casks, implementation of arrangements for the available financial support, and reactor usage.

Section 50.64(c)(2)(iii) requires the licensee to include in its proposal, to the extent required to effect conversion, all necessary changes to the license, to the facility, and to the licensee's procedures (all three types of changes hereafter called modifications). This paragraph also requires the licensee to provide supporting safety analyses so as to meet the schedule established for conversion.

Section 50.64(c)(2)(iii) also requires the director of the Commission's Office of Nuclear Reactor Regulation (NRR) to review the licensee's proposal, to confirm the status of Federal Government funding, and to determine final schedule, if the licensee has submitted a schedule for conversion.

Section 50.64(c)(3) requires the Director of NRR to review the licensee's supporting safety analyses and to issue an appropriate enforcement order directing both the conversion and, to the extent consistent with protecting the public health and safety, any necessary modifications. In the statement of consideration of the final rule, the Commission explained that in most cases, if not all, the enforcement order would be an order to modify the license under 10 CFR 2.204 (see 51 FR 6514).

Section 2.204 provides, among other things, that the Commission may modify a license by issuing an amendment on notice to the licensee that it may demand a hearing with respect to any part or all of the amendment within 20 days from the date of the notice or such longer period as the notice may provide. The amendment will become effective on the expiration of this 20-day-or-longer period. If the licensee requests a hearing during this period, the amendment will become effective on the date specified in an order made after the hearing.

Section 2.714 states the requirements for a person whose interest may be affected by any proceeding to initiate a hearing or to participate as a party

III.

On November 28, 1988, the Director of NRR received the licensee's proposal, including its proposed modifications, supporting safety analyses, and schedule for conversion. The conversion consists of replacement of high-enriched with low-enriched uranium fuel elements. The fuel elements contain materials testing reactor (MTR)-type fuel plates, with the fuel meat in the form of uranium silicides dispersed in an aluminum matrix. These plates contain an enrichment of less than 20 percent with the U-235 isotope. The Attachment to this Order includes the changes to the licensing conditions and technical specifications that are needed to amend the facility license. Based on the licensee's submittals and the requirements of 10 CFR 50.64, I have determined that the public health and safety and the common defense and security require the licensee to convert the facility from the use of HEU to LEU fuel pursuant to the modifications stated in the Attachment in accordance with the schedule included herein following.

IV.

Accordingly, pursuant to sections 51, 53, 57, 101, 104, 161b., 161i., and 161o. of the Atomic Energy Act of 1954, as amended, and to the Commission's regulations in 10 CFR 2.204 and 50.64, *it is hereby ordered that:*

On the later date of either receipt of low-enriched uranium fuel elements by the licensee or 30 days following the date of publication of this Order in the **Federal Register** Facility Operating License No. R-59 is modified by amending the license conditions and technical specifications as stated in the Attachment to this Order.

V.

Pursuant to the Atomic Energy Act of 1954, as amended, the licensee or any other person adversely affected by this Order may request a hearing within 30 days of the date of this Order. Any request for a hearing shall be submitted to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the Assistant General Counsel for Hearings and Enforcement at the same address. If a person other than the licensee requests a hearing, that person shall set forth with particularity in accordance with 10 CFR 2.714 the manner in which the person's interest is adversely affected by this Order.

If a hearing is requested by the licensee or a person whose interest is adversely affected, the Commission shall issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearings is whether this Order should be sustained.

This Order shall become effective on the later date of either the receipt of low-enriched uranium fuel elements by the licensee or 30 days following the date of publication of this Order in the **Federal Register** or, if a hearing is requested, on the date specified in an order following further proceedings on this Order.

Dated at Rockville, Maryland this 12th day of September 1990.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 90-22185 Filed 9-18-90; 8:45 am]

BILLING CODE 7590-01-M

OVERSIGHT BOARD

Regions 1 and 2 Advisory Board Meetings

AGENCY: Oversight Board.

ACTION: Meeting notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is hereby published for the regional advisory board meetings for regions 1 and 2. The meetings are open to the public.

DATES: The meetings are scheduled as follows: 1. October 4, 1990 10 a.m. to 3:30 p.m., Pittsburgh, PA, Region 1 Advisory Board. 2. October 11, 1990, 10 a.m. to 3:30 p.m., New Orleans, LA, Region 2 Advisory Board.

ADDRESSES: The meetings will be held at the following locations:.

1. Pittsburgh, PA—Pittsburgh Branch/Federal Reserve Bank of Pittsburgh, Conference Rooms A-C, 6th floor, 717 Grant Street.
2. New Orleans, LA—City Council Chambers, 1st floor, 1300 Perdido Street.

FOR FURTHER INFORMATION CONTACT: Jill Nevius, Committee Management Officer, Oversight Board/RTC, 1777 F Street, NW., Washington, DC 20232, 202/786-9675.

SUPPLEMENTARY INFORMATION: Section 501(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (the ACT), Public Law No. 101-73, 103 Stat. 183, 382-383, directed the Oversight Board to establish one national advisory board and six regional advisory boards..

Purpose: The advisory boards provide the Resolution Trust Corporation (RTC) with information and recommendations on the policies and programs for the sale of RTC-owned real property assets.

Agenda: A detailed agenda will be available at the meeting. Discussions will center around the activities of that particular region as related to seller financing for RTC real estate assets, affordable housing, asset marketing, and utilization of the private sector. In addition, there will be briefings by the RTC on activity pertaining to that region and policy updates by the Oversight Board.

Statements: Interested persons may present data, information, or views in writing on the issues pending before the advisory board. Persons wishing to make oral statements are to notify the contact person 10 days before each meeting giving a brief statement on the nature of the remarks. Time permitting, oral comments will be limited to approximately five minutes.

All meetings are open to the public. Seating is available on a first come first served basis.

Dated: September 14, 1990.

Diane M. Casey,

Vice President, Office of Public Affairs.

[FR Doc. 90-22200 Filed 9-18-90; 8:45 am]

BILLING CODE 2222-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-28429; International Series Rel. No. 153; File No. SR-NASD-90-49]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to the Exit Restrictions in the PORTAL Market Rules

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 20, 1990, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend Schedule I to the NASD By-Laws ("PORTAL Rules") to delete the requirements restricting the exit of PORTAL securities from the PORTAL Market to non-PORTAL accounts. The proposed rule change would delete the requirements that (1) PORTAL dealers and PORTAL brokers submit supervisory procedures to enforce PORTAL exit restrictions as a condition of designation; (2) PORTAL participants file an Exit Transaction Report with the NASD as to each exit transaction and transfer from the PORTAL Market; and (3) exit transactions be made in compliance with a list of enumerated exit provisions in section 18 to part I of the PORTAL Market Rules. The latter amendment would permit exit transactions of PORTAL securities from the PORTAL Market pursuant to rule 144A without the filing of an opinion of counsel prior to the transactions and permit an exit transaction pursuant to the "Section 4-1½ exemption" concept.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Background

The NASD is proposing a number of amendments to the PORTAL Market Rules recently approved by the SEC pursuant to Securities Exchange Act Release No. 27956 (April 27, 1990) in order to conform to the final form of rule 144A adopted by the SEC in Securities Act Release No. 6862 (April 23, 1990). At the time that the Commission approved the PORTAL Market Rules on April 19, 1990, it also considered and approved rule 144A. It was understood by both SEC and NASD staff that the NASD would not have advance knowledge of the final version of rule 144A prior to the

Commission's consideration of the PORTAL Market Rules. Subsequently, the NASD reviewed the PORTAL Market Rules to determine whether certain of its provisions should be amended in light of the final version of rule 144A.

When the SEC reproposed rule 144A [1], the rule was considered to be very close to its final version. This was the case in many respects. In one important area, however, the final version of rule 144A departed from the reproposal. Reproposal of rule 144A included a provision denominated rule 144A(d)(5) that would have imposed restrictions on the resale of rule 144A-eligible securities of foreign private issuers not subject to reporting pursuant to section 13 or section 15(d) of the Act, where the security was traded on or through the facilities of a foreign securities exchange or designated organized foreign securities market and quoted in a U.S. inter-dealer quotation system within the previous 12 months. The restrictions would have required that the seller or any person acting on its behalf take reasonable steps to prevent the purchaser of the securities from reselling the securities in the United States unless the securities were registered under the Securities Act of 1933 ("Securities Act") or an exemption from registration was available. Reasonable steps were considered to be conclusively established where (a) The purchaser agreed in writing that the securities would not be resold in the U.S. unless they were registered under the Securities Act or an exemption therefrom was available and (b) a procedure existed, which was administered by the issuer of the securities or a third party, that was reasonably designated to prevent the transfer of the securities to other than qualified instructional buyers unless the securities were registered under the Securities Act or an exemption from registration was available.

The NASD's rule filing SR-NASD-88-23 addressed the manner in which the PORTAL Market Rules and the procedures related to its operation would provide compliance with proposed rule 144A(d)(5). Reference should be made to the detailed discussions at pages 53 to 79 of Amendment No. 1 to SR-NASD-88-23 and pages 5 and 6 of Amendment No. 4 to SR-NASD-88-23. Based on the NASD's submissions, the SEC included a statement in the adopting release that "The Commission has concluded that the PORTAL system is designed to provide that participants who comply with its requirements will also be in compliance with the requirements of rule 144A, except where information is not provided upon request" [2]

The NASD believes that those provisions of the PORTAL Market Rules intended to provide restrictions on the resale of PORTAL Market securities to accounts outside the PORTAL Market are (1) No longer credible; (2) inappropriate as not required by rule 144A; and (3) act as a significant barrier to the NASD's ability to attract PORTAL participants in light of the lack of such restrictions on non-PORTAL transactions. The PORTAL Market exit restrictions also impose restrictions only with respect to the initial sale or transfer of a PORTAL security from a PORTAL account to a non-PORTAL account and not to any subsequent resales thereafter. Under current PORTAL Market Rules, therefore, PORTAL exit restrictions do not and cannot provide continuing oversight of transactions in restricted securities in the non-PORTAL market.

The NASD is, therefore, proposing to amend the PORTAL Market Rules to eliminate restrictions on, but not regulatory oversight of, the exit of PORTAL securities from the PORTAL Market.

Description of Proposed Rule Change

Part I—Definitions—*Section 12*—The PORTAL Market Rules currently provide in section 12 to part I a definition of "PORTAL Exit Report" the purpose of which is to provide Trade Date +1 information as to the basis for the PORTAL participant's exit transfer or exit transaction. The NASD is proposing to delete the definition of "PORTAL Exit Report" included in section 12 to part I of the PORTAL Rules. As a result, thereof, sections 13 to 25 of part I are proposed to be redesignated sections 12 to 24.

Section 18—Section 18, to be redesignated section 17, to part I of the PORTAL Market Rules currently requires that an exit transaction from the PORTAL Market be through a PORTAL dealer or PORTAL broker and either be registered under the Securities Act or exempt from registration by reason of compliance with Regulation S, Rules 144 or 145, or Rule 144A, if an opinion of counsel is provided to the NASD prior to the rule 144A transaction. Exit transactions are also permitted where the seller is transferring securities to the issuer or an affiliate of the issuer and where the transaction is otherwise exempt and results in the purchaser acquiring freely tradeable securities. The provision, thus, essentially restates the requirement under the Securities Act that any securities transaction be registered or have an applicable exemption from registration. However, unlike transactions in the non-PORTAL market, PORTAL participants are currently prohibited from engaging in an exit resale pursuant to the concept of "Section 4(1½)" and from selling a security to a non-PORTAL account pursuant to Rule 144A without an opinion of counsel.[3]

The NASD proposes that current section 18 to part I of the PORTAL Rules be simplified by replacing the enumerated list of qualified exit transactions with a general statement that the exit transaction [4] must either be registered with the SEC under section 5 of the Securities Act or be sold in a transaction not subject to registration under the Securities Act by reason of compliance with an applicable exemption therefrom. The result of this amendment is that exit transactions will be permitted pursuant to rule 144A without submission to the NASD of an opinion of counsel prior to the transaction and pursuant to the "Section 4(1½)" concept. The revised provision reminds PORTAL participants of their obligation to ensure compliance with the Securities Act when engaging in a sale of PORTAL securities to an account outside the PORTAL Market as the rule 144A compliance [5] provided by the PORTAL Market is only available with respect to transactions between PORTAL participants in the PORTAL Market.

Section 18 will continue to require that PORTAL qualified investors that sell a PORTAL security from their PORTAL account to a non-PORTAL account do so through a PORTAL dealer or PORTAL broker.

Part III—Requirements Applicable to PORTAL Dealers and PORTAL Brokers—*Section 1(b)(8)*—Section 1(b)(8) to part III of the PORTAL Market Rules requires that, in order to be a PORTAL dealer or PORTAL broker, an applicant must submit for the NASD's review supervisory procedures designed to achieve compliance with the current PORTAL restrictions on qualified exit transactions and transfers, including (1) Preserving information demonstrating

[1] Securities Act Release No. 6839 (July 11, 1989).

[2] Securities Exchange Act Release No. 27956 (April 27, 1990); FR 18781 (May 4, 1990), at 18787.

[3] Rule 144A does not, by its terms, require an opinion of counsel as a condition of the availability of the safe harbor provided by the rule.

[4] An "exit transaction" is the sale of a PORTAL security from a PORTAL account to a non-PORTAL account.

[5] *See*, footnote 2 *supra*.

compliance with respect to each exit transaction and exit transfer pursuant to rule 17a-4(a) under the Act and (2) filing a PORTAL Exit Report. The NASD is proposing to delete this provision in its entirety.

Section 3(b)(5)—The NASD also proposes to amend section 3(b)(5) to eliminate reference to restrictions on qualified exit transactions and qualified exit transfers and to conform the provision to the amendments to section 1(b)(8). Section 3(b)(5) would retain a requirement that a transfer or transaction be in compliance with the definition of "qualified exit transaction" (which requires compliance with the Securities Act and that the transaction be through a PORTAL dealer or broker) or the definition of "qualified exit transfer" (which essentially prohibits lending of PORTAL securities in coordination with part VI, section 10).

Section 3(d)—Section 3(d) to part III of the PORTAL Rules currently requires that the NASD be timely notified of any change in a broker/dealer's supervisory procedures. The NASD proposes to delete this continuing requirement for PORTAL dealers and brokers in conformance with the amendment to section 1(b)(8).

Part IV—Requirements Applicable to PORTAL Qualified Investors—Section 1(b)(10) to Part IV of the PORTAL Market Rules requires that PORTAL qualified investors file a PORTAL Exit Report where not filed by a PORTAL dealer or broker. Section 2(c)(1) to part IV permits the NASD to suspend or terminate the registration of a PORTAL qualified investor if it sells or transfers a security to a non-PORTAL account in a manner that does not comply with the exit restrictions on these transactions. The NASD proposes to delete the requirement in section 1(b)(10) that the investor file a PORTAL Exit Report under the referenced circumstances, and to amend section 1(b)(11) and section 2(c)(1) to replace the references to "restrictions" on exit transactions and transfers with a requirement to comply with the "definitions of qualified exit transaction and qualified exit transfer in part 1 of the PORTAL Rules."

Exit Surveillance

The NASD will continue to provide regulatory oversight of exits of PORTAL securities into the non-PORTAL market through: (1) Section 5 to part VI which requires a PORTAL dealer or PORTAL broker that executes a qualified exit transaction or a qualified exit transfer to enter a PORTAL transaction report with respect thereto; (2) section 1(b)(10) to part IV (as modified by this rule change) requiring a PORTAL qualified investor to provide the Association with any requested information or document necessary to verify compliance with the definition of qualified exit transaction, as revised, and qualified exit transfer; (3) the requirement that PORTAL securities be maintained in segregated accounts at the PORTAL depository organizations and be cleared through a segregated account at the PORTAL clearing organizations; (4) the review of daily activity reports from the PORTAL depository organizations on the exit of PORTAL securities; and, (5) the definition of qualified exit transaction in current section 18 to part I will retain the requirement that all exit transactions be through the account of a PORTAL dealer or PORTAL broker. The NASD will also continue to maintain a "closed" system for the primary offering of a secondary trading in restricted securities, as defined in rule 144A(a)(3) adopted under the Securities Act, in that all investors and securities will be required to meet the requirements of rule 144A to be included in the system and the securities will be required to be traded between the segregated PORTAL accounts of the participants in order to rely on the NASD's enforcement of the requirements of rule 144A[6].

The proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act, in that the proposed amendments to the PORTAL Rules are designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanisms of a free an open market by relieving PORTAL participants of the obligation to comply with restrictions on the exit of PORTAL securities from the PORTAL Market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

[6] The NASD submitted a Surveillance Plan for the PORTAL Market under cover of letter to Katherine A. England, Branch Chief, Division of Market Regulation, SEC, dated December 8, 1989. The Surveillance Plan is proposed to be amended to reflect the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by October 10, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: September 12, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-22171 Filed 9-18-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28430; International Series Rel. No. 154; File No. SR-NASD-90-50]

Self-Regulatory Organizations; Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the PORTAL Market Rules

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 24, 1990, the National Association of Securities

Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to delete section 1(b)(3) to part III and section 1(b)(3) to part IV and amend section 1(b)(6) to part III and 1(b)(3) to part IV of Schedule I to the NASD By-Laws ("PORTAL Market Rules") to delete the requirement that the account of a PORTAL dealer, PORTAL broker or PORTAL qualified investor at its agent, providing it access to the PORTAL depository organization, be a segregated account for PORTAL Market transactions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PORTAL Market Rules were approved by the SEC pursuant to Securities Exchange Act Release No. 27956 (April 27, 1990). Under current PORTAL Market Rules, PORTAL brokrs, PORTAL dealers and PORTAL qualified investors ("PORTAL participants" or "participants") must agree to maintain an account for PORTAL transactions at their agent who is providing them access to the services of a PORTAL depository organization [1] that is segregated from all other non-PORTAL accounts they may have at the agent. An agent for a PORTAL dealer or broker will also provide access to a PORTAL clearing organization.

The requirements with respect to PORTAL qualified investors, found in sections 1(b)(3) and 1(b)(7) to part IV of the PORTAL Market Rules, are intended to address the situation of a PORTAL qualified investor that utilizes an account with an agent for the purpose of accessing a depository organization. The agent may be an SEC-registered broker/dealer acting in an "agent bank" capacity, an entity regulated by state or federal authorities as a "bank," or another PORTAL participant acting as an agent in the PORTAL Market for the PORTAL qualified investor. The requirements with respect to PORTAL dealers and brokers, found in sections 1(b)(3) and 1(b)(6) to part III of the PORTAL Rules, are intended to address the situation of a PORTAL dealer or broker that clears its PORTAL Market transactions through another broker/dealer. In both cases, the agent will establish a segregated PORTAL account at the PORTAL depository organization with respect to any PORTAL participant and at the PORTAL clearing organization with respect to PORTAL dealers and brokers.

The NASD has been questioned by several banks proposing to act as an agent for PORTAL qualified investors as to why a segregated account at an agent bank is necessary as no PORTAL securities will be held by the bank. In the case of PORTAL Market transactions, PORTAL participants are required to maintain PORTAL securities in a segregated account at a PORTAL depository organization and PORTAL dealers and brokers are required to clear PORTAL transactions through a segregated account at the PORTAL clearing organization. Thus, the account at an agent bank providing access to the PORTAL depository for a PORTAL qualified investor will only process cash with respect to PORTAL Market transactions. The account at a broker/dealer acting as a clearing broker for a PORTAL dealer or broker would similary only process cash with respect to the PORTAL Market transactions of the dealer or broker.

The NASD has determined that the requirement that the PORTAL participant's account at its agent be a segregated account for PORTAL transactions is an unnecessary and costly regulatory burden. Therefore, the NASD proposes to amend sections 1(b)(3) and 1(b)(6) to part III and sections 1(b)(3) and 1(b)(7) to part IV to the PORTAL Rules to eliminate this requirement.

PORTAL participants will continue to be required, pursuant to section 1(b)(5) of part III and section 1(b)(2) of part IV of the PORTAL Rules, to agree to be a member or have their agent be a member of a PORTAL depository organization and direct that its account or accounts therein for PORTAL securities be segregated from all other accounts it may have at such PORTAL depository. PORTAL participants will also continue to be required pursuant to section 1(b)(6) to part III and section 1(b)(7) to part IV of the PORTAL Rules to deposit and maintain all PORTAL securities in its segregated PORTAL account at the PORTAL depository organization until such securities are sold or transferred to another PORTAL account or sold or transferred to a non-PORTAL account. In addition, PORTAL participants will continue to be required pursuant to section 1(b)(7) to part III and section 1(b)(4) to part IV of the PORTAL Rules to authorize and direct the relevant PORTAL depository organization (or authorize its agent to authorize and direct the relevant PORTAL depository organization) to release information in respect of its PORTAL account activity to the NASD or its designee. Therefore, the proposed rule change will not affect the NASD's surveillance of PORTAL Market transactions.

The proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act, in that the proposed amendments to the PORTAL Rules are designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanisms of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to

[1] The NASD initially has designated two depository organizations to perform the functions of a securities depository with respect to PORTAL securities. These organizations are the DTC for U.S. securities and Centrale de Livraison de Valuers Mobilieres, S.A. Luxembourg ("CEDEL") for foreign securities.

90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by October 10, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: September 12, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-22172 Filed 9-18-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17739; 812-7439]

Capitol Street Corp., et al.; Application

Septemer 12, 1990.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Capitol Street Corporation ("Capitol") and Galaxie Corporation ("Galaxie").

RELEVANT ACT SECTIONS: Order requested under section 6(c) that would grant an exemption from all provisions of the Act other than sections 9, 17(a), 17(d), 17(e), 36, and 37 and Rule 17f-2 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order pursuant to section 6(c) of the Act exempting Capitol from all provisions of the Act other than sections 9, 17(a), 17(d) (except to the extent necessary to reduce the number of Capitol shareholders who beneficially own its shares to 100 or fewer), 17(e), 36, and 37 and rule 17f-2 thereunder until the earlier of December 31, 1990 or the completion of a transaction that reduces the number of Capitol shareholders who beneficially own its outstanding shares to 100 or fewer.

FILING DATE: The application was filed on December 4, 1989, and amendments thereto were filed on March 14, 1990 and July 25, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 9, 1990, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549; Applicants, 711 West Capitol Street, Jackson, Mississippi 39207.

FOR FURTHER INFORMATION CONTACT: Robert B. Carroll, Staff Attorney, at (202) 272-3043, or Jeremy N. Rubenstein, Branch Chief, at (202) 275-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Capitol, a Mississippi corporation formerly known as Lamar Life Corporation, was organized to serve as a holding company for its principal operating subsidiary, Lamar Life Insurance Company ("Lamar Life"). Galaxie, a Mississippi corporation with 55 shareholders, owns 93.6% of the outstanding common stock of Capitol.

2. Prior to December 15, 1988, Capitol was engaged in the business of managing its investments in its subsidiaries, including its principal operating subsidiary, Lamar Life, and other affiliated and unaffiliated entities. On December 15, 1988, Capitol sold all of its outstanding stock of Lamar Life and certain other interests to a wholly owned subsidiary of Whitehall Insurance Holdings, Limited, for approximately $132 million in cash (the "Lamar Life Transaction").

3. The Lamar Life Transaction was approved by the shareholders of Capitol at a meeting on December 14, 1988. Approximately 10% of the shareholders of Capitol exercised their right under Mississippi law to seek an appraisal of, and payment of cash for, their shares rather than remain shareholders of Capitol following the sale of Lamar Life. As a result, Galaxie's percentage ownership of Capitol increased from 82.4% immediately before the Lamar Life Transaction to 92.31% immediately thereafter. Approximately 40 of the shareholders exercising their appraisal rights, whose shares constituted 9.66% of the outstanding shares of Capitol, disputed the share valuation method adopted by Capitol and refused the payment offered by Capitol. Such shareholders objected to the valuation of the proceeds from the Lamar Life Transaction on an after-tax basis and the use of an after-tax, rather than pre-tax, value for the proceeds that could be realized from the sale of Capitol's non-cash assets in the open-market. On April 11, 1989, Capitol instituted an appraisal proceeding in the Mississippi Chancery Court to resolve the dispute. The Chancery Court's decision in the appraisal proceeding is expected in the near future.

4. The net proceeds realized from the Lamar Life Transaction have been invested in U.S. government securities and highly-rated commercial paper, except for limited investments in shares of International Business Machines Corporation (the "IBM shares"), auction rate preferred stock of American International Group, Inc. and Exxon Corporation (the "ARPS"), and shares of Trustmark Corporation (the "Trustmark shares"). By letter dated August 29, 1990, counsel for the applicants informed the staff that Capitol invested approximately .75%, 6.97%, and 1.12% of the proceeds of the Lamar Life Transaction in, respectively, the IBM shares (which have been sold), the ARPS (which have been sold), and the Trustmark shares. Capitol's other assets consist of the securities of certain subsidiaries and other affiliated and unaffiliated entities which were

purchased before the Lamar Life Transaction.

5. Since December 15, 1988, Capitol has attempted to become engaged primarily in non-investment company businesses and has studied potential acquisitions of non-investment company businesses. In this regard, Capitol has entered into unsuccessful negotiations to acquire one company and considered three other companies as possible acquisition candidates. The board of directors of Capitol also considered a merger with a subsidiary of Galaxie pursuant to which Capitol would have become a wholly owned subsidiary of Galaxie.

6. In view of the difficulties in locating an appropriate acquisition candidate, Capitol is currently considering a reverse triangular merger transaction with Galaxie, a reverse stock split, or a self-tender offer to reduce the number of beneficial owners of Capitol's outstanding shares to 100 or fewer, each of which would bring Capitol within the provisions of section 3(c)(1) of the Act.

7. The selection of the appropriate form for, and consummation of, a merger, reverse stock split, or self-tender offer to reduce the number of Capitol's shareholders has been delayed by, among other things, the appraisal proceeding. Because the terms of any such transaction will depend on the valuation method used to determine the amount of cash to be received by the shareholders of Capitol, applicants do not wish to finalize arrangements until a decision is rendered by the Mississippi Chancery Court. In addition, because a vote of the shareholders of Capitol would be required to approve a reverse triangular merger or a revere stock split, a proxy statement would have to be prepared, filed with the Commission, and distributed to shareholders before a shareholders' meeting could take place. In light of these and other considerations, applicants are requesting relief until the earlier of December 31, 1990 or the completion of a transaction that reduces the number of shareholders who beneficially own outstanding shares of Capitol to 100 or fewer.

Applicants' Legal Analysis

1. Section 3(a)(3) of the Act states that an investment company includes any issuer that has more than 40% of its total assets (exclusive of government securities and cash items) invested in investment securities. As a result of the Lamar Life Transaction, Capitol is no longer engaged in the insurance business formerly conducted by Lamar Life and more than 40% of the value of Capitol's assets is invested in securities of companies that are not majority-owned by Capitol. Capitol recognizes that application of section 3(a)(3) may cause it to be an investment company under the Act. Inasmuch as Capitol's one year safe harbor under rule 3a-2 under the Act expired on December 15, 1989, Capitol seeks the requested order to remove any uncertainty as to its status under the Act.

2. Factors outside of Capitol's control have delayed both the acquisition of a non-investment company business or the consummation of a short-form or reverse triangular merger, a reverse stock split, or self-tender offer to reduce the number of Capitol's shareholders to 100 or fewer. The actions of Capitol's management since the Lamar Life Transaction reflect good faith efforts of Capitol to become primarily engaged in a non-investment company business. Capitol has invested the cash received from the Lamar Life Transaction in securities solely to preserve its value pending application of such assets to the acquisition of non-investment company business.

Applicants' Conditions

Applicants will comply with the following conditions if the requested order is granted:

1. Capitol will not engage in the trading of investment securities for short-term or speculative purposes.

2. Pending a decision in the appraisal proceeding by the Chancery Court, Capitol will continue to explore the opportunities for an acquisition by which Capitol would become primarily involved in a non-investment company business.

3. Capitol will from the date hereof invest only in U.S. government securities, short-term high quality money market investments, and short-term Euro-time deposits.

4. Capitol will comply with sections 9, 17(a), 17(d) (except to effect any going private transaction described herein), 17(e), 36 and 37 of the Act and rule 17f-2 thereunder as if it were a registered investment company.

5. Upon completion of the exemption period, in the event that Capitol has more than 100 shareholders who beneficially own common stock or Capitol is not engaged primarily in a non-investment company business, Capitol will either apply to the Commission for a temporary or permanent extension of the exemption order or promptly register under the Act and comply with the relevant provisions thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 22113 Filed 9-18-90

BILLING CODE 8010-01-M

[Rel. No. IC-17740; 811-4543]

Dolphin FRIC Convertible Fund; Application for Deregistration

September 13, 1990.

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Dolphin FRIC Convertible Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N-8F was filed on August 27, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 10, 1990 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 10900 Wilshire Blvd., Suite 1050, Los Angles, CA 90024.

FOR FURTHER INFORMATION CONTACT: Nicholas D. Thomas, Staff Attorney, at (202) 504-2263, or Jeremy N. Rubenstein, Branch Cheif, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch or by contacting the SEC's commerical copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is a Massachusetts business trust and an open-end diversified management investment company registered under the Act. On December 30, 1985, applicant filed a notification of registration on Form N-8A pursuant to section 8(a) of the Act. On the same date, applicant filed a registration statement on Form N-1A under the Securities Act of 1933. The registration statement became effective on August 28, 1986, and applicant's initial public offering commenced on the same date.

2. On December 15, 1989, applicant's board of trustees adopted a plan of reorganization and liquidation under which applicant would transfer all of its assets and liabilities to a portfolio of the Franklin Investors Securities Trust, a registered open-end management investment company (File No. 811-4986), known as the Franklin Convertible Securities Fund, in exchange for shares in that portfolio, and then make a liquidating distribution to its shareholders of shares in the Franklin Convertible Securities Fund.

3. The reorganization plan was approved by applicant's shareholders on February 28, 1990.

4. On March 10, 1990, applicant transferred all of its assets and liabilities to the Franklin Convertible Securities Fund. In exchange, applicant received a number of shares in the Franklin Convertible Securities Fund equal in value to the number of shares applicant had issued and outstanding on March 9, 1990. Applicant then made a liquidating distribution to its shareholders; each shareholder receiving shares in the Franklin Convertible Securities Fund equal in net asset value to the shares owned immediately preceding the reorganization.

5. All reorganization expenses were borne by Froley, Revy Investment Co., Inc., applicant's investment adviser and administrator.

6. As of the time of filing the application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-22170 Filed 9-18-90; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1267]

Shipping Coordinating Committee; Meeting; Sub-Committee on Safety of Life at Sea Working Group on Lifesaving, Search and Rescue

The Working Group on Lifesaving, Search and Rescue of the Sub-Committee on Safety of Life at Sea (SOLAS) will conduct an open meeting on September 28, 1990 at 9:30 a.m. in room 4315 at Coast Guard Headquarters, 2100 Second Street SW., Washington, DC.

The purpose of the meeting is to review the agenda items and to prepare U.S. positions for the 22nd Session of the International Maritime Organization (IMO) Sub-Committee on Lifesaving, Search and Rescue scheduled for February 18-22, 1991. Items of principal interest on the agenda for this session are:

—Clarifications of SOLAS Chapter III, including the completion of revision of IMO Resolution A.521(13) (Testing and Evaluation of Life-Saving Appliances)

—Inflatable liferafts, including completion of a new draft Assembly Resolution concerning liferaft servicing

—Matters concerning search and rescue (SAR), including those related to the 1979 SAR Conference, the introduction of the Global Maritime Distress and Safety System (GMDSS), and work consequential to the 1988 GMDSS Conference

—Role of the human element in maritime casualties (including on board communication problems)

Members of the public may attend up to the seating capacity of the room.

For further information contact Mr. Kurt J. Heinz, U.S. Coast Guard Headquarters (G-MVI-3/1404), 2100 Second Street SW., Washington, DC 20593-0001, Telephone: (202) 267-1444.

Dated: September 10, 1990.

Thomas J. Wajda,

Chairman, Shipping Coordinating Committee.

[FR Doc. 90-22096 Filed 9-18-90; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program, Santa Maria Public Airport, Santa Maria, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Santa Maria Public Airport District, Santa Maria, California, under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96-193) and 14 CFR part 150. These findings are made in recognition of the description of federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On November 10, 1988, the FAA determined that the noise exposure maps submitted by the Airport District under part 150 were in compliance with applicable requirements. On August 15, 1990, the Assistant Administrator for Airports approved the Santa Maria Public Airport noise compatibility program. Twelve (12) of the proposed action elements were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Santa Maria Public Airport noise compatibility program is August 15, 1990.

FOR FURTHER INFORMATION CONTACT: Howard S. Yoshioka, Supervisor, Planning Section, AWP-611, Federal Aviation Administration, Western-Pacific Region, 15000 Aviation Boulevard, Hawthorne, California, Mail Address: P.O. Box 92007, Worldway Postal Center, Los Angeles, California, 90009. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for the Santa Maria Public Airport, effective August 15, 1990.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map, may submit to the FAA, a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a federal

program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against type or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the federal government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, request for project grants must be submitted to the Standard Section at the location identified in "**FOR FURTHER INFORMATION CONTACT**" clause above.

The Santa Maria Public Airport District submitted to the FAA on March 13, 1988, the Noise Exposure Maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from July 11, 1985, thrugh March 13, 1988. The Santa Maria Public Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on November 10, 1988. Notice of this determination was published in the **Federal Register** on November 29, 1988.

The Santa Maria Public Airport Study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to (or beyond) the year 1990. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. the FAA began its review of the program on March 8, 1990, and was required by a provision of the Act to approve or disapprove the program within 180-days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such a program.

The submitted program contained twelve (12) proposed actions for noise mitigation on and off the airport. The proposed actions were numbered 1 thrugh 12. Proposed action number 11 is a duplication of proposed action number 10. Proposed action number 13 was discussed in the NCP but not listed in the summary. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Assistant Administrator for Airports effective August 15, 1990.

Outright approval was granted for twelve of the specific program elements. The approved elements included preferential runway use program, FAR part 36 Stage III non-compliance curfew, general plan change, zoning change, residential noise insulation, land acquisition, prohibition on new residential, encourage capital improvements which promote compatible use, discourage residential developments in areas subject to frequent overflights, require noise insulation and aviation easement on new residential construction, require truth in sales notifications and update NEM and NCP. These determinations are set forth in detail in a Record of Approval endorsed by the Assistant Administrator for Airports on August 15, 1990.

The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of Santa Maria Public Airport District.

Issued in Hawthorne, California, September 6, 1990.

James J. Wiggins,

Acting Manager, Airports Division, Western-Pacific Region.

[FR Doc. 90-22147 Filed 9-18-90; 8:45 am]

BILLING CODE 4910-13-M

Air Transportation Personnel Training and Qualifications Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public that the first meeting of the Federal Aviation Administration Air Transportation Personnel Training and Qualifications Advisory Committee will be held to discuss various administrative details, elect a chairperson, and discuss and examine issues dealing with the training and qualifications of crewmembers.

DATES: The meeting will be held on October 17, 1990, from 1 p.m. to 5 p.m.

ADDRESSES: The meeting will be held in the MacCracken room (10th floor), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Ruth Ann Hodges, Flight Standards Service, AFS-210, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-7480.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Air Transportation Personnel Training and Qualifications Advisory Committee to be held on October 17, 1990, from 10 a.m. to 4 p.m. at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. The agenda for this meeting is as follows: (1) Formulate administrative details; (2) elect a chairperson; and (3) discuss and examine the issues concerning man/machine interface, pilot operating environment, flight crewmember training including and automation, pilot qualification requirements, cockpit resource management, line operational simulations, and revisions to air carrier training and checking requirements.

Attendance is open to the interested public but may be limited to the space available. The public may present oral

statements at the meeting or may present written statements to the committee at any time.

Issued in Washington, DC, on September 13, 1990.

John S. Kern,

Executive Director, Air Transportation Personnel Training and Qualifications Advisory Committee.

[FR Doc. 90-22146 Filed 9-18-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: September 13, 1990.

The Department of the Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0121.
Form Number: 1116.
Type of Review: Resubmission.
Title: Foreign Tax Credit—Individual, Fiduciary, or Nonresident Alien.
Description: Form 1116 is used by individuals (including nonresident aliens) and fiduciaries who paid foreign income taxes on U.S. taxable income, to compute the foreign tax credit. This information is used by IRS to verify the foreign tax credit.
Respondents: Individuals or households.
Estimated Number of Respondents: 589,900.
Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping—2 hours, 44 minutes.
Learning about the law or the form—41 minutes.
Preparing the form—1 hour, 26 minutes.
Copying, assembling, and sending the form to IRS—35 minutes.

Frequency of Response: Annually.
Estimated Total Recordkeeping/Reporting Burden: 3,203,157 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Irving W. Wilson, Jr.,

Departmental Reports, Management Officer.

[FR Doc. 90-22154 Filed 9-18-90; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Date: September 13, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0062.
Form Number: 3903 and 3903F.
Type of Review: Revision.
Title: Moving Expenses and Foreign Moving Expenses.
Description: Internal Revenue Code section 217 requires intemization of various allowable moving expenses. Internal Revenue Code section 274(n) limits certain meal expenses to 80%. Forms 3903 and 3903F are filed with Form 1040 by individuals claiming employment related moves. The data is used to help verify that the expenses are deductible and that the deduction is computed correctly.
Respondents: Individuals of households.
Estimated Number of Respondents: 1,607,278.
Estimated Burden Hours Per Response/Recordkeeping:

	3903	3903F
Recordkeeping	1 hr., 5 mins	52 minutes.
Learning about the law or the form.	7 mins	7 minutes.
Preparing the form.	32 mins	31minutes.
Copying, assembling, and sending the form to IRS.	20 mins	20 minutes.

Frequency of Response: Annually.
Estimated Total Recordkeeping/Reporting Burden: 3,343,756 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Irving W. Wilson, Jr.,

Departmental Reports, Management Officer

[FR Doc. 90-22155 Filed 9-18-90; 8:45 am]

BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition, Modification of Notice

SUMMARY: The United States Information Agency hereby modifies a notice found at 55 FR 3136 (January 30, 1990) regarding immunity from judicial seizure for the art objects in the exhibit "Titian, Prince of Painters" to include additional art objects in the findings.

EFFECTIVE DATE: September 19, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. R. Wallace Stuart, Office of the General Counsel, United States Information Agency, room 700, 301 4th Street SW., Washington, DC 20547. The telephone number is 202/619-5078.

SUPPLEMENTARY INFORMATION: The United States Information Agency hereby modifies a notice published at 55 FR 3136 (January 30, 1990). The notice rendered immune from judicial process certain items to be included in the exhibit entitled "Titian, Prince of Painters". This modification of notice adds additional objects. I hereby determine that the additional objects are culturally significant, and that their temporary exhibition in the United States is in the national interest. A copy of this revised list [1] may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA.

Dated: September 13, 1990.

Alberto J. Mora,

General Counsel.

[FR Doc. 90-22107 Filed 9-18-90; 8:45 am]

BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202/619-5078, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547

Sunshine Act Meetings

Federal Register
Vol. 55, No. 182
Wednesday, September 19, 1990

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).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, October 5, 1990.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 90-22347 Filed 9-17-90; 3:23 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, October 5, 1990.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 90-22348 Filed 9-17-90; 3:23 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, October 19, 1990.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 90-22349 Filed 9-17-90; 3:23 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, October 26, 1990.

PLACE: 2033 K St., NW., Washington, DC 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 90-22350 Filed 9-17-90; 3:23 pm]

BILLING CODE 63351-01-M

NATIONAL COUNCIL ON DISABILITY

Hearings on the Reauthorization of the Rehabilitation Act of 1973, as Amended

AGENCY: National Council on Disability.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming hearing of the National Council on Disability on the Reauthorization of the Rehabilitation Act of 1973, as amended. This notice also describes the functions of the National Council. Notice of this hearing is required under section 522(b)(10) of the "Government in Sunshine Act" (Pub. L. 94-409).

DATES:

September 27, 1990, 8:30 a.m. to 5:00 p.m.
September 28, 1990, 8:30 a.m. to 1:00 p.m.

LOCATION: Holiday Inn Old Town, Old Town Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: National Council on Disability, 800 Independence Avenue, SW., Suite 814, Washington, DC 20591, (202) 267-3846, TDD: (202) 267-3232.

The National Council on Disability is an independent federal agency comprised of 15 members appointed by the President of the United States and confirmed by the Senate. Established by the 95th Congress in Title IV of the Rehabilitation Act of 1973 (as amended by Public Law No. 95-602 in 1978), the National Council was initially an advisory board within the Department of Education. In 1984, however, the National Council was transformed into an independent agency by the Rehabilitation Act Amendments of 1984 (Pub. L. 98-221).

The National Council is charged with reviewing all laws, programs, and policies of the Federal Government affecting individuals with disabilities and making such recommendations as it deems necessary to the President, the Congress, the Secretary of the Department of Education, the Commissioner of the Rehabilitation Services Administration, and the Director of the National Institute on Disability and Rehabilitation Research (NIDRR). In addition, the National Council is mandated to provide guidance to the President's Committee on Employment of People With Disabilities.

This hearing of the National Council shall be open to the Public. The proposed agenda includes:

Opening remarks from the Chairperson
Overview of programs within OSERS, RSA and NIDRR
Panel discussions on:
- Overall Act: Changes That Would Make the Act Work Better
- State Vocational Rehabilitation Program
- Client Assistance Programs
- Research, Training, NIDRR, and Supplementary Services and Facilities—Grant Processes, Priorities, Review
- Title V (501-508), ADA Interface Issues
- Title VI, Employment and Supported Employment Opportunities
- Title VII, Independent Living

Records shall be kept of all National Council proceedings.

Signed at Washington, DC on September 12, 1990.

Ethel Briggs,
Executive Director.

[FR Doc. 90-22258 Filed 9-17-90; 9:17 am]

BILLING CODE 6820-BS-M

UNITED STATES PAROLE COMMISSION

DATE AND TIME: Friday, September 21, 1990—2:00 p.m., Eastern Daylight Time.

PLACE: 5550 Friendship Boulevard, Chevy Chase, Maryland 20815. By conference telephone call.

STATUS: Open—Meeting.

MATTERS TO BE CONSIDERED: Emergency policy to govern the forfeiture of street time under 28 C.F.R. § 2.52(c)(2) in the Ninth Circuit, in order to comply with *Rizzo* v. *Armstrong*, ____ F.2d ____ (9th Cir. August 30, 1990).

AGENCY CONTACT: Pamela Posch, Paralegal Specialist, Office of General Counsel, United States Parole Commission, (301) 492–5959.

Dated: September 17, 1990.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 90–22317 Filed 9–17–90; 12:47 pm]

BILLING CODE 4410–01–M

federal register

Wednesday,
September 19, 1990

Part II

Department of Labor

Employment and Training Administration

Employment Service Reform Initiative; Notice; Request for Comments

DEPARTMENT OF LABOR

Employment and Training Administration

Employment Service Reform Initiative

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice; request for comments.

SUMMARY: The Secretary of Labor has announced a Workforce Quality Agenda to assure that the American workforce has the skills to meet the challenges of the 1990's and beyond. The Agenda includes an initiative to reform the Employment Service (ES). The objectives of the Initiative are to increase the efficiency of the labor market, more effectively spend the $800 million in funding the Employment Service receives annually, and reform and refocus the Employment Service to meet the labor market challenges of the new century. As part of the ES Reform Initiative, the Secretary is seeking the views of key business, labor, and State officials. The Secretary also wants to know the reaction of the public at large, and, therefore, is requesting comment on a series of questions about the role of the ES and its funding.

DATES: Written comments on this notice are invited. Comments shall be received by October 19, 1990.

ADDRESSES: Comments shall be mailed to Roberts T. Jones, Assistant Secretary for Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-4470, Washington, DC 20210, Attention: Robert A. Schaerfl, Director, U.S. Employment Service.

FOR FURTHER INFORMATION CONTACT: Robert A. Schaerfl, Director, U.S. Employment Service, Employment and Training Administration. Telephone: (202) 535-0157 (this is not a toll free number.)

SUPPLEMENTARY INFORMATION: Upgrading the skills of the American workforce, expediting the process where workers are matched with jobs in an era of slow labor force growth, and keeping our nation competitive in a complex global market, are all goals of the Secretary of Labor (Secretary). A key factor in reaching these goals is a strong and vital public Employment Service (ES).

A community of employers and jobseekers regularly use and benefit from the services and labor market information the ES provides. However, a number of facts lead to concern that the ES is not geared for the dynamics of the 1990's.

- For example, while nearly all of our employers pay the federal unemployment tax, only about 25 percent list job vacancies with the ES. In 1957, that figure was 42 percent.
- Since 1962, ES placements as a percent of all national hires has declined from 20 percent to 7 percent.
- The percent of jobseekers using the ES to find work has dropped from 30 percent in 1970 to 21 percent in 1988. As few as 3 percent of those persons seeking work actually find jobs through the ES.

The Department of Labor (Department) believes the ES can and must do better; that the $779,039,000 in annual funding the ES received in Program year 1990 should be more effectively and efficiently spent.

Increasing concern about ES performance is undoubtedly related to increasing confusion as to its appropriate role. Changing laws, regulations, and Congressional mandates have perhaps caused the ES to lose sight of a specific goal, and to try to be a bit of everything to everybody. However, despite the declining impact of the ES, there is no clear consensus among policymakers, employers, unions or employees about reasons for the decline or of the appropriate role for ES in today's economy.

The Department intends to present to the Congress early next year, legislation to reform and refocus the ES into an institution ready to tackle the challenges of the new century. To do that, it needs the help and expertise of all interested parties. The Department wishes to know what the public at large thinks should be contained in this legislation. Specifically, the Department wants to know what the public thinks the ES should be, whom it should serve, and how it can most effectively fulfill its mission.

- Should the ES be a comprehensive labor market exchange soliciting job listings across a wide range of skills and wage levels?
- Would it be most efficient for the ES to focus its services on unemployment insurance claimants making their return to work its primary goal—thus reducing employer payroll taxes?
- Should the ES continue to direct its services on disadvantaged individuals whose labor force participation is marginal or impaired by barriers to employment?
- Should the ES drop its placement activity altogether and act as a diagnostic and referral agent to programs offering job training, remediation and other services?
- Should the ES make development and dissemination of labor market information its primary role and, as part of that activity, make job listings and applicant files directly available to job seekers and employers?
- Should the ES charge employers for special screening and services above basic access to the applicant pool?

Request for Public Comment

The Department of Labor is seeking public comment. Interested parties are requested to submit comments, recommendations, and/or suggestions for improving the performance of the Employment Service.

Signed at Washington, DC, this 12th day of September, 1990.

Roberts T. Jones,

Assistant Secretary for Employment and Training.

[FR Doc. 90-22104 Filed 9-18-90; 8:45 am]

BILLING CODE 4510-40-M

federal register

Wednesday,
September 19, 1990

Part III

Department of Agriculture

Rural Electrification Administration

7 CFR Part 1717

Federal Pre-emption in Rate Making in Connection With Power Supply and Electric Borrowers; Final Rule

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1717

RIN 0572-AA40

Federal Pre-emption in Rate Making in Connection With Power Supply Borrowers

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby amends 7 CFR chapter XVII by adding part 1717, Post-Loan Policies and Procedures Common to Insured and Guaranteed Electric Loans. This part establishes policies and procedures to implement certain provisions of (a) The Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*) (the "RE Act"); and (b) REA loan documents, including wholesale power contracts between the power supply borrowers and their members, which provide, among other matters, for the establishment of rates for the sale of electric power and energy by power supply borrowers. This subpart addresses the pre-emption under certain circumstances of the regulation of power supply borrowers' rates by State Regulatory Authorities.

EFFECTIVE DATE: The final rule is effective October 19, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Laurence V. Bladen, Financing Policy Specialist, Rural Electrification Administration, Room 1272, South Building, U.S. Department of Agriculture, Washington, DC 20250-1500, telephone number (202) 382-9558.

SUPPLEMENTARY INFORMATION: Pursuant to the RE Act, REA hereby amends 7 CFR chapter XVII by adding part 1717, Post-Loan Policies and Procedures Common to Insured and Guaranteed Electric Loans and by adding, subpart G—Federal Pre-emption in Rate Making in Connection with Power Supply Borrowers.

This regulation is issued in conformity with Executive Order 12291, Federal Regulation. It will not (1) Have an annual effect on the economy of $100 million or more; or (2) result in a major increase in costs or prices for consumers, individuals, industries, Federal, state, or local government agencies or geographic regions; or (3) result in significant adverse effects on competition, employment, investment or productivity; and has been determined not to be "major".

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this final rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.* (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment. This program is listed in the Catalog of Federal Domestic Assistance as 10.850, Rural Electrification Loans and Loan Guarantees. For the reasons set forth in the final rule related Notice to 7 CFR 3015 subpart V in 50 FR 47034, (November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

The reporting and/or recordkeeping requirements contained in this final rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) The OMB approval number for these requirements is 0572-0089.

The public reporting burden for this collection of information is estimated to average 6 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, Office of Information Resources Management, Room 404-W, Washington, DC 20250 and to the Office of Management and Budget, Paperwork Reduction Project, (OMB # 0572-0089), Washington, DC 20503.

Background

On April 2, 1990, REA published a Proposed Rule at 55 FR 12194 proposing to revise 7 CFR chapter XVII, by adding a new Part 1714, Electric Rates, Services, and Contracts, consisting of Subpart E—Federal Pre-emption in Rate Making in Connection with Power Supply Borrowers. After issuing that Proposed Rule, and in the process of developing the Final Rule, REA has undertaken a project to simplify, clarify, and update agency regulations. This project, when complete, will provide a more logical arrangement of agency regulations in order to assist borrowers and others. As part of this project, this regulation relating to Federal pre-emption has been redesignated as subpart G—Federal Pre-emption in Rate Making in Connection with Power Supply Borrowers to a new Part 1717, Post-Loan Policies and Procedures Common to Insured and Guaranteed Electric Loans. This redesignation is not substantive and does not require public comment.

This regulation, 7 CFR part 1717, subpart G—Federal Pre-emption in Rate Making in Connection with Power Supply Borrowers is related in subject matter to a Final Rule, 7 CFR part 1717, subpart H—Federal Pre-emption in Rate Making in Connection with REA Electric Borrowers in Bankruptcy, which is being published elsewhere in today's **Federal Register**. Interested parties should refer to Subpart H and, in particular, the "Background" paragraphs for further discussion of the circumstances which give rise to both final rules. While subpart H and this subpart G are related in subject matter, this rule addresses the matter of pre-emption of State Regulatory Authorities' jurisdiction over the rates of power supply borrowers. This rule can be implemented separately and is therefore being promulgated separately.

Comments

In Proposed Rule, published on April 2, 1990, REA invited interested parties to file comments on or before June 1, 1990. On May 29, 1990, REA received a number of requests from the public for a 30 day extension of the comment period. Since these requests were received just prior to the June 1, 1990 scheduled end of the 60 day comment period for this Proposed Rule, REA did not extend the comment period.

In order to be responsive to these requests, however, and to give other interested parties an additional opportunity to comment, REA published a notice on June 12, 1990, at 55 FR 23748 to reopen the public comment period on this Proposed Rule for an additional 30 days, from June 12, 1990 to July 12, 1990.

Seventy four different organizations or groups commented on the Proposed Rule during the initial comment period. They were:

1. Alaska Public Utilities Commission.
2. Allegheny Electric Cooperative, Inc.
3. Arizona Corporation Commission
4. Arkansas Electric Cooperative Corporation
5. Arkansas Public Service Commission
6. Basin Electric Power Cooperative
7. Boone County Rural Electric Membership Corporation
8. Buckeye Power, Inc.
9. Cajun Electric Power Cooperative, Inc.
10. Carroll County Rural Electric Membership Corporation
11. Central Electric Power Cooperative, Inc.
12. Central Iowa Power Cooperative

13. Colorado Association of Municipal Utilities
14. Colorado Public Utility Commission
15. Corn Belt Power Cooperative
16. Cotton Electric Cooperative, Inc.
17. Delta Montrose Electric Association
18. East Kentucky Power Cooperative, Inc.
19. East River Electric Power Cooperative
20. Electric Consumers Resource Council
21. Empire Electric Association, Inc.
22. Fruit Belt Electric Cooperative
23. Grand Valley Rural Power
24. Hancock County Rural Electric Membership Corporation
25. Hendricks County Rural Electric Membership Corporation
26. Hoosier Energy Rural Electric Cooperative, Inc.
27. Hot Springs County Rural Electric Association, Inc.
28. Indiana Utility Regulatory Commission
29. Intermountain Rural Electric Association
30. Iowa Association of Electric Cooperatives, Inc.
31. Jasper County Rural Electric Membership Corporation
32. Jay County Rural Electric Membership Corporation
33. Kankakee Valley Rural Electric Membership Corporation
34. Kansas Corporation Commission
35. Kosciusko County Rural Electric Membership Corporation
36. LaGrange County Rural Electric Membership Corporation
37. Logan County Co-operative Power and Light Association, Inc.
38. Louisiana Public Service Commission
39. Marshall County Rural Electric Membership Corporation
40. Miami-Cass County Rural Electric Membership Corporation
41. Michigan Public Service Commission
42. National Association of Regulatory Commissioners, Inc.
43. A jointly signed comment from:
    a. National Association of State Utility Consumer Advocates
    b. Interim Director of Public Advocacy—Vermont
    c. Office of Consumer Counsel—Colorado
    d. Office of Utility Consumer Counselor—Indiana
44. National G&T Managers Association
45. National Rural Electric Cooperative Association
46. National Rural Utilities Cooperative Finance Corporation
47. New Mexico Public Service Commission
48. New York Department of Public Service
49. Newton County Rural Electric Membership Corporation
50. Noble County Rural Electric Membership Corporation
51. Northwest Iowa Power Cooperative
52. Oglethorpe Power Corporation
53. Parke County Rural Electric Membership Corporation
54. Phelps Dodge
55. Public Service of Indiana, Inc.
56. Public Utility Commission of Texas
57. San Isabel Electric Association, Inc.
58. Southeast Colorado Power Association
59. State of Maryland Public Service Commission
60. State of New Hampshire Public Utilities Commission
61. Steuben County Rural Electric Membership Corporation
62. The Western Michigan Electric Co-operative
63. Tipmont Rural Electric Membership Corporation
64. Tri-State Generation and Transmission Association, Inc.
65. United Power Association
66. United Rural Electric Membership Corporation
67. Vermont Department of Public Serivce
68. Wabash County Rural Electric Membership Corporation
69. Wabash Valley Power Association, Inc.
70. Warren County Rural Electric Membership Corporation
71. Western Interstate Energy Board
72. White County Rural Electric Membership Corporation
73. Wyoming Public Service Commission
74. Y-W Electric Association, Inc.

During the additional 30 day comment period, REA received comments from the following organizations:

1. Cooperative Power Association
2. East Kentucky Power Cooperative, Inc.
3. Fulton County Rural Electric Membership Corporation
4. Garkane Power Association, Inc.
5. Honorable John T. Myers, Member of Congress
6. A jointly signed comment from:
    a. North East Texas Electric cooperative, Inc.
    b. Tex-La Electric Cooperative
7. Northeastern Rural Electric Membership Corporation
8. The Brown-Atchison Rural Electric Co-operative Association, Inc.
9. A jointly signed comment from:
    a. The National Rural Electric Cooperative Association
    b. Ogelthorpe Power Corporation
    c. Paul, Hastings, Janofsky & Walker
10. Wabash Valley Power Association, Inc.

For the purposes of discussion, the comments of these organizations have been categorized and or summarized. Because both this subpart G—Federal Pre-emption in Rate Making in Connection with Power Supply Borrowers and subpart H—Federal Pre-emption in Rate Making in Connection with REA Electric Borrowers in Bankruptcy were published in proposed rule form in the **Federal Register** on the same day (April 2, 1990) many commentors submitted a single set of comments addressing both Proposed Rules. Because in many cases it was not possible to determine which specific comments pertained to which proposed rule, many of the comments have been addressed in both this Final Rule and the Final Rule, subpart H—Federal Pre-emption in Rate Making in Connection with REA Electric Borrowers in Bankruptcy which is being published elsewhere in today's **Federal Register**.

General Discussion

A number of comments opposing the proposed regulation argued that REA is not authorized under the RE Act to pre-empt state rate regulation, that REA is simply a lender seeking to use pre-emption as a means of debt collection, and that the interests of the consumer will not be protected if REA pre-empts a State Regulatory Authority. REA believes that these comments do not reflect a firm understanding of the objectives of the REA program and the structure which has been historically adopted to achieve these objectives. Further, these comments fail to recognize the fundamental problems which can arise as a result of rate regulation of not-for-profit cooperatives, problems which go to the very heart of the REA program. While these matters were discussed at some length in the background for the Proposed Rule, it may be helpful to further discuss the REA program and the basis for this regulation before addressing these comments more specifically.

The RE Act is consumer legislation designed to accomplish the social objective of providing affordable and reliable electric service to unserved persons in rural areas. REA was created as a lending agency to provide loans for rural electrification at a time when existing utilities were not providing service in many rural areas. REA has, pursuant to the broad discretion granted by Congress under the RE Act, created a structure to accomplish this statutory objective—a structure which for more than 50 years has succeeded in providing not only electric service to RE Act beneficiaries, but the repayment of REA loans. REA is promulgating this regulation to protect this structure.

There are two features of the REA program which are of particular importance in considering the need for this regulation. These features are, the corporate structure of REA-financed electric systems, and the provisions of the REA loan documents.

Most REA-financed electric systems are not-for-profit cooperatives organized on the democratic principle of "one person/one vote". The members/consumers are owners of the cooperative and control their cooperative through the election of a Board of Directors and through the exercising their other rights as members. Through their electric bills and the rates charged, members pay for the cost of electric service and contribute equity capital which is used by the cooperative. When the cooperative is financially able, the contributed capital

is periodically returned to the members. The members of the cooperative are not "investors" in the generally accepted meaning of the word. Unlike the shareholders of an investor owned utility, who receive dividends, the member/owners of a cooperative do not receive an economic return on the capital they contribute.

Rather, the members receive the benefits of ownership through lower rates for electricity. Without the need to provide a return on equity to "investors", the rates charged for electricity can be lower than would otherwise be the case. The cooperative structure itself thus serves to promote the RE Act objective of providing electric power at as low a cost as practicable.

Electric cooperatives, by their very structure, are more sensitive to cost increases such as construction cost overruns, and to revenue decreases such as caused by cyclical downturns in the economy. These changes can require immediate rate increases. Without timely rate relief borrowers can face potential payment defaults on loans.

It has been suggested that the lenders to the rural electric industry especially the Federal Government, are in effect the "equity investors" in the cooperative in lieu of stockholders who are absent in the cooperative structure. REA believes that this perception of the Federal Government and other lenders as "equity investors" is erroneous and wholly incompatible with the structure of the REA program.

Equity investors place money at risk for the potential of receiving unlimited returns on their investment (while returns on equity may be controlled in a regulated environment, stock price is not). The risk that equity investors assume in return for these potential benefits are substantial. They accept uncertainty about the amount and timing of the benefits that they may receive and accept junior priority of repayment in adverse circumstances.

Commercial lenders on the other hand have a senior priority of claims, accept less risk, and are compensated for this risk by accepting a finite benefit, the interest rate charged on their loans.

In the case of rural electric lending the Federal Government provides financing to power supply borrowers at approximately its cost of money. The RE Act does not provide the Federal Government with the right to receive the kind of unlimited benefits an equity investor may receive. Nor does it provide the Federal Government with the right to receive "profits" from its lending activities. In fact, REA is unable to act like a true commercial lender. It is not permitted to charge a fee for its services. Interest rates are fixed by statute, and REA is therefore unable to charge a risk adjusted interest rate on its loans. Additionally, unlike other lenders, REA has no funded reserve for loan losses. When a borrower defaults on a loan, there is no pool of funds set aside to make the payment for the debtor, nor is the shortfall covered by increased payments from other rural electric borrowers. Instead, any and all losses in the rural electrification program are borne by the Rural Electrification and Telephone Revolving Fund (the Revolving Fund), which was established under the provisions of the RE Act as a source of debt capital for REA-financed utilities and as the initial source of capital used by REA to make payments under contracts of guarantee.

Any shortfalls paid by the Revolving Fund either have the effect of depleting fund assets thus limiting the availability of capital to other REA financed systems or must be ultimately reimbursed by the nation's taxpayers.

Congress, in enacting the RE Act, intended that the loans made by REA, be repaid by the beneficiaries of the particular loan, not by the taxpayers. Under the RE Act, the Administrator is given the authority to make self liquidating loans—not grants. The RE Act provides the Administrator with only limited authority to restructure loans by lengthening the repayment period and no authority to write them off.

As explained in the background to the Proposed Rule, (55 FR 12195), REA financed cooperatives are generally organized on a two tier system with power supply borrowers providing wholesale service to their member/owners, the distribution cooperatives. The power supply borrower owns or controls generation and bulk transmission facilities. The distribution members own the facilities necessary to serve on the retail level. Taken together, a power supply borrower and its distribution members are essentially one economic unit, similar to a single investor owned utility which owns or controls both the sources of production and the retail franchises.

The REA power supply program is carried out by means of a series of financing documents: The REA loan contract, the security instrument, and, in particular, the REA wholesale power contract.

The wholesale power contract provides that the power supply borrower shall sell, and its members shall purchase, power at rates which are sufficient, but only sufficient, to meet the power supply borrower's costs, including repayment of REA loans. This key provision of the wholesale power contract is the foundation of the rural electric program and has provided REA assurance that its loans to power supply borrowers will be repaid. At the same time this provision, which requires a review of the adequacy of rates not less frequently than annually, carries out the objective of providing reliable electric service to RE Act beneficiaries at costs that are as low as practicable.

It should be noted that this wholesale power contract provision does not, of course, ensure that the rates charged for electric power and energy by REA-financed electric systems will not be higher than rates charged by other utilities for similar service. Indeed, historically, rates of REA borrowers have been higher than rates of other utilities. Nor does it, in and of itself, guarantee REA that the loans made to a borrower will be repaid within the time agreed. There are several situations where REA is prepared to face the potential for losses because the economics of the area served by the borrower would not sustain rates at a level necessary to repay REA as scheduled. Nevertheless, this rate provision of the wholesale power contract is the economic underpinning of the REA program—both providing the assurance of repayment and carrying out the social objectives of rural electrification.

As noted at length in the background section of the Proposed Rule, courts have recognized the significance of the wholesale power contract to the REA program and have upheld the contract in a number of different contexts. For example, the 10th Circuit Court of Appeals, in concluding that the contract obligates a distribution member to maintain its power requirements and remain in business throughout the term of the contract, stated:

> The all-requirements contracts which form the (power supply borrower's) system are not simple requirements contracts but rather inter-dependent, joint and mutual contracts with a common purpose of securing the REA loans and thereby effectuating the REA policy to provide the economic means for supplying electricity to rural areas. *Tri-State G&T Assn.* v. *Shoshone River Power & Light*, 874 F.2d 1359 (10th Cir. 1989).

The Court concluded that interference with the contract (in that case, a sell out by a distribution member to an investor owned utility) would "constitute an abuse of the federal program" (p. 1360). So it has been in other cases involving the wholesale power contract, and so it is, when a State Regulatory Authority exercises its jurisdiction over rates in

such a manner as to prevent the power supply borrower from charging rates adequate to repay REA loans as required by the terms of the wholesale power contract.

It is true, of course, that REA is a lending agency, not a conventional regulatory agency, and that Congress anticipated that cooperatives would be organized and operated in accordance with State law and State Regulatory Authorities. For the most part, the REA program has operated harmoniously with State Regulatory Authorities, with very few conflicts between the goals of REA and the goals of the state agencies regulating the rates and services of REA-financed electric systems.

REA loan funds are not advanced unless all required approvals from State Regulatory Authorities have been received. Further, REA has allowed for the jurisdiction of State Regulatory Authorities in the design of electric rates. The standard security instrument required of borrowers provides, in section 15 of article II, that, "* * * subject to applicable laws and rules and orders of regulatory bodies * * *," the borrower will design its rates to meet certain financial objectives. Thus, a State Regulatory Authority can establish rates which are lower than rates that the borrower would otherwise be required to set, absent state regulation. REA has not, however, deferred to State Regulatory Authorities the decision of whether REA loans will be repaid.

While the REA program has operated in harmony with state rate regulation, the opportunity for conflict exists, particularly where a State Regulatory Authority seeks to regulate an REA borrower in the same manner it regulates as an investor owned utility. There are fundamental differences between the REA-financed utilities and investor owned utilities which must be taken into consideration.

Investor owned utilities are owned and controlled by shareholders who are seeking to maximize the return on their investment. Such stockholders are not necessarily the rate paying customers of the utility. Thus, friction exists between the goals of the utility—to maximize stockholders' return on investment—and the goals of the rate payers—to keep the cost of electricity low. Rate regulation balances the interests of the ratepayers and the stockholders and thus protects the ratepayers from monopoly pricing by the investor owned utility.[1]

Cooperatives, on the other hand, are owned and controlled by the member/owners, i.e. the ratepayers, at both the distribution and power supply level. Since in a cooperative there are no investors and since no return is provided on contributed capital, the member/owner receives the benefits when the organization is operating efficiently through lower power costs, not through a return on investment. Similarly, the member/owners face the risk of higher rates if the organization encounters financial problems. Because the cooperatives' ratepayers and owners are one and the same, the friction between owners and customers does not exist. Thus, in a cooperative structure, there is not the same need for regulation to protect the ratepayers interests from the owners. Underscoring this is the fact that the majority of the States do not regulate cooperatives. Most States that regulate cooperatives recognize that the concept of "rate of return" does not exist in the cooperative structure. In these States cooperatives tend to be regulated on a "times interest earned" basis, which is designed to ensure rates adequate to pay the cooperative's obligations.

Indeed, the cooperative structure creates problems for regulatory authorities which apply a regulatory scheme designed for investor owned utilities. Should a regulatory authority refuse to approve rates required by the terms of the REA wholesale power contract, the member/owners benefit through lower rates. This is significantly different from the situation in an investor owned utility when a rate increase needed to cover its costs is denied. In such a case the owners/shareholders are expected to bear the loss.

It is clear that a State Regulatory Authority may see advantages to shifting the cost from ratepayers of the cooperative to the Federal Government. As an example, the Indiana Supreme Court recently upheld[2] its State Regulatory Authority's decision to exclude from the rates charged by a power supply borrower pursuant to the wholesale power contract an investment in a failed generating plant, on the grounds that the investment did not result in facilities that were "used or useful." This determination runs contrary to the logic of rate regulation. It rewards member/owners of the REA borrower, where it would have penalized the owner/shareholders of an investor owned utility under similar circumstances. This determination means that the member/owners of an REA borrower get all of the benefits when the organization is operating efficiently while bearing none of the burdens when problems occur.

The REA program stands to be frustrated by such actions. If a State Regulatory Authority does not allow an REA borrower to charge rates adequate to repay its debts, the Revolving Fund and the federal taxpayer will have to bear the financial loss. The State will have succeeded in interfering with the enforcement of the REA wholesale power contract which, for the history of the REA program, has been the means of bringing affordable and reliable electric service to rural areas.

If the REA contracts can no longer be enforced in accordance with their terms because of State interference, then the contracts will no longer provide the assurance of repayment that REA and private lenders believe necessary to permit continued financing. One consequence of this process could be the collapse of the program's financial structure. Even if it were possible to restructure the REA program, unquestionably, any restructuring would be significantly more expensive for the ultimate rate payers—a result that clearly frustrates the REA program objectives. Such state inference with the wholesale power contracts is, to use the words of the 10th Circuit Court, "an abuse of the federal program."

Additionally, this result also frustrates Congressional policy, which states,

> * * * it is hereby declared to be the policy of the Congress that adequate funds should be made available to rural electric and telephone systems * * * which will allow them to achieve the objectives of the Rural Electrification Act of 1936, as amended; and that such rural electric and telephone systems should be encouraged and assisted to develop their resources and ability to achieve the financial strength needed to enable them to satisfy their credit needs from their own financial organizations and other sources at reasonable rates and terms consistent with the loan applicant's ability to pay and the achievement of the Act's objectives.[3]

While REA in its lending program takes the business risk associated with lending to a specific company, and the risk of whether that company has the "ability to pay", it cannot accept the risk that a State Regulatory Authority may decide to shift costs to the federal taxpayer. Therefore, in order to manage such risk and still carry out the objectives of the RE Act, it is incumbent

[1] See generally, Charles F. Phillips, Jr. "The Regulation of Public Utilities" (Arlington, Virginia: Public Utilities Reports, 1988), pp 163–194.

[2] *National Rural Utilities Cooperative Finance Corporation* v. *Public Service Commission of Indiana*, 552 N.E. 2d 23 (1990).

[3] May 11, 1973, Public Law 93–32, Section 1, 87 Stat. 65; 7 U.S.C. 930.

on REA to pre-empt State Regulatory Authority action when its actions prevent repayment of secured loans.

Specific Discussion

Many of the comments REA received focused on one or more of several issues. The following is a discussion of the principal areas of comment and REA's response.

1. A number of commentors challenged the authority of REA to issue these regulations. These comments argued, among other matters, that the RE Act does not explicitly provide for pre-emption and the Congress did not intend to delegate to REA the authority to pre-empt state regulatory jurisdiction, that Congress intended REA to be a lender, not a rate making agency, and that there is no inconsistency between state rate regulation and carrying out the objective of the RE Act. The commentors cited the RE Act, its legislative history and case law in support of their arguments.

These regulations are being promulgated in order to displace state law in those very rare cases in which state law and the RE Act are in conflict, where the state law stands as an obstacle to the carrying out of the RE Act. Specifically the regulations displace state law where the State Regulatory Authority is preventing REA from enforcing its rights and is preventing an REA borrower from carrying out its obligations, set forth in the loan documents, to charge rates sufficient to repay REA loans. In displacing the state law, REA is not assuming the role of a conventional rate regulatory agency. Rather REA is simply putting the borrower in the same position as those borrowers which are not rate regulated. Currently, 45 of approximately 66 power supply borrowers are not subject to rate regulation by State Regulatory Authorities. REA will not, by this regulation, assume any greater authority or rights over its borrowers than it currently has pursuant to the loan documents. REA will enforce its existing rights and the borrower will meet its obligations pursuant to such loan documents and thus carry out the objectives of the RE Act free the obstacle imposed by state law. For the purpose of clarifying this point, REA has changed certain language in the regulation to emphasize that REA shall exercise jurisdiction over the rates pursuant to the terms of the loan documents.

The very narrow use of pre-emption authority pursuant to this regulation is well within the constitutional test for pre-emption i.e., that state law will be displaced to the extent that it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines* v. *Davidowitz*, 312 U.S. 52, 67–68 (1941); *see also Schneidewind* v. *ANR Pipeline Co.*, 108 S.Ct. 1145, 1150–51 (1988); *Jones* v. *Roth Packing Co.*, 430 U.S. 519 (1977). Further, in REA's view this use of pre-emption authority is precisely what was contemplated by the Supreme Court when it stated:

> There may come a time when the REA changes its present policy, and announces that state rate regulation of rural power cooperatives is inconsistent with federal policy. If that were to happen, and if such rule was valid under the Rural Electrification Act, it would, of course, pre-empt any further exercise of jurisdiction by the [state regulatory authority]. *Arkansas Elec. Coop. Corp.* v. *Arkansas Public Service Commission*, 461 U.S. 375, 388–89 (1983).

The Supreme Court followed that statement with the even more pointed statement which recognizes the particular circumstances, which the regulation addresses, where state law would be pre-empted:

> (E)ven without an explicit statement from the REA, a particular rate set the (state regulatory authority) may so seriously compromise important federal interest including the ability of the (cooperative) to repay its loans as to be implicitly pre-empted by the Rural Electrification Act. (461 U.S. 389)

The express language of the RE Act, its legislative history and applicable case law confirm that the pre-emption provided in the regulation is consistent with and necessary to achieve the objectives of Congress. It is clear from the RE Act and legislative history that Congress viewed REA as being basically a lending agency, and that REA would operate in cooperation with the states. It is also clear from the express language of the RE Act and from legislative history that Congress intended that REA loans be repaid. Section 4 (7 U.S.C. 940) requires the Administrator to determine that security for the loan is adequate and that the loan will be repaid in accordance with its terms. The legislative history well illustrates that Congress assumed that, despite state regulation, see 80 Cong. Rec. 5316 (1936) (Rep. Lea) "all of the money loaned * * * will be recaptured by the Government with interest," id. at 5279 (Rep. Withhrow). There are many other examples in the legislative history which confirm that Congress intended the loans to be repaid.

The express language of the RE Act and the legislative history also make clear that the Administrator is to have broad authority to structure the program in a manner that would best achieve the purposes of rural electrification. Section 4 of the RE Act provides the Administrator with the authority to establish the "terms and conditions" of the loans. Pursuant to that authority, REA has established a unique structure that for more than 50 years has effectively carried out the objectives of the RE Act to provide reliable, affordable electric service to persons in rural areas while providing for repayment of loans. The REA program is implemented by, and the Administrator relies upon, the REA loan documents including the wholesale power contract. When a State Regulatory Authority refuses to approve rates required by the terms of the wholesale power contract and necessary to permit repayment of the REA loans, then that structure does not function properly and REA and its borrowers are unable to carry out the REA program as envisioned by Congress.

There is substantial case law, in addition to the *Arkansas Electric* case discussed above, which supports REA's authority to pre-empt. In the case of *Public Service Co. of Indiana* v. *Hamil*, 416 F.2d 648 (7th Cir. 1969) *cert. denied*, 386 U.S. 1010 (1970), the court held that REA may operate power supply facilities without being subject to State Regulatory Authority requirements. Two Ninth Circuit Court of Appeals cases,[4] held that REA had the authority to pre-empt state laws pursuant to which municipal bodies sought to acquire assets from a borrower. See also *Tri-State, supra*, and those cases referred to in the background section of the proposed rule regarding the wholesale power contract. These cases support the proposition that the Administrator has the authority under the RE Act to establish terms and conditions of loans including requiring borrowers enter into a wholesale power contract, and that the Administrator has authority to enforce such terms and conditions notwithstanding state laws which interfere with the REA program.

2. A number of commentors cite the recently decided *Wabash Valley Power Association, Inc.* v. *Rural Electrification Administration*, 903 F.2d 445 (7th Cir. May 23, 1990) as suggesting that Congress did not intend for REA to be a rate making organization and that REA may not pre-empt a State Regulatory Authority. As stated earlier, REA is not, through this regulation, attempting to become a rate making agency, but rather is displacing state law which constitutes an obstacle to carrying out the REA

[4] *Public Util. Dist. No. 1* v. *United States*, 417 F.2d 200 (9th Cir. 1969) and *Public Util. Dist. No. 1* v. *Big Bend Elec. Coop.*, 618 F.2d 601 (9th Cir. 1980).

program and, specifically, to carrying out the terms and conditions established in the loan documents. Moreover, it is clear that the court did not decide the issue of authority to pre-empt:

> [REA] has issued a notice of proposed rulemaking * * * to consider thorough substitution of federal for state regulation. It would be inappropriate to interrupt that process by deciding in advance whether REA has statutory authority. Its effort to preempt state regulation of Wabash's rates alone founders on a mundane obstacle: it neglected to use the procedures required by the APA. 903 F.2d at 453, slip Op. at 14.

3. A number of commentors also argue that the proposed regulation would unlawfully abrogate contracts between REA and its power supply borrowers and between those borrowers and their members. The commentors appear to assume that, since the standard REA mortgage provides that the borrower shall design its rates to meet certain financial ratios, subject "to applicable laws and rules and orders of regulatory bodies," REA has contractually deferred rate matters to the States and that the regulation would abrogate such contractual commitments. These comments overemphasize REA's willingness to allow local control over rate design, expressed in one provision of the mortgage, but ignore REA's fundamental requirement, stated repeatedly in all loan documents, that its loans be repaid.

As discussed above, REA has, for the most part, worked harmoniously with State Regulatory Authorities. As provided in § 4 of the RE Act, REA will not make loans unless the State Regulatory Authority with jurisdiction has approved the loan. Borrowers which must change their rates, do so in accordance with applicable state law and with the approval of the State Regulatory Authority having jurisdiction.

The REA loan documents require a borrower to maintain a level of revenue sufficient (its revenue requirements) to meet the borrower's operating expenses and to repay its loans. These revenue requirements are allocated among the various classes of the borrower's consumers through the rate design it adopts. REA believes that each borrower's rate design, in general, is best determined by parties familiar with local conditions. Most borrowers design their own rates, but a few State Regulatory Authorities have been granted jurisdiction over the rates of some or all of the borrowers in their State.

REA has allowed local parties acting pursuant to the rate design provision of the REA mortgage to assume some limited authority to vary the level of the borrower's revenues, so long as the borrower has sufficient funds to meet its borrowing needs, financial requirements, and legal obligations. However, REA has never allowed State Regulatory Authorities to determine whether REA loans will be repaid. The loan documents unconditionally require the borrower to repay its REA loans as and when due.

The pre-emption of State Regulatory Authority provided for in this subpart G is to be triggered by a financial default by the borrower caused by the failure of the State Regulatory Authority to approve adequate rates. The pre-emption permits the borrower to establish rates required by the loan documents unfettered by obstacles imposed by the State Regulatory Authority. The pre-emption places the borrower in the same position as are all other borrowers whose rates are not subject to regulation by a State Regulatory Authority. Several States have recognized the unique structure of REA borrowers and have accepted self-regulation by the cooperative membership as the best way to assure fair and equitable rates. By analogy, in some circumstances, borrowers were, at the time of the REA loan, subject to rate regulation by the State and subsequently, either the State decided to deregulate the borrowers, or the borrowers elected under State law to remove themselves voluntarily from rate regulation. In either case the borrowers' rates thereafter were established pursuant to the provisions of the loan documents notwithstanding the language of the mortgage referring to State regulatory bodies. Conversely, there have been circumstances where borrowers were not subject to State rate regulation at the time a loan was made but later became regulated as to rates. In such situations, REA and its loan documents accommodate regulation. So it is with the pre-emption regulation.

This regulation in no way abrogates a contractual right of the borrower. The borrower does not have a contractual right to default on REA loans. To the contrary, the regulation removes an obstacle which is interfering with the ability of the borrower and REA to carry out their contractual rights and obligations.

4. Some commentors argued that the regulation is invalid to the extent it applies to outstanding loans because it is impermissible retroactive rulemaking.

REA's response to the preceding comment applies as well to this comment. The regulation does not change the respective rights and obligations of REA and the borrowers as set forth in the loan documents evidencing outstanding REA loans. Rather the regulation displaces State law which interferes with the carrying out of the terms and conditions of REA loans. While the REA standard mortgage accommodates rate regulation by a State Regulatory Authority, in no sense has REA, through its loan documents or otherwise, deferred to a State Regulatory Authority to determine whether REA loans shall be repaid. In the event that State rate regulation is pre-empted pursuant to the regulation, the borrower shall stand in the same position as any other unregulated borrower—it shall be able to carry out its obligations in accordance with their terms.

5. A number of commentors also asserted that the proposed regulation fails to provide interested parties with necessary due process. The commentors view REA as assuming the role of a conventional rate regulatory body and argue that the regulation must provide standards for ratemaking and a mechanism for interested parties, including ratepayers, to participate in the determination of the appropriate rates for borrowers.

REA has a twofold response to these comments. First, as stated previously, REA is not, pursuant to the regulations, attempting to assume the role of a conventional rate regulator. REA is simply displacing a State Regulatory Authority where the action or inaction of the Authority has prevented REA and the borrower from carrying out the terms of the loan documents. Where REA has pre-empted, REA will have those rights, set forth in the loan documents and particularly the wholesale power contract, to approve rates and will exercise those rights as it currently does for unregulated borrowers in accordance with the standards set forth in the loan documents.

It is initially the borrower's responsibility to design rates to meet the provisions of the loan documents. The loan documents grant wide discretion to the borrower in designing rates. The ratepayers may exercise any and all rights which they may have as member/owners of their cooperative to control management decisions of the borrower in such a way as to ensure rate designs are satisfactory. Unlike the ratepayers of an investor owned utility, the member/owners of a cooperative have an opportunity to participate in the rate setting process from inception. In members' meetings and through their locally elected representative on the Board of Directors they participate in all

financial decisions of the cooperative, from the planning for a new project to the timing and structure of rate increases. Their representatives have complete access to the financial books and records of the utility. It should be noted that some borrowers which are not rate regulated have adopted procedures which provide the members with notice and opportunity to participate in the rate setting process. REA certainly has no objections to borrowers affording members such rights.

Secondly, because of the structure of the REA program, REA borrowers do not require the conventional form of regulation, which was designed to balance the interests of ratepayers and owners. The purpose of REA and of REA-financed electric systems is to bring reliable power at as low a cost as practicable to rural consumers. The not-for-profit cooperative structure, the rights of the member/owners, and the provisions of the loan documents all serve to promote this objective and to protect the interests of the ratepayer. This structure and particularly REA's role in the structure provided the basis for the Federal Power Commission (FPC), now Federal Energy Regulatory Commission (FERC), to conclude that REA borrowers are not subject to regulation under the Federal Power Act, *Dairyland Power Cooperative*, 37 F.P.C. 12 (1976), *aff'd sub nom., Salt River Project* v. *FPC*, 391 F.2d 470 (D.C. Cir.), *cert. denied*, 393 U.S. 857 (1968). The court in *Salt River* stated:

> Through its lending authority REA exercises extensive supervision over the planning, construction and operation of the facilities it finances. * * * Moreover, REA's concern is not only with providing high standards of electric service and guaranteeing its loan, but also with reducing the cost of service to the cooperative's consumers. * * * Though REA regulation and supervision of cooperatives are, in many respects, far more comprehensive than those which the Federal Power Commission exercises over investor-owned utilities, there are certain areas, such as ratemaking, where the cooperatives enjoy a freer hand. But it is in these areas that, by their structural nature, the cooperatives are effectively self-regulating. They are completely owned and controlled by their consumer-members, and only consumers can become members. They are non-profit. Each member has a single vote in the affairs of the cooperative, and service is essentially limited to members. No officer receives a salary for his services and officers and directors are prohibited from engaging in any transactions with the cooperative from which they can earn any profit. (391 F.2d at 473).

The court went further to recognize that rate regulation was intended to address "venal conditions and iniquitous practices" (p. 475) in the investor-owned electric utility industry but that virtually none of the major abuses "could be associated with the cooperative structure where ownership and control is vested in the consumer-owners." (p. 475). It upheld the determination by the FPC that REA borrowers were not subject to jurisdiction under the Federal Power Act concluding that the Federal Power Act and the RE Act "were arrived at wholly disparate problems and the supervisory agencies established under them were to deal with fundamentally different sorts of utilities." (p. 475).

As the FPC and the courts have recognized, the structure of the REA program and of its borrowers is such that conventional regulation is not required to protect the interests of the consumer.

6. One commentor opposed what has been redesignated as § 1717.307, Distribution Members Rates, which requires State Regulatory Authorities to pass through the power supply borrower's rates in determining rates for distribution members. The commentor argued that the regulation improperly relied on *Mississippi Power & Light Co.* v. *Mississippi Ex Rel. Moore*, 108 S.Ct. 1249 (1988) and *Nantahala Power & Light Co.* v. *Thornburg*, 106 S.Ct. 1249 (1986). The commentor contended that because REA would not be establishing rates which were "just and reasonable" but rather would be setting rates at a level high enough to ensure repayment of its loans, the filed rate doctrine of these cases is inapposite.

Section 1717.307 provides that State Regulatory Authorities which have been pre-empted may continue to exercise rate jurisdiction over distribution members. However, the State Regulatory Authority must pass through the power supply borrower's rates in determining rates for distribution member. This provision is required if the underlying purpose of the regulation, i.e. to displace a State Regulatory Authority which is interfering with the carrying out of the REA program, is to be fulfilled. The background section of the Proposed Rule analogized this provision to the filed rate doctrine under which power rates filed with or fixed by the FERC must be given binding effect by State Regulatory Authorities.

As the holding of the *Dairyland* case (discussed above) makes clear, Congress designed two different structures when it enacted the Federal Power Act and the RE Act. REA borrowers are not subject to regulation under the Federal Power Act because the consumers interests are protected through the structure of the program. Nevertheless, the rationale underlying the FERC filed rate doctrine applies as well to the REA program. In *Nantahala*, the Supreme Court stated:

> When FERC sets a rate between a seller of power and a wholesaler-as-buyer, a state may not exercise its undoubted jurisdiction over retail sales to prevent the wholesaler-as-seller from recovering the costs of pay the FERC, approved rate * * * Such a trapping of costs is prohibited. (106 S.Ct. at 2359.)

The wholesale rates established pursuant to the REA structure must be passed through or the objectives of the RE-Act would be frustrated just as the objectives of the Federal Power Act would be frustrated if FERC approved rates were not passed through by the State Regulatory Authority.

7. A number of commentors felt that REA failed to consider the provisions of Executive Order 12291, Federal Regulation, when it issued the Proposed Rule. REA and the Department of Agriculture continue to believe that this program does not (1) Have an annual effect on the economy of $100 million or more; or (2) result in a major increase in costs or prices for consumers, individuals, industries, Federal, state, or local government agencies or geographic regions; or (3) result in significant adverse effects on competition, employment, investment or productivity.

REA and the Department of Agriculture believe that the economic impacts resulting from this regulation establishing certain circumstances for pre-emption are minimal. The economic impact of a lending decision occurs at the time the loan is made and funds are disbursed. The timely repayment of loans has no additional economic impact.

Of the 46 states in which REA-financed electric systems operate only 17 currently regulate the rates of 293 REA distribution borrowers. The State Regulatory Authorities of only 12 states assert jurisdiction over the wholesale electric rates of approximately 21 REA-financed electric power supply systems.

In most cases, the rates approved by these Authorities are sufficient to ensure the repayment of the Federal government's loan and loan guarantees. REA believes that in most situations Federal interests and State interests will continue to coincide. Therefore, REA expects conflicts with Federal interests to occur infrequently.

Pre-emption shall occur pursuant to this regulation if a State Regulatory Authority fails to approve adequate rates. In such a situation, the amounts to be charged upon pre-emption will be no greater than the amounts that the power supply borrower's members should have

been paying under their wholesale power contract and therefore the issuance of this regulation has no marginal effect on the economy.

REA acknowledges that the failure to make payments on lawfully incurred debts does have an economic impact and would transfer the burden of payment from the member/owners of the cooperative, who derive a benefit from the rural electrification program, to the nation's taxpayers as a whole.

Therefore, REA and the Department of Agriculture continue to believe that this regulation is not a "major rule" under the scope of Executive Order 12291.

8. Some commenters have suggested that REA has failed to comply with four specific policies of Executive Order 12612, Federalism. In preparing the Proposed Rule and Final Rule, REA considered the specific Federalism provisions which pertained to this regulation and has complied with the Secretary of Agriculture's Memorandum 1200-1, dated February 19, 1988, which implements Executive Order 12612 within the Department of Agriculture.

Contrary to the comments received, REA believes that constitutional authority for this Federal action (the regulation) is clear and REA has firm and palpable evidence compelling the conclusion that the Congress intended pre-emption of State law.

REA carefully assessed the necessity for this regulation. As discussed in REA's responses to comments challenging the authority to issue this regulation under the RE Act, REA affirms the conclusion that Congress intended REA to have the authority to pre-empt State law, when the exercise of State authority in regulating rates directly conflicts with the exercise of Federal authority to establish the terms and conditions of loans made under the RE Act.

Also contrary to comments received, REA believes that to the extent practicable, REA, in administering its loan program, consults with appropriate officials and organizations representing the States in an effort to avoid conflicts and to eliminate the need for pre-emption.

Notwithstanding the terms and conditions imposed by the Administrator in REA loan documents and the overriding Federal interests in carrying out the REA program, Congress has recognized that State Regulatory Authorities have an appropriate role in the REA power supply program. Section 4 of the RE Act in one instance expressly requires the Administrator to defer to State authority providing:

> That no loan for the construction, operation, or enlargement of any generating plant shall be made unless the consent of any applicable State Regulatory Authority is first obtained.

Consequently, REA does not finance facilities for power supply borrowers without the required approvals of all State Regulatory Authorities.

REA has not deferred to State Regulatory Authorities the decision of whether REA loans will be repaid. For the most part, REA and the States' interest coincide and State Regulatory Authorities exercise their authority in a manner consistent with protecting Federal interests, by approving rates adequate to ensure loan repayment.

REA continues to believe that, while opportunities exist for conflict between State Regulatory Authorities and Federal interests, in almost all cases conflict can be avoided through cooperation among the interested parties. Even when faced with a borrower in default and experiencing extreme financial problems, REA and some State Regulatory Authorities have been able to resolve the problems in a way that protects Federal interests and is satisfactory to the State Regulatory Authority.

Some comments assert that this regulation is unnecessary because the problems confronting the rural electrification program are not of national scope as provided in Executive Order 12612.

REA-financed electric systems provide service to rural consumers in 46 states. While only 17 states regulate power supply or distribution cooperatives, the problems that this regulation addresses are of a national scope. Unless REA can pre-empt State Regulatory Authorities in the limited circumstances covered by the regulation, the State Regulatory Authorities would be given a means of shifting costs from consumers in their state to Federal taxpayers. It could well be that the type of interference with and abuse of the REA program which has occurred in Indiana (see above) may have a snowballing effect; that other State Regulatory Authorities which heretofore have acted in a manner consistent with the structure of the REA program would feel compelled to also shift costs to the Federal taxpayer. It should also be noted that in effect, as Federal taxpayers the electric consumers in other States are paying for the cost of electric service to rural Indiana consumers. Unless state law, which in these limited circumstances stands as an obstacle to carrying out the REA program, is displaced, the intent of Congress in providing for rural electrification through a lending program would be frustrated and the American taxpayers as a whole will end up subsidizing rural electric service well beyond the levels envisioned by Congress.

Under the Secretary of Agriculture's memorandum 1200-1, dated February 19, 1988, REA has subjected this regulation to close internal scrutiny by policy officials before publication in the Federal Register. This regulatory action is being taken only after a thorough analysis with a view toward maximizing the net benefits to society. As determined by the Memorandum, the Administrator was initially responsible for identifying proposed policies, regulatory initiatives and legislative proposals that have sufficient Federalism implications to warrant the preparation of a Federalism assessment pursuant to the Order. In accordance with the principal and purpose of the Executive Order 12612, Federalism, REA has considered whether the Proposed Rule would have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. It is the opinion of REA that during the rule making process the Federalism implications of this Final Rule have been assessed in compliance with the requirements of Executive Order 12612.

The following is a brief summary of the modifications made in the final regulation:

Several modifications have been made in the regulatory text to make it clear that should REA pre-empt a State Regulatory Authority, REA rate regulation will thereafter be pursuant to the REA documents (§ 1717.300, § 1717.301(e)).

A new definition of State Regulatory Authority has been added to the regulation (§ 1717.302(a)).

The regulatory text has been modified to make it clear that the REA wholesale power contract provides that revisions to electric rate shall not be effective until approved by the Administrator (§ 1717.303(b)).

Under the regulations, in order to pre-empt a State Regulatory Authority, the Administrator must determine that approved rates are inadequate to make payments on secured debt and that the borrower has failed to make required payments. The provision in the proposed regulation that authorized pre-emption upon the determination by the Administrator that the borrower will fail to make required payments has been eliminated (§ 1717.305(a)).

The regulation now provides that a public notice of REA pre-emption of rates be published in the **Federal Register** (§ 1717.305(b)).

The regulation has been modified to make clear that REA has the option, but is not required to exercise remedies pursuant to the REA documents should a borrower subject to REA rate jurisdiction fail to establish rates in accordance with the wholesale power contract (§ 1717.306(c)).

List of Subjects in 7 CFR Part 1717

Administrative practice and procedure, Electric power rates, Electric utilities, Federal pre-emption, Guaranteed loans, Loans programs—energy, Wholesale power contracts.

In view of the above, REA amends 7 CFR chapter XVII by adding part 1717, to read as follows:

PART 1717—POST-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

Subpart A—Area Coverage [Reserved]

Subpart B—Electric Retail Rates [Reserved]

Subpart C—Service to Large Power Loads [Reserved]

Subpart D—[Reserved]

Subpart E—[Reserved]

Subpart F—[Reserved]

Subpart G—Federal Pre-emption in Rate Making in Connection With Power Supply Borrowers

Sec.
1717.300 Purpose.
1717.301 Policy.
1717.302 Definitions and Rules of Construction.
1717.303 Requirements of REA Documents.
1717.304 State Regulatory Authority Rate Jurisdiction.
1717.305 Pre-emption.
1717.306 REA Required Rates.
1717.307 Distribution Members' Rates.
1717.308 REA Approval of Nonconforming Rates.
1717.309 Additional Statutory Pre-emption.
1717.310 1717.349 [Reserved]

Subpart H—[Reserved]

Subpart I—[Reserved]

Subpart J—[Reserved]

Authority: 7 U.S.C. 901–950b; Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Secretary for Small Community and Rural Development 7 CFR 2.72.

Subpart A—Area Coverage [Reserved]

Subpart B—Electric Retail Rates [Reserved]

Subpart C—Service to Large Power Loads [Reserved]

Subpart D—[Reserved]

Subpart E—[Reserved]

Subpart F—[Reserved]

Subpart G—Federal Pre-emption in Rate Making in Connection With Power Supply Borrowers

§ 1717.300 Purpose.

This subpart contains regulations of the Rural Electrification Administration (REA) implementing provisions of Section 4 of the RE Act (7 U.S.C. 904) which authorize the Administrator to establish terms and conditions of loans and implementing provisions of the REA wholesale power contracts and other REA documents which provide for the establishment of rates to be charged by power supply borrowers for the sale of electric power and energy. This subpart contains the general regulations of REA for the pre-emption, under certain circumstances, which are not exclusive, of the regulation of a power supply borrower's rates by a state regulatory authority under state law and for the exercise of exclusive jurisdiction over rates by REA pursuant to the REA documents.

§ 1717.301 Policy.

(a) REA makes and guarantees loans to borrowers to bring electric service to persons in rural areas. REA requires, as a condition to making or guaranteeing any loans to power supply borrowers, that the borrower enter into REA wholesale power contracts with its several members and assign and pledge such contracts as security for the repayment of loans made or guaranteed by REA and for other loans which, pursuant to the RE Act, REA has permitted to be secured pursuant to the REA mortgage. The REA wholesale power contract requires, among other matters, that the rates charged for power and energy sold thereunder produce revenues sufficient to enable the power supply borrower to make payments on account of all indebtedness of the power supply borrower. The Administrator relies upon the REA wholesale power contracts together with other REA documents to find and clarify, as required in Section 4 of the RE Act (7 U.S.C. 904), that the security for the loan is reasonably adequate and the loan will be repaid within the time agreed.

(b) REA requires power supply borrowers to take such actions as may be necessary to charge rates for the sale of electric power and energy which are sufficient to pay the principal and interest on loans made or guaranteed by REA in a timely manner and to meet the requirements of the REA wholesale power contract and other REA documents.

(c) With respect to power supply borrowers which are not subject to rate regulation by a state regulatory authority, REA requires that such borrowers establish rates and obtain REA approval of such rates as required by the terms of the REA wholesale power contract and other REA documents.

(d) With respect to power supply borrowers which are subject to regulation by a state regulatory authority, REA does not make or guarantee a loan for the construction, operation or enlargement of any generating plant or transmission facility unless the consent of the state regulatory authority having jurisdiction in the premises is first obtained.

(e) Pursuant to applicable provisions of state law state regulatory authorities regulate many aspects of a power supply borrowers business activities, including such matters as the setting of wholesale electric rates, the borrowing of money, and the mortgaging of property. A state regulatory authority's jurisdiction over the rates charged by a power supply borrower shall be pre-empted where the Administrator has determined that such jurisdiction has compromised Federal interests, including without limitation, the ability of the borrower to repay its secured loans in accordance with the terms of the REA documents. Thereupon, REA shall, pursuant to the REA documents, exercise exclusive jurisdiction over the rates charged by a power supply borrower.

§ 1717.302 Definitions and rules of construction.

(a) Definitions. For the purpose of this subpart, the following terms shall have the following meanings:

Administrator means the Administrator of REA.

Borrower means any organization which has an outstanding loan made or guaranteed by REA for rural electrification. Unless otherwise stated in the text, "borrower" shall mean power supply borrower.

Loan contract means the agreement, as amended, supplemented, or restated

from time to time, between a borrower and REA providing for loans made or guaranteed pursuant to the RE Act.

Power supply borrower means any borrower engaged in the wholesale sale of electric power and energy to distribution members either directly or though other power supply borrowers pursuant to REA wholesale power contracts.

REA means Rural Electrification Administration, an agency of the United States Department of Agriculture.

RE Act means Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*).

REA documents means the loan contract, mortgage and REA wholesale power contract of a power supply borrower.

REA mortgage means the mortgage and security agreement, as from time to time supplemented, amended and restated, made by and among the borrower, REA, and, if a party thereto, third party lenders, or any other form of mortgage or security instrument or indenture of mortgage and deed of trust, securing the payment of outstanding loans made or guaranteed by REA and other lenders.

REA wholesale power contract means the contract for the wholesale sale of electric power and energy between a power supply borrower and its member as approved by REA.

Secured loans shall mean outstanding loans secured pursuant to the REA mortgage.

State regulatory authority means any state board or local governing body having jurisdiction under state law to regulate, or in any way, approve the electric rates charged by a power supply borrower or electric distribution member of a power supply borrower.

(b) Rules of Construction. Unless the context shall otherwise indicate, the terms defined in § 1717.302(a) hereof include the plural as well as the singular, and the singular as well as the plural. The words "herein," and "hereunder", and words of similar import, refer to this subpart as a whole. "Includes" and "including" are not limiting and "or" is not exclusive.

§ 1717.303 Requirements of REA documents.

(a) Pursuant to the terms of the REA documents each power supply borrower shall establish and adjust rates for the sale of electric power and energy in such a manner as to assure that the borrower will be able to make required payments on secured loans.

(b) Pursuant to the terms of the REA wholesale power contract, the Board of Directors or Board of Trustees of the power supply borrower shall review rates not less frequently than once each calendar year and revise its rates as therein set forth.[1] The REA wholesale power contract further provides that the borrower shall notify the Administrator not less than 30 nor more than 45 days prior to the effective date of any adjustment and shall set forth the basis upon which the rate is to be adjusted and established. The REA wholesale power contract provides that no final revision in rates shall be effective unless approved in writing by the Administrator.

(c) Pursuant to the terms of the REA mortgage, each power supply borrower must design its rates as therein set forth and must give 90 days prior notice to REA of any proposed change in its general rate structure.

(Approved by the Office of Management and Budget under control number 0572-0089)

§ 1717.304 State regulatory authority rate jurisdiction.

(a) In the event that rate revisions required by the terms of the REA wholesale power contract or other REA documents may be subject to the approval of a state regulatory authority, the power supply borrower shall seek such required approval in a timely manner.

(b) REA recognizes the need of state regulatory authorities for documents, information and records for use in connection with an application for rate approval and will consider any reasonable request by a borrower or a state regulatory authority for such documents, information and records. The failure of REA to provide requested documents, information or records shall not limit any rights of REA including the right with respect to pre-emption of the state regulatory authority as provided in this subpart.

(c) In the event that the state regulatory authority shall fail to act favorably upon the borrower's application for rate increases required by terms of the REA wholesale power contract or other REA documents, the borrower shall pursue such legal and administrative appeals as may be available to it, unless REA shall approve otherwise in writing.

§ 1717.305 Pre-emption.

(a) *Inadequate rates.* State regulatory authority jurisdiction over a power supply borrower's rates shall be pre-empted by the RE Act if the Administrator shall have determined that the borrower's rates approved by the state regulatory authority are, after taking into account the borrower's costs and expenses, inadequate to produce revenues sufficient to permit the borrower to make required payments on its secured loans and the borrower has failed to make required payments on its secured loans.

(b) *Public notice.* The Administrator shall:

(1) Notify the borrower and the state regulatory authority in writing of the determination, indicating the jurisidiction of the state regulatory authority over the rates of the borrower has been pre-empted pursuant to this part and the borrower shall henceforth establish its rates in accordance with the term of the REA documents.

(2) publish a notice in the **Federal Register** informing the public of the action.

§ 1717.306 REA required rates.

(a) Upon the publication in the **Federal Register** of the notice of pre-emption of state regulatory authority as provided in this subpart, REA will exercise exclusive jurisdiction over the rates of the borrower pursuant to the terms of the REA documents. The borrower shall immediately establish rates with the approval of REA that are sufficient to satisfy the requirements of the REA wholesale power contract and other REA documents described in § 1717.303 of this subpart. The borrower shall establish such rate notwithstanding provisions of state law, and rules, orders or other actions of state regulatory authorities, and notwithstanding any provision of the REA documents referring to such laws, rules, orders or actions.

(b) So long as the state regulatory authority shall be pre-empted hereunder, REA shall be considered the governmental regulatory body with jurisdiction over rates for the purposes of the REA documents and for the purposes of section 1129(a)(6) of the Bankruptcy Code of 1978, as amended (11 U.S.C. 1129(a)(6)).

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[1] The Wholesale Power Contract, with minor modifications which are approved by REA on a case by case basis, provides that the rate charged for electric power and energy,

shall produce revenues which shall be sufficient, but only sufficient, with the revenues of the Seller from all other sources, to meet the cost of the operation and maintenance (including without limitation, replacements, insurance, taxes and administrative and general overhead expenses) of the generating plant transmission system and related facilities of the Seller, the cost of any power and energy purchased for resale hereunder by the Seller, the cost of transmission service, make payments on account of principal and interest on all indebtedness of the Seller, and to provide for the establishment and maintenance of reasonable reserves. (Section 4. Rates (b), REA Form 444; "Wholesale Power Contract—Federated Cooperative"; Rev. 6-60.)

(c) If a borrower, which is subject to exclusive REA rate jurisdiction, shall fail to establish rates in accordance with terms of the REA wholesale power contract and other REA documents in a timely fashion, REA may proceed to exercise any and all right and remedies available pursuant under the REA documents or otherwise.

(d) The jurisdiction of the state regulatory authority over the rates of the borrower shall continue to be pre-empted hereunder until the Administrator shall in writing approve the resumption of jurisdiciton by the state regulatory authority and publish in the **Federal Register** a notice to such effect. The administrator shall approve resumption only after determining that such jurisdiction shall be exercised in a manner consistent with Federal interests.

§ 1717.307 Distribution members' rates.

A state regulatory authority which has been pre-empted as provided in this subpart may continue to exercise jurisdiction, pursuant to applicable provisions of state law, over all other business affairs of the power supply borrower and over the rates of its distribution members: Provided, however, that the state regulatory authority shall treat any REA approved rate for the power supply borrower as fair and reasonable and shall not in any manner, directly or indirectly, prevent or impede the distribution member from recovering the costs of paying the REA approved rates to the power supply borrower.

§ 1717.308 REA approval of nonconforming rates.

Borrowers may request and REA may approve rates which do not conform with the requirements of the REA wholesale power contract and other REA documents if REA determines, in its sole discretion, that such approval is in the interests of REA. If REA approval is granted prior to pre-emption hereunder, and if the state regulatory authority shall have approved such rates, then, so long as REA's approval of the nonconforming rates remains in effect, the jurisdiction of the state regulatory authority over the rates of the borrower shall not be pre-empted hereunder.

§ 1717.309 Additional statutory pre-emption.

This subpart addresses pre-emption of state law and state regulatory authority in only those specific circumstances herein described. Nothing in this subpart waives, limits, or otherwise affects the explicit pre-emption or pre-emption, which is implicit and shall occur pursuant to the RE Act as a matter of law, of state law or action of a state regulatory authority where such state law or such action compromises Federal interests, including the ability of any borrower, including power supply borrowers, to repay loans made or guaranteed by REA.

§§ 1717.310 to 1717.349 [Reserved]

Subpart H—[Reserved]

Subpart I—[Reserved]

Subpart J—[Reserved]

Dated: September 10, 1990.

Gary C. Byrne,

Administrator.

[FR Doc. 90-22120 Filed 9-14-90; 2:57 pm]

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DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1717

RIN 0572-AA44

Federal Pre-emption in Rate Making in Connection With REA Electric Borrowers in Bankruptcy

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby amends 7 CFR Chapter XVII, Part 1717, Post-Loan Policies and Procedures Common to Insured and Guaranteed Electric Loans and by adding a new subpart, Subpart H—Federal Pre-emption in Rate Making in Connection with REA Electric Borrowers in Bankruptcy. This new subpart establishes policies and procedures to implement certain provisions of the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*) (the "RE Act"); and the REA loan documents which provide for the establishment of rates for the sale and purchase of electric power and energy by REA electric borrowers. This subpart will also establish certain circumstances under which the jurisdiction by State Regulatory Authorities over the rates of an REA financed electric system in bankruptcy shall be pre-empted by REA.

EFFECTIVE DATE: The final rule is effective October 19, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Laurence V. Bladen, Financing Policy Specialist, Rural Electrification Administration, Room 1272, South Building, U.S. Department of Agriculture, Washington, DC 20250-1500, telephone number (202) 382-9558.

SUPPLEMENTARY INFORMATION: Pursuant to the RE Act, REA hereby amends 7 CFR chapter XVII by adding part 1717, Post-Loan Policies and Procedures Common to Insured and Guaranteed Electric Loans and by adding, Subpart H—Federal Pre-emption in Rate Making in Connection with REA Electric Borrowers in Bankruptcy.

This regulation is issued in conformity with Executive Order 12291, Federal Regulation. It will not (1) have an annual effect on the economy of $100 million or more; or (2) result in a major increase in costs or prices for consumers, individuals, industries, Federal, state, or local government agencies or geographic regions; or (3) result in significant adverse effects on competition, employment, investment or productivity; and has been determined not to be "major".

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this final rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.* (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment. This program is listed in the Catalog of Federal Domestic Assistance as 10.850, Rural Electrification Loans and Loan Guarantees. For the reasons set forth in the final rule related Notice to 7 CFR part 3015 subpart V in 50 FR 47034 (November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

This Final Rule contains no reporting or recordkeeping provisions requiring Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*)

Background

On April 2, 1990, REA published a Proposed Rule at 55 FR 12199 proposing to revise 7 CFR chapter XVII, by adding a new part 1714, Electric Rates, Services, and Contracts, consisting of Subpart I—Federal Pre-emption in Rate Making in Connection with REA Electric Borrowers in Bankruptcy. After issuing that Proposed Rule, and in the process of developing the Final Rule, REA has undertaken a project to simplify, clarify, and update agency regulations. This project, when complete, will provide a more logical arrangement of agency regulations in order to assist borrowers and others. As part of this project, this regulation relating to Federal pre-emption has been redesignated as Subpart H—Federal Pre-emption in Rate Making in Connection with REA Electric Borrowers in Bankruptcy to a new part 1717, Post-Loan Policies and Procedures Common to Insured and Guaranteed Electric Loans. This redesignation is not substantive and does not require public comment.

This regulation, 7 CFR part 1717, Subpart H—Federal Pre-emption in Rate Making in Connection with REA Electric Borrowers in Bankruptcy, is related in subject matter to a Final Rule, 7 CFR part 1717, Subpart G—Federal Pre-emption in Rate Making in Connection with Power Supply Borrowers, which is being published elsewhere in today's **Federal Register**. Interested parties should refer to subpart G and, in particular, the "Background" paragraphs for further discussion of the circumstances which give rise to both final rules. While subpart G and this subpart H are related in subject matter, this rule addresses the matter of pre-emption of State Regulatory Authorities' jurisdiction over any REA electric borrower, either distribution or power supply, which is in bankruptcy. This rule can be implemented separately and is therefore being promulgated separately.

Comments

In proposed rule, published on April 2, 1990, REA invited interested parties to file comments on or before June 1, 1990. On May 29, 1990, REA received a number of requests from the public for a 30 day extension of the comment period. Since these requests were received just prior to the June 1, 1990 scheduled end of the 60 day comment period for this proposed rule, REA did not extend the comment period.

In order to be responsive to these requests, however, and to give other interested parties an additional opportunity to comment, REA published a notice on June 12, 1990, at 55 FR 23748 to reopen the public comment period on this proposed rule for an additional 30 days, from June 12, 1990 to July 12, 1990.

Because both this Subpart H—Federal Pre-emption in Rate Making in Connection with REA Electric Borrowers in Bankruptcy and Subpart G—Federal Pre-emption in Rate Making in Connection with Power Supply Borrowers were published in proposed rule form in the **Federal Register** on the same day (April 2, 1990) many commentors submitted a single set of comments addressing both proposed rules. Seventy-four different organizations or groups commented on the proposed rule during the initial comment period. They were:

1. Alaska Public Utilities Commission
2. Allegheny Electric Cooperative, Inc.
3. Arizona Corporation Commission
4. Arkansas Electric Cooperative Corporation
5. Arkansas Public Service Commission
6. Basin Electric Power Cooperative
7. Boone County Rural Electric Membership Corporation
8. Buckeye Power, Inc.
9. Cajun Electric Power Cooperative, Inc.
10. Carroll County Rural Electric Membership Corporation
11. Central Electric Power Cooperative, Inc.
12. Central Iowa Power Cooperative
13. Colorado Association of Municipal Utilities
14. Colorado Public Utility Commission
15. Corn Belt Power Cooperative
16. Cotton Electric Cooperative, Inc.
17. Delta Montrose Electric Association
18. East Kentucky Power Cooperative, Inc.
19. East River Electric Power Cooperative
20. Electric Consumers Resource Council
21. Empire Electric Association, Inc.

22. Fruit Belt Electric Cooperative
23. Grand Valley Rural Power
24. Hancock County Rural Electric Membership Corporation
25. Hendricks County Rural Electric Membership Corporation
26. Hoosier Energy Rural Electric Cooperative, Inc.
27. Hot Springs County Rural Electric Association, Inc.
28. Indiana Utility Regulatory Commission
29. Intermountain Rural Electric Association
30. Iowa Association of Electric Cooperatives, Inc.
31. Jasper County Rural Electric Membership Corporation
32. Jay County Rural Electric Membership Corporation
33. Kankakee Valley Rural Electric Membership Corporation
34. Kansas Corporation Commission
35. Kosciusko County Rural Electric Membership Corporation
36. LaGrange County Rural Electric Membership Corporation
37. Logan County Co-operative Power and Light Association, Inc.
38. Louisiana Public Service Commission
39. Marshall County Rural Electric Membership Corporation
40. Miami-Cass County Rural Electric Membership Corporation
41. Michigan Public Service Commission
42. National Association of Regulatory Commissioners, Inc.
43. A jointly signed comment from:
    a. National Association of State Utility Consumer Advocates
    b. Interim Director of Public Advocacy—Vermont
    c. Office of Consumer Counsel—Colorado
    d. Office of Utility Consumer Counselor—Indiana
44. National G&T Managers Association
45. National Rural Electric Cooperative Association
46. National Rural Utilities Cooperative Finance Corporation
47. New Mexico Public Service Commission
48. New York Department of Public Service
49. Newton County Rural Electric Membership Corporation
50. Noble County Rural Electric Membership Corporation
51. Northwest Iowa Power Cooperative
52. Oglethorpe Power Corporation
53. Parke County Rural Electric Membership Corporation
54. Phelps Dodge
55. Public Service of Indiana, Inc.
56. Public Utility Commission of Texas
57. San Isabel Electric Association, Inc.
58. Southeast Colorado Power Association
59. State of Maryland Public Service Commission
60. State of New Hampshire Public Utilities Commission
61. Steuben County Rural Electric Membership Corporation
62. The Western Michigan Electric Co-operative
63. Tipmont Rural Electric Membership Corporation
64. Tri-State Generation and Transmission Association, Inc.
65. United Power Association
66. United Rural Electric Membership Corporation
67. Vermont Department of Public Service
68. Wabash County Rural Electric Membership Corporation
69. Wabash Valley Power Association, Inc.
70. Warren County Rural Electric Membership Corporation
71. Western Interstate Energy Board
72. White County Rural Electric Membership Corporation
73. Wyoming Public Service Commission
74. Y-W Electric Association, Inc.

During the additional 30 day comment period, REA received comments from the following organizations:

1. Cooperative Power Association
2. East Kentucky Power Cooperative, Inc.
3. Fulton County Rural Electric Membership Corporation
4. Garkane Power Association, Inc.
5. Honorable John T. Myers, Member of Congress
6. A jointly signed comment from:
    a. North East Texas Electric Cooperative, Inc.
    b. Tex-La Electric Cooperative
7. Northeastern Rural Electric Membership Corporation
8. The Brown-Atchison Rural Electric Co-operative Association, Inc.
9. A jointly signed comment from:
    a. The National Rural Electric Cooperative Association
    b. Oglethorpe Power Corporation
    c. Paul, Hastings, Janofsky & Walker
10. Wabash Valley Power Association, Inc.

A number of these comments addressed general issues relating to pre-emption rather than the specific circumstances under which REA might exercise its pre-emption authority and are for the most part addressed in the preamble to Subpart G—Federal Pre-emption in Rate Making in Connection with Power Supply Borrowers which is being published elsewhere in today's **Federal Register**. The preamble to subpart G also contains a general discussion of the structure of the REA program. The preamble to this subpart H primarily discusses issues raised by the commentors relating to REA electric borrowers in bankruptcy.

General Discussion

Subpart G—Federal Pre-emption in Rate Making in Connection with Power Supply Borrowers addresses pre-emption in circumstances where the rates approved by the State Regulatory Authority are inadequate to produce revenues sufficient to permit the borrower to make payments on REA loans and the borrower has defaulted on its secured loans. This subpart H addresses pre-emption in connection with the bankruptcy of borrowers and is required for several reasons. Subpart H is necessary to ensure that the intent of subpart G will be carried out—that a borrower which is seeking to use the rate jurisdiction the State Regulatory Authority as a means of avoiding rate increases required to meet its obligations to REA cannot necessarily avoid the consequences of subpart G by filing for bankruptcy. For complete discussion of the basis for subpart G and in particular a discussion of how State Regulatory Authority rate jurisdiction can be an obstacle to the carrying out of the REA program, see the preamble of subpart G published elsewhere in today's **Federal Register**.

The exercise of rate jurisdiction by a State Regulatory Authority over an REA borrower in bankruptcy presents additional obstacles to the carrying out of RE Act purposes. The financial problems of a bankrupt borrower can often begin with its inability to obtain timely approval of needed rate increases. Whether or not that is the case, once a borrower is in bankruptcy, unless rate relief can be quickly obtained, the borrower's financial problems can quickly escalate. If the rate jurisdiction of State Regulatory Authority is pre-empted, a bankrupt borrower can obtain rate relief without undue delays and hence limit the extent of its financial problems.

As discussed in detail in the preamble to the proposed rule (at 55 FR 12199), rate regulation of a borrower in bankruptcy raises the unique problem of "valuation circularity," summarized as follows:

> [T]he value of the assets of a public utility company in large measure is determined by the rates that can be charged for the power produced by those assets; and the rates to be set by regulators for a public utility company in large measure is determined by the structure of the company and the value of its assets. It is apparent then that such circularity could easily lead to a stalemate when a public utility company comes into a bankruptcy reorganization court unless an appropriate resolution can be accomplished in the chapter 11 proceedings. *In re Public Service Company of New Hampshire v. The State of New Hampshire and the State of New Hampshire PUC*, 108 B.R. 845, footnote 1 (Bankr. D. N.H. 1989).

This potential for delays and stalemate is even greater in connection with REA borrowers because of the unique structure of REA borrowers and the problems associated with applying conventional rate regulation principles to not for profit cooperatives. See the preamble to subpart G.

State Regulatory Authority rate jurisdiction over a borrower in bankruptcy can also cause delays and uncertainty in obtaining confirmation of a reorganization plan. Under section 1129(a)(6) of the Bankruptcy Code of

1978, as amended (11 U.S.C. 1129(a)(6)), any regulatory authority with jurisdiction over the rates of the debtor must approve any rate change provided for in the plan. Thus a State Regulatory Authority could frustrate attempts to resolve financial problems in a manner consistent with protecting the interests of the REA program.

The pre-emption provided for in subpart H will expedite the resolution of bankruptcy and allow the borrower to resume the orderly planning, construction and operation of an electric system serving RE Act beneficiaries as soon as possible. It will reduce the direct and indirect costs of bankruptcy, and reduce the potential for losses in the Rural Electrification and Telephone Revolving Fund (Revolving Fund). It will discourage State Regulatory Authorities which may be tempted to shift costs from the consumer to the federal taxpayer by refusing to approve rate increases necessary to repay REA loans. Pre-emption is necessary to protect the structure of the REA program, carry out the objectives of the RE Act to provide reliable electric service to rural areas at as low a cost as practicable, and to obtain repayment of REA loans.

Specific Discussion

Many of the comments REA received focused on one or more of several issues. The following is a discussion of the principal areas of comment and REA's response.

1. A number of commenters challenged the authority of REA to issue the regulations set forth in subparts G and H of this part 1717. These comments argued, among other matters, that the RE Act does not explicitly provide for pre-emption and that Congress did not intend to delegate to REA the authority to pre-empt state regulatory jurisdiction, that Congress intended REA to be a lender, not a rate making agency, and that there is no inconsistency between state rate regulation and carrying out the objective of the RE Act. Since most of these comments appeared to relate to the specific subject matter contained in Subpart G—Federal Pre-emption in Rate Making a Connection with Power Supply Borrowers, REA has discussed these comments in more detail in subpart G, published elsewhere in today's **Federal Régister**. See subpart G for a complete discussion of the authority of REA.

These regulations are being promulgated in order to displace state law in those very rare cases where an REA borrower is in bankruptcy. As discussed in the preamble, REA has concluded that in such cases State Regulatory Authority over rates stands as an obstacle to carrying out the purposes of the RE Act. It delays resolution of the financial problems, increases the costs of bankruptcy, increases the potential of losses to the Revolving Fund and provides a potential means to shift costs of the Federal taxpayer. Moreover, it jeopardizes the structure of the REA program.

In displacing the state law, REA is not assuming the role of a conventional rate regulatory agency, nor as discussed below, is REA assuming the role of the bankruptcy court or circumventing the strictures of the Bankruptcy Code of 1978, 11 U.S.C. 101 *et seq.* (Bankruptcy Code or code). Rather, REA is simply putting the borrower in the same position as those borrowers which are not rate regulated. Subject to the provisions of the Bankruptcy Code REA will not, by this regulation, assume any greater authority or rights over its borrowers than it currently has pursuant to the loan documents.

For the purpose of clarification, REA has added language to the regulation providing the REA shall exercise jurisdiction over the rates pursuant to the terms of the loan documents.

The very narrow use of pre-emption authority pursuant to this regulation is well within the constitutional test for pre-emption, i.e., that state law will be displaced to the extent that it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines* v. *Davidowitz*, 312 U.S. 52, 67–68 (1941); *see also Schneidewind* v. *ANR Pipeline Co.*, 108 S. Ct. 1145, 1150–51 (1988); *Jones* v. *Roth Packing Co.*, 430 U.S. 519 (1977).

2. Some of the commentors have suggested that permitting REA to assume jurisdiction over cooperatives' rates upon filing of a bankruptcy petition violates the letters and spirit of the Bankruptcy Code. The allegations fall into four basic categories: (i) The proposed rule gives REA a priority not authorized by the Code, *see* 11 U.S.C. 507; (ii) pre-emption by REA violates the automatic stay of actions by creditors to collect on their debts during pendency of the bankruptcy proceeding, 11 U.S.C. 362; (iii) pursuant to 11 U.S.C. 1129(a)(6) and 28 U.S.C. 959(b), approval of electricity rates proposed in a plan of reorganization for a bankrupt cooperative is somehow committed to state, and not federal, regulatory commission jurisdiction; and (iv) the proposed rules improperly authorize REA to engage in rate-setting activities in derogation of review and approval responsibilities ascribed to the bankruptcy court by the Code.

While REA understands the concerns of the commentors, REA believes they are not well-founded. First, the regulation does not in any way alter the priorities established by the Code, as the commentors suggest. It does not give an REA claim any priority in the bankruptcy process, and REA does not intend to claim any priority not otherwise authorized in the Code. Second, REA believes the rule is consistent with the automatic stay set forth in 11 U.S.C. 362. That section specifically exempts from its scope actions by "governmental units" to enforce "police or regulatory power." Section 362(b)(4) of the automatic stay statute provides:

> (b) The filing of a petition under section 301, 302, or 303 of this title * * * does not operate as a stay—
>
> * * * * *
>
> (4) under subsection (a)(1) of this section, of the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power; * * *

The legislative history of section 362(b)(4) explains the exception:

> Paragraph (4) excepts commencement or continuation of actions and proceedings by governmental units to enforce police or regulatory powers. Thus, where a governmental unit is suing a debtor to prevent or stop violation of fraud, environmental protection, consumer protection, safety, or similar police or regulatory laws, or attempting to fix damages for violation of such a law, the act or proceeding is not stayed under the automatic stay.

House Report No. 95–595, 95th Cong., 1st Sess. (1977) at 343, *reprinted in* 2 App. *Collier on Bankruptcy* (15th ed. 1985).

The commentors concede, or assert, that, pursuant to this exemption, state rate-setting jurisdiction over a regulated entity may be exercised notwithstanding the automatic stay. Those commentors fail to acknowledge, however, that 11 U.S.C. 101(26) specifically defines the term "governmental unit," as used in the automatic stay section, as including both state and federal entities. Therefore, federal and state rate regulation are treated equally under the exemption. The Code may somehow place limitations on the exercise of that rate-setting jurisdiction, but it does not, as far as REA can ascertain, limit who may exercise it. If a State Regulatory Authority is an obstacle to carrying out the REA program and can be pre-empted when the borrower is not bankrupt, REA fails to understand why pre-emption is precluded if the cooperative is bankrupt.

The commentors assert, nevertheless, that the rule violates the stay because, by its own terms, it sets rates at

unlawful levels. However, the rate-setting provisions in the rule are not self-executing. Section 1717.353 merely provides that rates of REA electric borrowers must be established as provided in the REA loan documents. The section does not independently establish rates. Instead, REA contemplates that once state jurisdiction is displaced, rates will be established subject to applicable strictures, if any, of the Code. REA recognizes of course, that all rate revenues of the debtor would be property of the bankruptcy estate subject to the jurisdiction of the bankruptcy court. Moreover, REA recognizes that neither federal nor state entities may set rates as a means to, and at levels which, levy against assets of the estate. Therefore, it is anticipated that if REA's enforcement of the loan documents of a bankrupt REA cooperative overstepped permissible bounds in any particular case, and constituted an attempt to levy against the estate for REA's own pecuniary advantage, our action would be challenged immediately in the bankruptcy court. However, REA does not intend to overstep those bounds. REA fails to understand how the hypothetical possibility that REA might overstep them violates the automatic stay—which precludes "acts" against the debtor or its property—or how it provides any basis to invalidate the rule.

Third, neither 11 U.S.C. 1129(a)(6) nor 28 U.S.C. 959(b) preclude federal, as opposed to state, regulatory oversight during bankruptcy. Section 1129(a)(6) requires approval of rates set forth in a reorganization plan by "any governmental regulatory commission with jurisdiction." The section is not limited to state authorities, but applies instead to both state and federal entities. Similarly, 28 U.S.C. 959(b) merely requires that the property of the estate be managed in accordance with "the requirements of the valid laws of the state." This does not require the application of state regulation once it has been pre-empted.

Finally, the rule is not intended to, and does not, preclude any otherwise applicable review or approval ascribed by the Code to the bankruptcy court. The rule may displace state rate-setting, but it does so entirely within the strictures of the Code.

3. Commentors also argue (i) that the proposed regulation would unlawfully abrogate contracts between REA and its borrowers and between those power supply borrowers and their members; (ii) that the regulation is invalid to the extent it applies to outstanding loans because it is impermissible retroactive rulemaking; and (iii) that the proposed regulation fails to provide interested parties with necessary due process. For REA's response to these comments see Subpart G—Federal Pre-emption in Rate Making in Connection with Power Supply Borrowers published elsewhere in today's **Federal Register.**

4. A number of commentors felt that REA failed to consider the provisions of Executive Order 12291, Federal Regulation, when it issued the proposed rule. REA and the Department of Agriculture continue to believe that this program does not (1) have an annual effect on the economy of $100 million or more; or (2) result in a major increase in costs or prices for consumers, individuals, industries, Federal, state, or local government agencies or geographic regions; or (3) result in significant adverse effects on competition, employment, investment or productivity.

REA and the Department of Agriculture believe that the economic impacts resulting from this regulation establishing certain circumstances for pre-emption are minimal. The economic impact of a lending decision occurs at the time the loan is made and funds are disbursed. The timely repayment of loans has no additional economic impact.

Of the 46 states in which REA-financed electric systems operate only 17 currently regulate the rates of 293 REA distribution borrowers. The State Regulatory Authorities of only 12 states assert jurisdiction over the wholesale electric rates of approximately 21 REA-financed electric power supply systems.

In most cases, the rates approved by these Authorities are sufficient to ensure the repayment of the Federal government's loan and loan guarantees. REA believes that in most situations Federal interests and state interests will continue to coincide. Therefore, REA expects conflicts with Federal interests to occur infrequently.

The pre-emption provisions of this regulation shall not be invoked unless an eletric borrower is in bankruptcy. In such a situation, the amounts that would be charged in rates would be no greater than the amounts that the borrower's members should have been paying and therefore the issuance of this regulation has no marginal effect on the economy.

Therefore, REA and the Department of Agriculture continue to believe that this regulation is not a "major rule" under the scope of Executive Order 12291.

5. Some commentors have suggested that REA has failed to comply with four specific policies of Executive Order 12612, Federalism. In preparing the proposed rule and final rule, REA considered the specific Federalism provisions which pertained to this regulation and has complied with the Secretary of Agriculture's Memorandum 1200-1, dated February 19, 1988, which implements Executive Order 12612 within the Department of Agriculture.

Contrary to the comments received, REA believes that constitutional authority for this Federal action (the regulation) is clear and REA has firm and palpable evidence compelling the conclusion that the Congress intended pre-emption of State law.

REA carefully assessed the necessity for this regulation. As discussed in REA's responses to comments challenging the authority to issue this regulation under the RE-Act, REA affirms the conclusion that Congress intended REA to have the authority to pre-empt State law, when the exercise of State authority in regulating rates directly conflicts with the exercise of Federal authority to establish the terms and conditions of loans made under the RE Act.

Also contrary to comments received, REA believes that to the extent practicable, REA, in administering its loan program, consults with appropriate officials and organizations representing the States in an effort to avoid conflicts and to eliminate the need for pre-emption.

REA has not however, deferred to State Regulatory Authorities the decision of whether REA loans will be repaid. For the most part, REA and the States' interest coincide and State Regulatory Authorities exercise their authority in a manner consistent with protecting Federal interests by approving rates adequate to ensure loan repayment.

REA continues to believe that, while opportunities exist for conflict between State Regulatory Authorities and Federal interests, in almost all cases conflict can be avoided through cooperation among the interested parties.

Some comments assert that this regulation is inconsistant with the provisions of Executive Order 12612 and is unnecessary because the problems confronting the rural electrification program are not of national scope.

REA-financed electric systems provide service to rural consumers in 46 States. While only 17 States regulate power supply or distribution cooperatives, the problems that this regulation addresses are of a national scope. Unless REA can pre-empt State Regulatory Authorities in the limited circumstances covered by the regulation, the State Regulatory

Authorities would be given a means of shifting costs from consumers in their State to Federal taxpayers. It could well be that this type of interference with and abuse of the REA program may have a snowballing effect; that State Regulatory Authorities which heretofore have acted in a manner consistent with the structure of the REA program would feel compelled to also shift costs to the Federal taxpayer. Unless State law, which in these limited circumstances stands as an obstacle to carrying out the REA program, is displaced, the intent of Congress in providing for rural electrification through a lending program would be frustrated and the American taxpayers as a whole will end up subsidizing rural electric service well beyond the levels envisioned by Congress.

Under the Secretary of Agriculture's memorandum 1200-1, dated February 19, 1988, REA has subjected this regulation to close internal scrutiny by policy officials before publication in the **Federal Register**. This regulatory action is being taken only after a thorough analysis with a view toward maximizing the net benefits to society. As determined by the Memorandum, the Administrator was initially responsible for identifying proposed policies, regulatory initiatives and legislative proposals that have sufficient Federalism implications to warrant the preparation of a Federalism assessment pursuant to the Order. In accordance with the principal and purpose of the Executive Order 12612, Federalism, REA has considered whether the proposed rule would have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. It is the opinion of REA that during the rule making process the Federalism implications of this final rule have been assessed in compliance with the requirements of Executive Order 12612.

The following is a brief summary of the modifications made in the final regulation:

Several modifications have been made in the regulatory text to make it clear that should REA pre-empt a State Regulatory Authority, REA rate regulation will thereafter be pursuant to the REA documents (§ 1717.350, § 1717.351(d), § 1717.355).

REA deleted from the final rule the subsection which was designated in the proposed rule as § 1714.901(d), because it is unnecessary in this regulation. This deletion has no substantive impact.

A new definition of State Regulatory Authority has been added to the regulation (§ 1717.352(a)).

List of Subjects in 7 CFR Part 1717

Administrative practice and procedure, Electric power rates, Electric utilities, Federal pre-emption, Guaranteed loans, Loans programs—Energy, REA mortgage.

In view of the above, REA hereby amends 7 CFR chapter XVII, part 1717, as follows:

PART 1717—POST-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

1. The authority citation for part 1717 continues to read as follows:

Authority: 7 U.S.C. 901–950b; Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72.

2. A new supart H consisting of §§ 1717.350 through 1717.356 is added to read as follows:

Subpart H—Federl Pre-emption in Rate Making in Connection With REA Electric Borrowers in Bankruptcy

Sec.
1717.350 Purpose.
1717.351 Policy.
1717.352 Definitions and rules of construction.
1717.353 Requirements of REA documents.
1717.354 Pre-emption.
1717.355 REA required rates.
1717.356 Additional statutory pre-emption.

Subpart H—Federal Pre-emption in Rate Making in Connection With REA Electric Borrowers in Bankruptcy

§ 1717.350 Purpose.

This subpart contains regulations of the Rural Electrification Administration (REA) implementing provisions of section 4 of the RE Act (7 U.S.C. 904) which authorizes the Administrator to establish terms and conditions of loans, and provisions of the REA documents which provide for the establishment of rates for electric service to be charged by REA electric borrowers. This subpart contains the general regulations of REA for the pre-emption of the regulation by a State Regulatory Authority under State law of an REA borrower's rates and for the exercise by REA, pursuant to the REA documents, of exclusive jurisdiction over rates of a borrower by or against whom a case under the Bankruptcy Code of 1978, as amended, has commenced.

§1717.351 Policy.

(a) REA makes and guarantees loans to borrowers to bring electric service to persons in rural areas. To accomplish this objective, REA normally requires, as a condition to making or guaranteeing any loans to an electric borrower, that the borrower execute and deliver the REA documents in the form prescribed by REA. The REA mortgage secures repayment of the loans made or guaranteed by REA and other loans which, pursuant to the RE Act, REA has permitted to be secured pursuant to the REA mortgage. The Administrator relies upon the REA mortgage together with other REA documents to find and certify, as required by section 4 of the RE Act (7 U.S.C. 904), that the security for the loan is reasonably adequate and the loan will be repaid within the time agreed.

(b) REA requires borrowers to take such actions as may be necessary to establish rates for electric service which are sufficient to pay the principal of and interest on the loans made or guaranteed by REA in a timely manner and to meet the requirements of the REA documents.

(c) With respect to borrowers whose rates are not regulated by a State Regulatory Authority, REA requires that such borrowers establish rates and to obtain REA approval of such rates as required by the REA documents.

(d) To protect Federal interests, including without limitation the ability of the borrower to repay REA loans, REA's policy is to exercise, pursuant to the REA documents, exclusive jurisdiction over the rates for electric service charged by a borrower by or against whom a case under the Bankruptcy Code of 1978, as amended, has commenced.

§1717.352 Definitions and Rules of Construction.

(a) Definitions. For the purpose of this subpart, the following terms shall have the following meanings:

Administrator means the Administrator of REA.

Bankruptcy code of 1978, as amended, means the Bankruptcy Reform Act of 1978, as amended (11 U.S.C. 101 *et seq.*).

Borrower means any organization which has an outstanding loan made or guaranteed by REA for rural electrification.

REA loan contract means the agreement, as amended, supplemented, or restated from time to time, between a borrower and REA providing for loans made or guaranteed pursuant to the RE Act.

REA means Rural Electrification Administration, an agency of the United States Department of Agriculture.

RE Act means Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*).

REA documents means the REA loan contract, REA mortgage and, if the Borrower is engaged in the wholesale sale of electric power and energy to members pursuant to REA Wholesale Power Contracts, the REA Wholesale Power Contract.

REA mortgage means the mortgage and security agreement, as from time to time supplemented, amended and restated, made by and among the borrower, REA, and, if a party thereto, third party lenders, or any other form of mortgage or security instrument or indenture of mortgage and deed of trust, securing the payment of outstanding loans made or guaranteed by REA and other lenders.

REA wholesale power contract means the contract for the wholesale sale of electric power and energy between a power supply borrower and its member as approved by REA.

Secured loans shall mean outstanding loans secured pursuant to the REA mortgage.

State regulatory authority means any state board or local governing body having jurisdiction under state law to regulate, or in any way, approve the electric rates charged by a borrower.

(b) Rules of construction.

Unless the context shall otherwise indicate, the terms defined in § 1717.352(a) hereof include the plural as well as the singular, and the singular as well as the plural. The words "herein;" and "hereunder", and words of similar import, refer to this subpart as a whole. "Includes" and "including" are not limiting and "or" is not exclusive.

§ 1717.353 Requirements of REA documents.

Each borrower shall establish and adjust rates for electric service as set forth in the REA documents to assure that the borrower will be able to make required payments on secured loans and to otherwise meet the terms of the REA documents.

§ 1717.354 Pre-emption.

State Regulatory Authority jurisdiction over an REA borrower's rates shall be pre-empted by the RE Act and REA shall have exclusive jurisdiction over the borrower's rates:

(a) On October 19, 1990, with respect to any borrower by or against whom a case under the Bankruptcy Code of 1978, as amended, was commenced prior to and remains outstanding on October 19, 1990; and

(b) With respect to all other borrowers, upon the filing of a petition by or against the borrower commencing a case under the Bankruptcy Code of 1978, as amended.

§ 1717.355 REA required rates.

(a) Upon the pre-emption of State Regulatory Authority as provided in this subpart, REA will exercise exclusive jurisdiction over the rates of the borrower pursuant to the terms of the REA documents.

(b) So long as the State Regulatory Authority shall be pre-empted hereunder, REA shall be considered the governmental regulatory body with jurisdiction over rates for all purposes, including for the purposes of the REA documents and for the purposes of section 1129(a)(6) of the Bankruptcy Code of 1978, as amended (11 U.S.C. 1129(a)(6)).

(c) REA shall, pursuant to the terms of the REA documents, exercise exclusive jurisdiction over the rates of the borrower until the Administrator shall in writing approve the resumption of jurisdiction by the State Regulatory Authority. The Administrator shall approve resumption only after determining that such jurisdiction shall be exercised in a manner consistent with Federal interests.

§ 1717.356 Additional statutory pre-emption.

This subpart addresses pre-emption of State law and State Regulatory Authority upon the filing of a petition by or against the borrower commencing a case under the Bankruptcy Code of 1978, as amended. Nothing in this subpart waives, limits, or otherwise affects the explicit pre-emption or pre-emption, which is implicit and shall occur pursuant to the RE Act as a matter of law, of State law or action of a State Regulatory Authority where such State law or such action compromises Federal interests, including the ability of any borrower to repay loans made or guaranteed by REA.

Dated: September 12, 1990.

Gary C. Byrne,

Administrator.

[FR Doc. 90-22119 Filed 9-14-90; 2:57 pm]

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federal register

Wednesday
September 19, 1990

Part IV

The President

Extension of Moratorium on Permits and Certificates for Foreign Motor Carriers Memorandum of September 17, 1990

Federal Register
Vol. 55, No. 182
Wednesday, September 19, 1990

Presidential Documents

Title 3—

The President

Memorandum of September 17, 1990

Memorandum for the Secretary of Transportation, the United States Trade Representative

Pursuant to Section 6 of the Bus Regulatory Reform Act of 1982 (49 U.S.C. 10922 (*l*)(1) and (2)), I hereby extend for an additional 2 years both the moratorium imposed by that Section and all actions taken by me or my predecessor under that Section on the issuance of certificates or permits to motor carriers domiciled in, or owned or controlled by persons of, a contiguous foreign country. This action preserves the *status quo* and will maintain the moratorium through September 19, 1992, unless earlier revoked or modified.

This memorandum shall be published in the **Federal Register**.

George Bush

THE WHITE HOUSE,
Washington, September 17, 1990.

[FR Doc. 90-22391
Filed 9-18-90; 10:46 am]
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