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Wednesday
September 29, 1993

Briefings on How To Use the Federal Register
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WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 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

WASHINGTON, DC
(two briefings)

WHEN: October 19 at 9:00 am and 1:30 pm
WHERE: Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)
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Presidential Documents

Title 3—

The President

Memorandum of August 11, 1993

Importation of Assault Pistols

Memorandum for the Secretary of the Treasury

A category of pistols commonly referred to as assault pistols has increasingly become the weapon of choice for drug dealers, street gang members, and other violent criminals. These pistols, generally characterized by their bulky military-style appearance and large magazine capacity, include domestically manufactured TEC–9's and MAC–10's as well as imported models like the Uzi pistol and the H&K SP–89. Their popularity appears to stem from their intimidating appearance and their considerable firepower.

These weapons have been used to harm and terrorize many Americans, particularly our children, in recent years. As a result, it is no longer possible to stand by and witness the deadly proliferation of these weapons without acting to protect our communities.

Although addressing the domestic production of these weapons requires a change in the statute, which I support, existing law already bans the importation of firearms unless they are determined to be particularly suitable for or readily adaptable for sporting purposes. I am informed that shortly after enactment of the Gun Control Act of 1968, the Treasury Department adopted a factoring system to determine whether handguns were importable pursuant to this standard. The system entails the examination of the firearm against a set of criteria, with points being awarded for various features. A minimum score is required before importation is approved. The criteria and weighted point system were designed to address the crime gun of the day, the cheap, easily concealable "Saturday Night Special." Under this 25-year old system, small caliber, easily concealable handguns score few points and are banned from importation. However, assault-type pistols—the new crime gun of the day—because of their large size, weight, and caliber, easily score the necessary points to qualify for importation even though none of these pistols appears to have any legitimate sporting purpose. Accordingly, it is time to reassess how the present regulatory approach can be made more effective in achieving the legislative directive to preclude importation of firearms that are not particularly suitable for or readily adaptable for sporting purposes.

I hereby direct you to take the necessary steps to reexamine the current importation factoring system to determine whether the system should be modified to ensure that all nonsporting handguns are properly denied importation. You have advised me that the Bureau of Alcohol, Tobacco and Firearms (ATF) will issue a notice of proposed rule-making in the near future that will propose changes to the factoring system to address the assault pistol problem. You have further advised me that effective immediately action on pending applications to import these weapons will be suspended, and that final action on any application will be delayed until this review process is completed.

Nothing herein shall be construed to require actions contrary to applicable provisions of law. You are hereby authorized and directed to publish this memorandum in the **Federal Register.**

William J. Clinton

THE WHITE HOUSE,
Washington, August 11, 1993.

[FR Doc. 93-24114
Filed 9-27-93; 4:25 pm]
Billing code 4810-31-M

Editorial note: For the President's remarks on this policy, see vol. 29, page 1602 of the *Weekly Compilation of Presidential Documents.*

Presidential Documents

Memorandum of August 11, 1993

Gun Dealer Licensing

Memorandum for the Secretary of the Treasury

A major problem facing the Nation today is the ease with which criminals, the mentally deranged, and even children can acquire firearms. The gruesome consequences of this ready availability of guns is found in the senseless violence occurring throughout the country with numbing regularity. While there is not one solution to the plague of gun-related violence, there is more than sufficient evidence indicating that a major part of the problem involves the present system of gun dealer licensing, which encourages a flourishing criminal market in guns.

The Gun Control Act of 1968 established a licensing system for persons engaged in businesses of manufacturing, importing, and dealing in firearms. These licensees are allowed to ship firearms in interstate commerce among themselves, and are required to abide by State laws and local ordinances in their sale of firearms to non-licensees. They are also prohibited from selling firearms to felons, certain other classes of persons, and generally to out of state persons. This Act also established a comprehensive record-keeping system and authorized the Secretary to conduct inspections to ensure compliance with the Act. The statutory qualifications for a licensee are that the applicant is at least 21 years of age, is not a felon or other person prohibited from possessing firearms, has not willfully violated the Gun Control Act, and has premises from which he intends to conduct business. The license fee for a basic dealer's license is only $10 a year.

The minimal qualification standards of the statute, coupled with policies of neglect and opposition to legitimate regulatory efforts by past Administrations, leave us with a situation where in some ways we have made it easier to get a license to sell guns than it is to get and keep a driver's license. Today there are in excess of 287,000 Federal firearms licensees, and a great number of these persons probably should not be licensed. The Bureau of Alcohol, Tobacco and Firearms (ATF) estimates that only about 30 percent of these are bona fide storefront gun dealers. ATF estimates that probably 40 percent of the licensees conduct no business at all, and are simply persons who use the license to obtain the benefits of trading interstate and buying guns at wholesale. The remaining 30 percent of licensees engage in a limited level of business, typically out of private residences. While the Federal statute creates no minimum level of business activity to qualify for a license, many of the licensees in this category operate in violation of State and local licensing, taxing, and other business-related laws. Since the overall purpose of the Gun Control Act was to assist State and local gun control efforts, at the very least we need to coordinate the Federal licensing process with the appropriate State and local agencies.

This Administration is committed to doing more to prevent this criminal market in illegal guns from continuing to flourish. Since all new firearms used in crime have at some point passed through the legitimate distribution system, Federal firearms licenses represent the first line of defense in our efforts to keep guns out of the hands of criminals.

Accordingly, you have informed me that you will direct the Department of the Treasury and ATF to take whatever steps are necessary, to the extent

permitted by law, to ensure compliance with present licensing requirements, such as:

(a) improving the thoroughness and effectiveness of background checks in screening dealer license applicants;

(b) revising the application process to require the applicant to supply all information relevant to establishing qualification for a license, and to require more reliable forms of identification of the applicant, such as fingerprinting, to assist in identifying an applicant's criminal or other disqualifying history;

(c) making the "premises" requirement of the statute more meaningful by increasing field checks and the use of other procedures to verify compliance;

(d) increasing the scrutiny of licensees' multiple handgun sales reports and providing automated access to multiple sales report information by serial number for firearms trace purposes;

(e) requiring dealers to obtain more reliable identification from purchasers;

(f) reviewing sanctioning policies to determine the feasibility and desirability of adding the option of license suspension for certain violations;

(g) expanding the use of cooperative agreements with State and local law enforcement agencies to address licensing and trafficking problems;

(h) expanding ATF's capabilities to utilize effectively the firearms transaction records of out-of-business licensees for tracing purposes through the use of automation and other technology.

Acting pursuant to your statutory authority, you shall make such determinations and issue orders, regulations and rulings, as appropriate, to achieve the objectives stated in this memorandum.

I further direct that you initiate these actions as soon as possible and report your progress implementing these and other measures consistent with the foregoing to me within 90 days and annually thereafter.

All Executive agencies shall, to the extent permitted by law, cooperate with and assist you in carrying out the objectives of this memorandum. You shall consult with the Attorney General, the Director of National Drug Control Policy, and other Executive agencies as necessary to coordinate and implement the objective of this memorandum. To the maximum extent possible, the Attorney General, through the Office of Justice Programs, Bureau of Justice Assistance, will expand support to State and local agencies working with ATF on joint projects relating to licensing and trafficking in firearms. Nothing in this memorandum shall be construed to require actions contrary to applicable provisions of the law. You are hereby authorized and directed to publish this memorandum in the **Federal Register.**

William J. Clinton

THE WHITE HOUSE,
Washington, August 11, 1993.

[FR Doc. 93–24115
Filed 9–27–93; 4:26 pm]
Billing code 4810–31–M

Editorial note: For the President's remarks on this policy, see vol. 29, page 1602 of the *Weekly Compilation of Presidential Documents.*

Rules and Regulations

Federal Register
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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 JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 204 and 245

[INS No. 1450-93]

RIN 1115-AD05

Special Immigrant Status; Aliens Who Have Served Honorably (or Are Enlisted To Serve) in the Armed Forces of the United States for at Least 12 Years

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule implements provisions of the Armed Forces Immigration Adjustment Act of 1991 relating to the special immigrant status under section 101(a)(27)(K) of the Immigration and Nationality Act (the Act) granted to a limited number of foreign nationals who have served honorably on active duty status in the Armed Forces of the United States. This rule also establishes procedures under section 245 of the Act for these special immigrants and certain family members in the United States to adjust their status to that of aliens lawfully admitted for permanent residence. This regulation is necessary to recognize the patriotism and valor of aliens who, by virtue of their military service, have clearly demonstrated a commitment to support and defend the Constitution and laws of the United States.

EFFECTIVE DATE: September 29, 1993.

FOR FURTHER INFORMATION CONTACT: Susan A. Dugas, Senior Immigration Examiner, Adjudications Branch, Immigration and Naturalization Service, 425 I Street, NW., room 7223, Washington, DC 20536, telephone (202) 514-5014.

SUPPLEMENTARY INFORMATION: The Armed Forces Immigration Adjustment Act of 1991, Public Law 102-110, enacted on October 1, 1991, amends the Immigration and Nationality Act to provide for special immigrant status for certain aliens who, pursuant to a bilateral international agreement or treaty, have served honorably (or are enlisted to serve) in the Armed Forces of the United States after October 15, 1978, and who apply for such status. Public Law 102-110 further requires that such service be after lawful enlistment outside the United States and be for a period of twelve years or, alternatively, for six years if the person has reenlisted for an additional six years. Nationals of the Philippines, the Federated States of Micronesia, and the Republic of the Marshall Islands are allowed to enlist in the United States Armed Forces each year; however, in the case of the latter two independent states, few of their nationals will have enlisted outside the United States, whereas most natives of the Philippines have to date enlisted in the Philippines.

The grant of special immigrant classification pursuant to Public Law 102-110 allows the intended beneficiaries of section 101(a)(27)(K) of the Immigration and Nationality Act to become eligible for an immigrant visa or adjustment of status to that of aliens lawfully admitted for residence. Generally, an applicant for such benefits must have served honorably for the required twelve years of active military duty and at least some part of that service must have occurred after October 15, 1978. However, an alien who is on active duty status at the time he or she is seeking special immigrant status under section 101(a)(27)(K) of the Act and who has served a total of six years of active duty needs only to establish, to the satisfaction of the Immigration and Naturalization Service (the Service), that he or she has reenlisted to incur a total active duty service obligation of at least twelve years. Public Law 102-110 also requires that the executive department of the Armed Forces under which the immigrant serves or served must have recommended the granting of special immigrant status to the immigrant.

On July 31, 1992, at 57 FR 33859-33862, the Service published an interim rule with request for comments, implementing provisions of Public Law 102-110. Comments were due by August 31, 1992.

The Service received two comments on the interim rule. These comments were reviewed and considered in finalizing this rule. The discussion which follows describes the comments and provides the Service's position on the issues and indicates any revisions made based on the comments received.

Allocation of Visa Numbers

The Service received one comment concerning the discussion of visa number allocations contained in the supplementary information to the interim rule. The supplementary information contained in the interim rule described the allocation of visa numbers for military special immigrants and their spouses and children, and indicated that visa issuance under this category of special immigrant would be "charged to the allocation of employment-based fourth preference visas provided by section 203(b)(4) of the Act for the following year." It was suggested that this explanation be changed to reflect broader flexibility in the allocation of visa numbers by the Department of State since visa numbers for aliens granted special immigrant status under section 101(a)(27)(K) of the Act may not come exclusively from the pool of employment-based fourth preference visas, due to necessary adjustments within the system.

It was suggested that the following language be used in the supplementary information to describe the visa number allocation for military special immigrants: "Once an alien is granted special immigrant status under section 101(a)(27)(K) of the Act, his or her visa issuance is charged to the allocation of employment-based visas for the following year." The Service acknowledges the comment, but since the comment addressed only the language in the supplementary information, the regulation was not amended as a result of the comment.

Where To File a Petition for Armed Forces Special Immigrant

One commenter suggested that the term "service office" listed in 8 CFR 204.9(a)(2) be changed to "Service Center". The commenter also suggested that 8 CFR 204.9(a)(2) be amended to include petitions submitted in conjunction with adjustment of status applications. The Service agrees that for efficiency and clarity, these changes

should be made and they will be incorporated into the final rule.

Use of Form I-824, Application for Action on an Approved Application or Petition

One commenter also suggested that 8 CFR 204.9(c)(3) be placed under 8 CFR 245.8 and that the word "petition" be replaced by the word "application". Since Form I-824 is for use in approved adjustment of status cases, the commenter felt that the word "petition" might cause confusion in the form's intended use. The Service agrees and has amended 8 CFR 204.9(c) and 8 CFR 245.8 accordingly.

Interview of the Applicant

One commenter suggested that the wording of 8 CFR 245.8(c) be changed regarding the director's effort to determine a military special immigrant's eligibility for naturalization benefits. The commenter suggested that the words "every effort" placed an undue burden on the Service and suggested the words "conscientious effort" be used instead.

The Service agrees that the language should be changed and has revised 8 CFR 245.8(c) to recognize the director's responsibility in making a *prima facie* determination regarding a military special immigrant's eligibility for naturalization benefits. This language now requires the director to make such a determination.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

The information collection requirements contained in this regulation have been cleared by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. Clearance numbers for these collections are contained in 8 CFR 299.5, Display of Control Numbers.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 204

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 245

Administrative practice and procedure, Aliens, Employment, Immigration, Passports and visas, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 8 CFR parts 103, 204, and 245 which was published at 57 FR 33859–33862 on July 31, 1992, is adopted as a final rule with the following changes:

PART 204—IMMIGRANT PETITIONS

1. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255; 8 CFR part 2.

2. In § 204.9 paragraph (a)(2) is revised to read as follows:

§ 204.9 Special immigrant status for certain aliens who have served honorably (or are enlisted to serve) in the Armed Forces of the United States for at least 12 years.

(a) * * *

(2) *Where to file.* The petition must be filed with the Service Center having jurisdiction over the place of the alien's current or intended place of residence in the United States, with the overseas Service office having jurisdiction over the alien's residence abroad, or in conjunction with 8 CFR 245.8.

* * * * *

3. In § 204.9 paragraph (c)(3) is removed and paragraph (c)(4) is redesignated as paragraph (c)(3).

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

4. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; and 8 CFR part 2.

5. Section 245.8 is amended by:

a. Revising the first sentence in paragraph (c);

b. Redesignating paragraphs (d) and (e) as paragraphs (e) and (f); and

c. Adding a new paragraph (d) to read as follows:

§ 245.8 Adjustment of status as a special immigrant under section 101(a)(27)(K) of the Act.

* * * * *

(c) *Interview of the applicant.* Upon completion of the adjustment of status interview for a special immigrant under section 101(a)(27)(K) of the Act, the director shall make a *prima facie* determination regarding eligibility for naturalization benefits if the applicant is to be granted status as an alien lawfully admitted for permanent residence.

* * *

(d) *Spouse or child outside the United States.* When a spouse or child of an alien granted special immigrant status under section 101(a)(27)(K) of the Act is outside the United States, the principal alien may file Form I-824, Application for Action on an Approved Application or Petition, with the office which approved the original application.

* * * * *

Dated: August 19, 1993.

Chris Sale,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 93-23840 Filed 9-28-93; 8:45 am]

BILLING CODE 4410-10-M

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 933

[No. 93-75]

Members of the Federal Home Loan Banks

AGENCY: Federal Housing Finance Board.

ACTION: Final rule; information collection approval.

SUMMARY: The Federal Housing Finance Board ("Finance Board") is amending its final rule governing membership in the Federal Home Loan Bank System ("FHLBank System"), which was published at 58 FR 43522 (August 17, 1993), to include the assigned Office of Management and Budget ("OMB") control number in the regulatory text.

EFFECTIVE DATE: September 29, 1993.

FOR FURTHER INFORMATION CONTACT: Sharon B. Like, Attorney/Advisor, Office of Legal & External Affairs-Legal Division, (202) 408-2930, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: On August 17, 1993, the Finance Board published a final rule under 12 CFR part 933 on membership in the FHLBank System (58 FR 43522). OMB has approved the information collection requirements contained in §§ 932.2, 933.5, 933.9, 933.12, 933.13 and 933.18 of the final rule pursuant to the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35, and has assigned these collections OMB control number 3069-0004, expiration date August 31, 1996.

Under OMB's regulations implementing the Paperwork Reduction

Act, agency regulations containing information collection requirements that are published in the **Federal Register** also must publish the OMB control number as part of the regulatory text or as a technical amendment. See 5 CFR 1320.7(e)(2). The Finance Board, by this technical amendment, revises the applicable sections of the Finance Board's final membership rule to include the assigned OMB control number in the regulatory text.

List of Subjects in 12 CFR Part 933

Federal home loan banks, Reporting and recordkeeping requirements.

Accordingly, title 12, chapter IX, subchapter B of the Code of Federal Regulations is hereby amended as follows:

PART 933—MEMBERS OF THE FEDERAL HOME LOAN BANKS

1. The authority citation for part 933 continues to read as follows:

Authority: 12 U.S.C. 1422a, 1422b, 1424, 1426, 1430, 1442.

§§ 933.2, 933.5, 933.9, 933.12, 933.13, 933.18 [Amended]

2. Sections 933.2, 933.5, 933.9, 933.12, 933.13 and 933.18 are amended by adding the parenthetical "(The information collection requirements contained in this section have been approved where applicable by the Office of Management and Budget under control number 3069–0004.)" at the end of each section.

Dated: September 22, 1993.

By the Federal Housing Finance Board.

Philip L. Conover,

Managing Director.

[FR Doc. 93–23791 Filed 9–28–93; 8:45 am]

BILLING CODE 6725–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–ANE–10; Amendment 39–8694; AD 93–19–01]

Airworthiness Directives; Dowty Rotol (Now Dowty Aerospace Gloucester Ltd.) Propeller Models (c)R354/4–123–F/13, (c)R354/4–123–F/20, and (c)R375/4–123–F/21

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Dowty Rotol (now Dowty Aerospace Gloucester Ltd.) Propeller Model (c)R354/4–123–F/13 series, that currently requires a torque check of the propeller retention bolts for low torque; a magnetic particle inspection of the propeller retention bolts for cracks, and dye penetrant, ultrasonic, and eddy current inspections of the propeller hub backface for cracks. This amendment requires inspections of additional model propellers, requires installation of an interface shim, and increases the repetitive inspection interval from 500 to 1500 hours time in service (TIS). This amendment is prompted by new test data and results of world-wide fleet operator service usage inspections. The actions specified by this AD are intended to prevent possible loss of the propeller.

DATES: Effective on October 29, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 29, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Dowty Aerospace Gloucester Ltd., Anson Business Park, Cheltenham Road East, Gloucester GL2 9QN England. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA 01803–5299; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Francis X. Walsh, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, Massachusetts 01803–5299, telephone (617) 238–7158; fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 87–21–51, Amendment 39–5929 (53 FR 25139, July 5, 1988), which is applicable to Dowty Rotol (now Dowty Aerospace Gloucester Ltd.) Propeller Model (c)R354/4–123–F/13, installed on SAAB-SF340A and SAAB-SF340B series aircraft, was published in the **Federal Register** on June 21, 1993 (58 FR 33783). That action proposed to require torque checks of the propeller retention bolts for low torque magnetic particle inspections of the propeller retention bolts for cracks; dye penetrant, ultrasonic, and eddy current inspections of the hub backface for cracks; on Dowty Aerospace Gloucester Ltd., Model Number (c)R354/4–123–F/13, and the following additional propeller models: Dowty Aerospace Gloucester Ltd. Model Numbers (c)R354/4–123–F/20 and (c)R375/4–123–F/21. That AD also proposed to require installation of an interface shim (Dowty Aerospace Gloucester Ltd. Modification (C) VP3336), and increase the repetitive inspection interval from 500 to 1500 hours time in service (TIS).

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

One comment concurs with the rule as proposed.

After careful review of the available data, including the comment noted above, the Federal Aviation Administration (FAA) has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 268 Dowty Aerospace Gloucester Ltd., Models (c)R354/4–123–F/13, (c)R354/4–123–F/20, and (c)R375/4–123–F/21 propellers of the affected design installed on SAAB-SF340, and SAAB-SF340B series aircraft of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per propeller to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $35 per propeller. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $127,300.

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 it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–5929 (53 FR 25139, July 5, 1988) and by adding a new airworthiness directive, Amendment 39–8694, to read as follows:

93–10–01 Dowty Rotol (now Dowty Aerospace Gloucester Ltd.): Amendment 39–8694. Docket 93–ANE–10. Supersedes AD 87–21–51, Amendment 39–5929.

Applicability: Dowty Rotol (now Dowty Aerospace Gloucester Ltd.) Propeller Models (c)R354/4–123–F/13, (c)R354/4–123–F/20, and (c)R375/4–123–F/21 installed on SAAB-SF340A, and SAAB-SF340B series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent possible loss of the propeller, accomplish the following:

(a) For Dowty Rotol (now Dowty Aerospace Gloucester Ltd.) Model (c)R354/4–123–F/13 propellers, perform Dowty Aerospace Gloucester Ltd. Modification (C) VP3336 by installing interface shim Part Number (P/N) 660712669 in accordance with Dowty Aerospace Gloucester Ltd. Service Bulletin (SB) No. SF340–61–57, dated February 15, 1991, within 500 hours time in service (TIS) since the last torque check and inspections accomplished in accordance with AD 87–21–51.

(b) For Dowty Rotol (now Dowty Aerospace Gloucester Ltd.) Model R354/4–123–F/13 propellers, perform a torque check of the propeller retention bolts for low torque and a magnetic particle inspection of the propeller retention bolts for cracks; perform dye penetrant, ultrasonic, and eddy current inspections of the propeller hub backface for cracks. If propeller retention bolts or hubs are found to have cracks, remove from service prior to further flight, and replace with serviceable propeller retention bolts and hubs, within 500 hours TIS since the last torque check and cracking inspections accomplished in accordance with AD 87–21–51. These actions must be accomplished in accordance with Dowty Aerospace Gloucester Ltd. SB No. SF340–61–58, Revision 1, dated July 18, 1991.

(c) For Dowty Rotol (now Dowty Aerospace Gloucester Ltd.) Model (c)R354/4–123–F/20 and (c)R375/4–123–F/21 propellers, perform Dowty Aerospace Gloucester Ltd. Modification (C) VP3336 by installing interface shim P/N 660712669 in accordance with Dowty Aerospace Gloucester Ltd. SB No. SF340–61–57, dated February 15, 1991, within 100 hours TIS after the effective date of this AD; or 500 hours TIS since the last torque check and inspections accomplished in accordance with Dowty Aerospace Gloucester Ltd. SB No. SF340–61–58, Revision 1, dated July 18, 1991, or Dowty Aerospace Gloucester Ltd. SB No. SF340–61–21, Revision 4, dated October 1, 1987; or 500 hours TIS since new, whichever occurs latest.

(d) For Dowty Rotol (now Dowty Aerospace Gloucester Ltd.) Model (c)R354/4–123–F/20 and (c)R375/4–123–F/21 propellers, perform a torque check of the propeller retention bolts for low torque; a magnetic particle inspection of the propeller retention bolts for cracks; and dye penetrant, ultrasonic, and eddy current inspections of the propeller hub backface for cracks. Remove from service prior to further flight cracked propeller retention bolts and hubs, and replace with serviceable propeller retention bolts or hubs, within 100 hours TIS after the effective date of this AD; or 500 hours TIS since the last torque check and inspections accomplished in accordance with Dowty Aerospace Gloucester Ltd. SB No. SF340–61–58, Revision 1, dated July 18, 1991, or Dowty Rotol (now Dowty Aerospace Gloucester Ltd.) SB No. SF340–61–21, Revision 4, dated October 1, 1987; or 500 hours TIS since new, whichever occurs latest. These actions must be accomplished in accordance with Dowty Aerospace Gloucester Ltd, SB No. SF340–61–58, Revision 1, dated July 18, 1991.

(e) Thereafter, for propeller models identified in paragraphs (a) and (c) of this AD, perform a torque check of the propeller retention bolts for low torque; a magnetic particle inspection of the propeller retention bolts for cracks; and dye penetrant, ultrasonic, and eddy current inspections of the propeller hub backface for cracks. Remove from service prior to further flight cracked propeller retention bolts and hubs, and replace with serviceable propeller retention bolts or hubs at intervals not to exceed 1500 hours TIS since the last torque check and inspections performed in accordance with paragraphs (b) or (d), as applicable, of this AD. These actions must be accomplished in accordance with Dowty Gloucester Aerospace Ltd. SB No. SF340–61–58, Revision 1, dated July 18, 1991.

(f) Installation of newly designed Dowty Aerospace Gloucester Ltd. propeller hub assembly P/N 660714241 and remarking of the propeller in accordance with Dowty Aerospace Gloucester Ltd. SB No. SF340–61–61, Revision 1, dated October 19, 1992, constitutes terminating action to the inspection requirements of this AD.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Boston Aircraft Certification Office.

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

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

(i) The inspections shall be done in accordance with the following Dowty Aerospace Gloucester service bulletins:

Document No.	Pages	Revision	Date
SF340–61–57	1–5	Original	Feb. 15, 1991.
Total pages: 5.			
SF340–61–58	1–2	1	July 18, 1991.
	3–5	Original	Feb. 15, 1991.
Appendix A	1–3	Original	Feb. 15, 1991.
Appendix B	1–3	Original	Feb. 15, 1991.
Appendix C	1–2	1	July 18, 1991.
	3–4	Original	Feb. 15, 1991
Total pages: 15.			
SF340–61–61	1–3	1	Oct. 19, 1992.
	4–8	Original	Sept. 9, 1992.
Total pages: 8.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Dowty Aerospace Gloucester Ltd., Anson Business Park, Cheltenham Road East, Gloucester GL2 9QN England. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) This amendment becomes effective on October 29, 1993.

Issued in Burlington, Massachusetts, on September 17, 1993.

Mark C. Fulmer,

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

[FR Doc. 93-23779 Filed 9-28-93; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 39

[Docket No. 93-NM-152-AD; Amendment 39-8699; AD 93-17-51]

Airworthiness Directives; Boeing Model 737-300, -400, and -500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) T93-17-51 that was sent previously to all known U.S. owners and operators of certain Boeing Model 737 -300, -400, and -500 series airplanes by individual telegrams. This AD requires inspection of the fitting joint to verify the installation of all parts of the horizontal stabilizer center section hinge bearing installation, and replacement of any missing parts. This amendment is prompted by a report that, during routine maintenance, certain parts were missing from both the left and right horizontal stabilizer hinge fittings on a Model 737 series airplane. The actions specified by this AD are intended to prevent loss of the horizontal stabilizer, which could severely affect controllability of the airplane.

DATES: Effective on October 14, 1993, to all persons except those persons to whom it was made immediately effective by telegraphic AD T93-17-51, issued on August 27, 1993, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before November 29, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-152-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

FOR FURTHER INFORMATION CONTACT: Walter Sippel, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone: (206) 227-2774; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: On August 27, 1993, the FAA issued telegraphic AD T93-17-51, which is applicable to certain Boeing Model 737-300, -400, and -500 series airplanes. That action was prompted by a report that, during routine maintenance, an operator of Boeing Model 737 series airplanes recently found that the inner hinge pins, cotter pins, nuts, and bushings retainers were missing from both the left and right horizontal stabilizer hinge fittings on a Model 737-400 series airplane. The locking devices on the outer hinge pins were also missing on this airplane. Further, Boeing recently found that the inner hinge pin and its locking device were missing from both hinge fittings on a production airplane. Investigation revealed that these pins and associated parts were not installed during manufacture of these airplanes. Inner hinge pins missing from the horizontal stabilizer center section hinge bearing installation could result in loss of the stabilizer. This condition could severely affect controllability of the airplane.

The hinge pins installed on Model 737-400 series airplanes are similar in design to those installed on Model 737-300 and -500 series airplanes. Therefore, the FAA has determined that this condition may also exist on these airplanes.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, the FAA issued telegraphic AD T93-17-51 require a one-time detailed visual inspection of the fitting joint to verify the installation of all parts of the horizontal stabilizer center section hinge bearing installation, and replacement of any missing parts. This AD also requires that operators submit a report of findings of discrepancies to the FAA.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on August 27, 1993 to all known U.S. owners and operators of certain Boeing Model 737-300, -400, and -500 series 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 (FAR) to make it effective to all persons.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93-NM-152-AD." The postcard will be date stamped and returned to the commenter.

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

implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation 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 Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

93-17-51 Boeing: Amendment 39-8699. Docket 93-NM-152-AD.

Applicability: Model 737-300, -400, and -500 series airplanes, line positions 2288 through 2515 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the horizontal stabilizer, which could severely affect controllability of the airplane, accomplish the following:

(a) For airplanes having line positions 2288 through 2347 inclusive: Within 24 hours after the effective date of this AD, perform a detailed visual inspection of the left and right horizontal stabilizer hinge fitting to verify installation of the retention devices on the inner and outer hinge pins. For the purposes of this AD, retention devices are cotter pins, nuts, washers, and bushing retainers.

(b) For airplanes having line positions 2348 through 2515 inclusive: Within 15 days after the effective date of this AD, perform a detailed visual inspection of the left and right horizontal stabilizer hinge fitting to verify installation of the retention devices on the inner and outer hinge pins.

(c) If no part is missing, no further action is required by this AD.

(d) If any part is missing, prior to further flight, replace the outer pin, inner pin, and all associated retention devices on the affected side of the horizontal stabilizer, in accordance with the procedures described in Boeing 737 Maintenance Manual.

(e) Within 24 hours after completion of the inspection required by this AD, submit a report of any finding(s) of discrepancies to the Manager, Seattle Manufacturing Inspection District Office, ANM-108S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; fax (206) 227-1181. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120-0056.

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

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

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) This amendment becomes effective on October 14, 1993, to all persons except those persons to whom it was made immediately effective by telegraphic AD T93-17-51, issued on August 27, 1993, which contained the requirements of this amendment.

Issued in Renton, Washington, on September 23, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-23842 Filed 9-28-93; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 39

[Docket No. 93-ANE-35; Amendment 39-8642; AD 93-12-01]

Airworthiness Directives; Hartzell Model HC-B4TN-5(D, G, J)L Propellers Installed on Mitsubishi Models MU-2B-26A, -36A, and -40 Aircraft

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, request for comments.

SUMMARY: This document publishes in the Federal Register an amendment adopting Airworthiness Directive (AD) 93-12-01 that was sent previously to all known U.S. owners and operators of Hartzell Model HC-B4TN-5(D, G, J)L/LT10282(B, K)-5.3R and HC-B4TN-5(D, G, J)L/LT10282N(B, K)-5.3R propellers installed on Mitsubishi MU-2B-26A, -36A, and -40 aircraft by individual letters. This AD requires removal from service of propeller hub assemblies and replacement with serviceable propeller hub assemblies. This amendment is prompted by a report of a hub assembly with a crack indication in the hub arm that was found during the inspection and rework required by AD 93-09-04. The actions specified by this AD are intended to prevent fatigue cracks in propeller hub arm assemblies progressing to failure, resulting in departure of the hub arm and blade, and may result in engine separation and subsequent loss of aircraft control.

DATES: Effective on October 14, 1993, to all persons except those persons to whom it was made immediately effective by priority letter AD 93-12-01, issued on June 10, 1993, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 14, 1993.

Comments for inclusion in the Rules Docket must be received on or before November 29, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93-ANE-35, 12 New England Executive Park, Burlington, MA 01803-5299.

The applicable service information may be obtained from Hartzell Propeller Inc., One Propeller Place, Piqua, OH 45356-2634. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Smyth, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, room 232, Des Plaines, IL 60018; telephone (312) 694-7130, fax (312) 694-7834.

SUPPLEMENTARY INFORMATION: On June 17, 1993, the Federal Aviation Administration (FAA) issued Airworthiness Directive (AD) 93–09–04, that was published in the **Federal Register** on July 22, 1993 (58 FR 39139), applicable to Hartzell HC–B4TN–5(D, G)L/LT10282(B, K)–5.3R and HC–B4TN–5(D, G, J)L/LT10282N(B, K)–5.3R propellers installed on Mitsubishi Model MU–2B–60 aircraft. That AD was prompted by two reports of propeller hub arm assembly fatigue failure and subsequent propeller blade separation from aircraft in flight. Preliminary data indicated that fatigue cracks can originate in the propeller hub arm assembly. That AD requires removal from service of propeller hub assemblies, and replacement with serviceable propeller hub assemblies, on MU–2B–60 aircraft. That condition, if not corrected, can result in fatigue cracks in propeller hub arm assemblies progressing to failure, resulting in departure of the hub arm and blade, and may result in engine separation and subsequent loss of aircraft control.

Since the issuance of that AD, the FAA has received a report of a hub assembly with a crack indication in the hub arm that was found during the inspection and rework required by AD 93–09–04. The FAA determined it was necessary to issue a new priority letter AD 93–12–01 (June 10, 1993) requiring similar inspections and rework on these same propeller models installed on Mitsubishi MU–2B–26A, –36A, and –40 aircraft, as these aircraft have similar operating characteristics to the Mitsubishi Model MU–2B–60 aircraft, but have different performance limitations. Since the propeller installations on the Mitsubishi MU–2B series aircraft are operated at a higher propeller inflow angle during cruise than other aircraft with this same model propeller installed, it is necessary to inspect these additional MU–2B series aircraft as soon as possible. Upon completion of the FAA's investigation and analysis, the FAA may consider further rulemaking that may include other aircraft.

Although Hartzell Propeller, Inc. is presently the only FAA-approved repair facility authorized to conduct the requirements of this AD, other facilities may be authorized through the alternative method of compliance procedure in paragraph (e) of this AD.

The FAA has reviewed and approved the technical contents of Hartzell Alert Service Bulletin (ASB) No. A183, dated June 1, 1993, that describes procedures for removal from service, inspection, rework, and replacement of propeller hub assemblies on Mitsubishi MU–2B–26A, –36A, and –40 aircraft.

Since the unsafe condition described is likely to exist or develop on other engines of the same type design, the FAA issued priority letter AD 93–12–01 to prevent propeller hub arm assembly failure. The AD requires removal from service of propeller hub assemblies and replacement with serviceable propeller hub assemblies. This AD is an interim action until more data is available on the cause of propeller hub arm assembly failures. The actions are required to be accomplished in accordance with the service bulletin described previously.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on June 10, 1993, to all known U.S. owners and operators of Hartzell Model HC–B4TN–5(D, G, J)L/LT10282(B, K)–5.3R and HC–B4TN–5(D, G, J)L/LT10282N(B, K)–5.3R propellers installed on Mitsubishi MU–2B–26A, –36A, and –40 aircraft. 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 (FAR) to make it effective to all persons.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–ANE–35." The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation 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 Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

93-12-01 Hartzell Propeller, Inc.: Amendment 39-8642. Docket 93-ANE-35.

Applicability: Hartzell Propeller, Inc. Model HC-B4TN-5(D, G, J)L/LT10282(B, K)-5.3R and HC-B4TN-5(D, G, J)L/LT10282N(B, K)-5.3R propellers installed on Mitsubishi Model MU-2B-26A, -36A, and -40 aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent possible fatigue cracks in propeller hub arm assemblies progressing to failure, resulting in departure of the hub arm and blade, that may result in engine separation and subsequent loss of aircraft control, accomplish the following in accordance with the compliance schedule as indicated:

Time-Since-New (TSN) in hours on the effective date of this AD or propeller hub assemblies that have experienced a blade strike	Compliance required
TSN greater than or equal to 3,000 hours or TSN unknown	Within the next 10 hours time in service (TIS) or two calendar months after the effective date of this AD, whichever occurs first, and thereafter at intervals not to exceed 600 hours TIS or 60 calendar months since last inspection, whichever occurs first.
TSN less than 3,000 hours	Prior to the accumulation of 3,010 hours TSN, or within the next 200 hours TIS or 12 months after the effective date of this AD, whichever occurs first, and thereafter at intervals not to exceed 600 hours TIS or 60 calendar months since last inspection, whichever occurs first.
Regardless of TSN, propeller hub assemblies that have experienced a blade strike prior to the effective date of this AD. See paragraph (c) of this AD for the definition of a blade strike.	Within the next 10 hours TIS or two calendar months after the effective date of this AD, whichever occurs first and thereafter at intervals not to exceed 600 hours TIS or 60 calendar months since last inspection, whichever occurs first.
Regardless of TSN, propeller hub assemblies that experience a blade strike after the effective date of this AD. See paragraph (c) of this AD for the definition of a blade strike.	Prior to further flight, and thereafter at intervals not to exceed 600 hours TIS or 60 calendar months since last inspection, whichever occurs first.

(a) Remove affected propeller hub assemblies from the aircraft and return to Hartzell Propeller Inc., One Propeller Place, Piqua, OH 45356-2634 U.S.A. for inspection and specified rework procedures, in accordance with Hartzell Alert Service Bulletin (ASB) No. A183, dated June 1, 1993. Propeller hubs removed from Mitsubishi Model MU-2B-26A, -36A, and -40 aircraft may not be installed on any other aircraft unless an inspection is performed in accordance with Hartzell ASB No. A183, dated June 1, 1993.

(b) Re-install affected propeller hub assemblies that have had the hub arm bores inspected and reworked as necessary, pilot tubes replaced, and marked at the end of the hub serial number with suffix letter "M", followed by a number (1,2,3, etc.) to indicate the number of repetitive inspections performed in accordance with Hartzell ASB No. A183, dated June 1, 1993; or install new production hubs which have passed the inspection and have been marked at the end of the hub serial number with the suffix letter "M".

(c) A blade strike is defined as a propeller having any blade(s) that has been bent beyond repair limits in accordance with Hartzell Service Letter 61R, dated February 28, 1992.

(d) The "calendar month" compliance time stated in this AD allows the performance of the required action prior to the last day of the month in which compliance is required.

Note: For example, if action is required 2 calendar months from June 15, 1993, the required actions are to be performed not later than August 31, 1993.

(e) An alternate method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Chicago Aircraft Certification Office.

Note 1: Information concerning the existence of approved alternative methods of compliance with this Airworthiness Directive, if any, may be obtained from Chicago Aircraft Certification Office.

Note 2: Although Hartzell Propeller is presently the only FAA-approved repair facility authorized to conduct the requirements of this AD, other facilities may be authorized through the alternative method of compliance procedure in paragraph (e) of this AD.

(f) Except when propeller hub assemblies experience a blade strike after the effective date of this AD, special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The removal from service, inspection, rework, and reinstallation shall be done in accordance with the following alert service bulletin:

Document No.	Pages	Revision	Date
Hartzell ASB No. A183	1-3	Original	June 1, 1993.
Total pages	3		

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Hartzell Propeller Inc., One Propeller Place, Piqua, OH 45356-2634. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on October 14, 1993, to all persons except those persons to whom it was made immediately effective by priority letter AD 93-12-01, issued June 10, 1993, which contained the requirements of this amendment.

Issued in Burlington, Massachusetts, on September 8, 1993.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93-23778 Filed 9-28-93; 8:45 am]

BILLING CODE 4910-13-P

14 CFR Part 39

[Docket No. 92-ANE-07; Amendment 39-8688; AD 93-18-03]

Airworthiness Directives; Precision Airmotive (formerly Facet Aerospace Products and Marvel-Schebler) Carburetors

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Precision Airmotive (formerly Facet Aerospace Products and Marvel-Schebler) Model MA-3A, MA-3PA, MA-3SPA, and MA-4SPA carburetors that requires inspecting the carburetor at each annual inspection to determine if the primary venturi is loose or missing, and if a two-piece venturi is installed, replacing it with a one-piece venturi. This amendment is prompted by accidents, incidents, and service difficulty reports involving loose or missing components of two-piece venturis. The actions specified by this AD are intended to prevent disruption of fuel flow to the engine resulting in engine power loss, or engine failure.

DATES: Effective October 29, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 29, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Precision Airmotive Corporation, 3220 100th Street SW., Building E, Everett, WA 98204. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jon A. Regimbal, Aerospace Engineer, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, WA 98055-4056; telephone (206) 227-2687, fax (206) 227-1181

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to Precision Airmotive (formerly Facet Aerospace Products and Marvel-Schebler) Model MA-3A, MA-3PA, MA-3SPA, and MA-4SPA carburetors was published in the **Federal Register** on June 2, 1992 (57 FR 23169). That action proposed to require removing the two-piece venturi from the carburetor and replacing it with a one-piece venturi. The proposed AD also required that the data plate be specifically marked with a "V" to indicate compliance with the AD.

After publication of that NPRM, the FAA received a comment suggesting a one time inspection of the two-piece venturi for looseness, followed by mandatory replacement with a one-piece venturi at the next overhaul. As a result of that comment the FAA consulted with the manufacturer and determined that an interim inspection performed at each annual inspection would increase the level of safety in the fleet and would place only a minimal additional burden on operators. On April 15, 1993 (58 FR 19635) the FAA published in the **Federal Register** a Supplemental NPRM, which would require inspecting the carburetor at each annual inspection to determine if the primary venturi is loose or missing. In addition, that Supplemental proposed rule would require at the next carburetor removal for overhaul or repair, but not later than 48 months after the effective date of this AD, whichever occurs first, if a two-piece venturi is installed, replacing it with a one-piece venturi.

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 comment states that venturi replacement should be mandated with reasonable dispatch, and opposed deferring replacement to the next overhaul. The commenter states his own experience with a partial power loss in flight due to a missing primary venturi. The venturi was found to be missing due to a carburetor fire. The FAA does not concur. The low number of incidents where fuel flow was disrupted due to a loose or missing primary venturi does not justify the increased economic impact on the operators of a shorter compliance time. An acceptable level of safety is provided by the annual inspection requirements of the proposed rule.

One comment states that the venturi inspection should be accomplished at each 100 hours or annual inspection. The FAA concurs in part. This final rule requires the venturi inspection at each annual inspection as the economic impact on the operators of a shorter compliance time would be unduly burdensome.

One comment supports the rule as proposed.

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

The FAA estimates that 100,000 carburetors installed on aircraft of U.S. registry would be affected by this proposed AD, and that it would take approximately 6 work hours per carburetor to accomplish the proposed actions. The average labor rate is $55 per work hour. Required parts would cost approximately $325 per carburetor. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $65,500,000.

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 it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation Safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

93-18-03 Precision Airmotive Corporation: Amendment 39-8688. Docket 92-ANE-07

Applicability: Precision Airmotive (formerly Facet Aerospace Products and Marvel-Schebler) Model MA-3A, MA-3PA, MA-3SPA, and MA-4SPA carburetors installed on but not limited to Textron Lycoming Model O-235, O-290, and O-320 series engines, and Teledyne Continental A-65, A-75, C-75, C-85, C-90, C-115, C-125, C-145, O-200, and O-300 series engines installed on but not limited to normally aspirated piston engine powered aircraft manufactured by Cessna, Piper, Beechcraft, and Mooney.

Compliance: Required as indicated, unless accomplished previously.

To prevent disruption of fuel flow to the engine resulting in engine power loss, or engine failure, accomplish the following:

(a) At the next annual inspection after the effective date of this AD, inspect the carburetor to determine if a two-piece venturi is installed. Carburetors that have the letter "V" stamped or etched on the lower portion of the data plate, or that have a black Precision Airmotive data plate, already contain a one-piece venturi and do not require further action.

(1) If a two-piece venturi is installed, at each annual inspection after the effective date of this AD, inspect the carburetor to determine if the primary venturi is loose or missing. If either of these conditions is found, prior to further flight, repair the carburetor by installing a one-piece venturi in accordance with the Accomplishment Instructions of Precision Airmotive Service Bulletin (SB) No. MSA-2, Revision 1, dated November 11, 1991.

(2) At the next carburetor removal for overhaul or repair, but not later than 48 months after the effective date of this AD, whichever occurs first, if a two-piece venturi is installed, replace with a one-piece venturi in accordance with the Accomplishment Instructions of Precision Airmotive SB No. MSA-2, Revision 1, dated November 11, 1991.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Seattle Aircraft Certification Office.

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

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

(d) The inspection and replacement shall be done in accordance with the following service bulletin:

Document No.	Pages	Revision	Date
Precision Airmotive SB No. MSA-2.	1-3	1	November 11, 1991.

Total Pages: 3.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Precision Airmotive Corporation, 3220 100th St., SW., Bldg E, Everett, WA 98204. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(e) This amendment becomes effective on November 29, 1993.

Issued in Burlington, Massachusetts, on September 8, 1993.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93-23777 Filed 9-28-93; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF DEFENSE

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AF36

Veterans' Education; Increase in Rates Payable in the Educational Test Program

AGENCY: Department of Defense and Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The law provides that rates of subsistence allowance and educational assistance payable under the Educational Assistance Test Program shall be adjusted annually based upon the average actual cost of attendance at public institutions of higher education in the twelve-month period since the rates were last adjusted. After consultation with the Department of Education, the Department of Defense has concluded that these rates should be increased by 6 percent. The regulations dealing with these rates are adjusted accordingly.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2092.

SUPPLEMENTARY INFORMATION: On pages 58435 and 58436 of the **Federal Register** of December 10, 1992, there was published a Notice of Intent to amend 38 CFR part 21 in order to increase the rates payable under the Educational Assistance Test Program. Interested people were given 32 days to submit comments, suggestions or objections. The Department of Veterans Affairs (VA) received no comments, suggestions or objections. Accordingly, the department is making the revised regulations final.

The law (10 U.S.C. 2145) provides that the Secretary of Defense shall adjust the amount of educational assistance which may be provided in any academic year under the Educational Assistance Test Program, and the amount of subsistence allowance authorized under that program. The adjustment is to be based upon the twelve-month increase in the average actual cost of attendance at public institutions of higher education. As required by law, the Department of Defense has consulted with the Department of Education and determined that these costs increased during the 1989-90 school year by 6 percent. This revision adjusts 38 CFR 21.5820 and 21.5822 so that all rates which appear in them are based on an annual limit on educational assistance of $1969, and monthly payment of subsistence allowance for full-time students of $491.

These increases are effective October 1, 1990. Retroactive effect is warranted because these changes are liberalizing, and because they are interpretive rules which implement and construe the meaning of a law. Moreover, there is good cause for a retroactive effective date of October 1, 1990. Such a date facilitates implementation of 10 U.S.C. 2145 which requires annual adjustments in educational assistance.

VA (Department of Veterans Affairs) and the Department of Defense have determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy and will not cause a major increase in costs or prices for anyone. They will have no 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 Secretary of Veterans Affairs and the Secretary of Defense have certified that these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulations affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

There is no Catalog of Federal Domestic Assistance number for the program affected by these regulations.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: April 8, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

Approved: July 16, 1993.

Nicolai Timenes, Jr.,

Principal Director, Military Manpower & Personnel Policy, U.S. Department of Defense.

For the reasons set out in the preamble, 38 CFR part 21, subpart H is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart H—Educational Assistance Test Program

1. The authority citation for part 21, subpart H continues to read as follows:

Authority: 10 U.S.C. ch. 107; Pub. L. 96–342.

2. In § 21.5820 paragraphs (b) introductory text, (b)(1)(ii) (A), (B) and (C) and (b)(2)(ii) (A), (B) and (C) are revised to read as follows:

§ 21.5820 Educational assistance.

* * * * *

(b) *Amount of educational assistance.* The amount of educational assistance may not exceed $1969 per standard academic year, adjusted annually by regulation.

(Authority: 10 U.S.C. 2143)

(1) * * *

(ii) * * *

(A) Multiplying the number of whole months in the enrollment period by $218.78 for a full-time student or by $109.39 for a part-time student;

(B) Multiplying any additional days in the enrollment period by $7.29 for a full-time student or by $3.64 for a part-time student; and

(C) Adding the two results. If the enrollment period is as long or longer than a standard academic year, this amount will be decreased by 2¢ for a full-time student and decreased by 1¢ for a part-time student; and

(Authority: 10 U.S.C. 2143)

(2) * * *

(ii) * * *

(A) Multiplying the number of whole months in the enrollment period by $218.78 for a full-time student or by $109.39 for a part-time student;

(B) Multiplying any additional days in the enrollment period by $7.29 for a full-time student or by $3.64 for a part-time student; and

(C) Adding the two results. If the enrollment period is as long or longer than a standard academic year, this amount will be decreased by 2¢ for a full-time student and decreased by 1¢ for a part-time student; and

(Authority: 10 U.S.C. 2143)

* * * * *

3. In § 21.5822 paragraphs (b)(1) (i) and (ii), (b)(2) (i) and (ii) are revised to read as follows:

§ 21.5822 Subsistence allowance.

* * * * *

(b) *Amount of subsistence allowance.*

(1) * * *

(i) If a person is pursuing a course of instruction on a full-time basis, his or her subsistence allowance is $491 per month adjusted annually by regulation.

(ii) If a person is pursuing a course of instruction on other than a full-time basis, his or her subsistence allowance is $245.50 per month.

(Authority: 10 U.S.C. 2144)

* * * * *

(2) * * *

(i) VA shall determine the monthly rate of subsistence allowance payable to a person for a day during which he or she is pursuing a course of instruction full-time by dividing $491 per month by the number of the deceased veteran's dependents pursuing a course of instruction on that day.

(ii) VA shall determine the monthly rate of subsistence allowance payable to a person for a day during which he or she is pursuing a course of instruction on other than a full-time basis by dividing $245.50 per month by the number of the deceased veteran's dependents pursuing a course of instruction on that day.

(Authority: 10 U.S.C. 2144)

* * * * *

[FR Doc. 93–23720 Filed 9–28–93; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AF10

Reservists Education; Change of Program of Education

AGENCY: Department of Defense, Department of Transportation (Coast Guard) and Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs Nurse Pay Act of 1990 contains a section which affects most of the educational programs VA (Department of Veterans Affairs) administers. The section revises the rules for determining whether an individual can change programs of education. The regulation governing changes of programs of education for reservists receiving benefits under the Montgomery GI Bill—Selected Reserve must be changed in order to bring it into agreement with the law. This amended regulation will effect this change.

EFFECTIVE DATE: June 1, 1991.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2092.

SUPPLEMENTARY INFORMATION: On pages 47023 through 47024 of the **Federal Register** of October 14, 1992, there was published a Notice of Intent to amend 38 CFR part 21 in order to implement a provision of the Department of Veterans Affairs Nurse Pay Act of 1990 (Pub. L. 101–366) concerning changes of programs of education. Interested people were given 30 days to submit comments, objections or suggestions. VA, the Department of Defense and the Coast Guard received no comments, objections or suggestions. Accordingly, the agencies are making the proposal final.

The Department of Veterans Affairs Nurse Pay Act liberalizes the rules for determining whether a veteran or eligible person can change a program of education. On page 29027 VA amended 38 CFR 21.4234 in order to implement this provision of law. 38 CFR 21.7614, which governs changes of program of education under the Montgomery GI Bill—Selected Reserve contains a reference to 38 CFR 21.4234 which is no longer accurate. This revision eliminates that inaccuracy.

The Department of Veterans Affairs, the Department of Defense and the Department of Transportation have determined that this amended regulation does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs, the Secretary of Defense and the Secretary of Transportation have certified that this amended regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the amended regulation directly affects only individuals. It will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Department of Veterans Affairs, the Department of Defense and the Department of Transportation find that good cause exists for making the amendments to § 21.7614, like the provisions of law it implements, retroactively effective on June 1, 1991.

It is necessary to implement these provisions of law as soon as possible. These provisions are intended to achieve a benefit for the individual. The maximum benefits intended in the legislation will be achieved through prompt implementation. Hence, a delayed effective date would be contrary to statutory design, would complicate administration of these provisions of law; and might result in the denial of a benefit to someone who is entitled to it.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: April 13, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

Approved: August 6, 1993.

W.S. Sellman,

Director, Accession Policy, Military Manpower and Personnel Policy, U.S. Department of Defense.

Approved: August 18, 1993.

C.L. Rhinard, Jr.,

Acting Chief, Office of Readiness and Reserve.

For the reasons set out in the preamble, 38 CFR part 21, subpart L is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart L—Educational Assistance for Members of the Selected Reserve

1. The authority citation for part 21, subpart L continues to read as follows:

Authority: 10 U.S.C. Ch. 106; 38 U.S.C. 501(a).

2. Section 21.7614 is revised to read as follows.

§ 21.7614 Changes of program.

In determining whether a change of program of education may be approved for the payments of educational assistance, VA will apply § 21.4234 of this part.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 3691; Pub. L. 98–525, Pub. L. 101–366) (June 1, 1991)

[FR Doc. 93–23722 Filed 9–28–93; 8:45 am]

BILLING CODE 8320-01-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE17–1–5961; MD22–1–5962; VA27–1–5963; FRL–4702–5]

Conditional Approval of Maryland's, Virginia's and Delaware's Requests To Substitute Programs for the Clean Fuel Fleet Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The States of Maryland and Delaware, and the Commonwealth of Virginia, have requested conditional approval of a commitment to submit a substitute program for the Clean Air Act clean fuel fleet program. Section 182(c)(4) of the Clean Air Act (CAA) provides that, in order to opt out of the fleet program, States must submit a substitute program or programs which achieve at least equal long-term emission reductions of ozone producing and toxic air emissions. By this action, EPA is only approving State Implementation Plan (SIP) revisions to preserve the opportunity of the States of Maryland and Delaware, and the Commonwealth of Virginia, to opt-out of the clean fuel fleet program. EPA is not taking action on those substitute programs, themselves.

EFFECTIVE DATE: This action will become effective on November 29, 1993 unless notice is received on or before October 29, 1993 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107; Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224; the Virginia Department of the Environment Quality, Ninth Street Office Building, Richmond, Virginia, 23219, and the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler, (215) 597–0545.

SUPPLEMENTARY INFORMATION:

I. Summary and Action

Section 182(c)(4) of the Clean Air Act (CAA) allows States to "opt-out" of the clean fuel fleet program by submitting for EPA approval a State Implementation Plan (SIP) revision consisting of a program(s) resulting in as much or greater long-term emission reductions in ozone-producing and toxic air emissions as the CAA clean fuel fleet program. EPA can approve such a revision "only if it consists

exclusively of provisions other than those required under title I of the Clean Air Act for the area." Section 182(c)(4) further provides that EPA is to approve or disapprove the revision by May 15, 1993, and that EPA is to publish the revision upon receipt, with such notice being deemed to be a rulemaking notice on whether or not to approve the revision.

EPA also has determined that States intending to opt-out of the fleet program could do so by submitting by the November 15, 1992 deadline a commitment to opt-out of the fleet program. If EPA conditionally approved that commitment, then the State would be required to submit a fully adopted SIP revision fulfilling that commitment by a date certain, but no later than May 15, 1994 (the deadline for submitting a SIP revision to implement the fleet program pursuant to section 246(a) of the CAA). If the State fails to submit a SIP revision fulfilling its commitment, the conditional approval will be treated as a disapproval and the State will have an obligation to submit a fully-adopted SIP revision to implement the fleet program in accordance with section 246(a). EPA believes that this approach is consistent with the provisions of the Act and will ensure that, by May 15, 1994, the deadline for the submission of the fleet program SIP revisions, a SIP revision either implementing the fleet program or a substitute achieving equivalent air quality benefits will have been submitted to EPA.

The States of Maryland and Delaware, and the Commonwealth of Virginia have submitted SIP revisions which include a commitment to adopt a substitute program in order to opt-out of the clean fuel fleet program or to submit the clean fuel fleet program.

Maryland: In a letter dated November 15, 1992, the Governor of Maryland committed to either adopt the federal clean fuel fleet program or an alternative substitute program and submit to EPA a SIP revision by May 15, 1994. The alternative program being considered is the California Low Emissions Vehicle (LEV) program. Section 177 of the Clean Air Act allows states to adopt the California LEV program. The LEV program is a motor vehicle emissions certification program, developed by the California Air Resources Board, which requires motor vehicle manufacturers to introduce progressively cleaner vehicles into the marketplace. Under the LEV program, each vehicle manufacturer must meet an increasingly stringent sales weighted standard for each year from program adoption through model year 2003. In the event that Maryland does elect to opt-out of the federal clean fuel fleet program through the adoption of the California LEV program, Maryland will retain, as a requirement for Maryland fleets a low emission vehicle purchase requirement that is at least as stringent as the federal clean fuel fleet program.

Virginia: In a letter dated January 25, 1993, the Director of the Virginia Department of Air Pollution Control (now called the Department of Environmental Quality) committed to either adopt the federal clean fuel fleet program or an alternative substitute program and submit to EPA a SIP by May 15, 1994. The alternative substitute programs being considered are the California LEV program (see discussion above for description of the LEV program) and the Federal Energy Policy Act (EPAct) fleet program.

Delaware: In a letter dated February 26, 1993, the Secretary of the Department of Natural Resources and Environmental Control committed to either adopt the federal clean fuel fleet program or an alternative substitute program and submit to EPA a SIP by May 15, 1994. One alternative substitute program being considered is the California LEV program (see discussion above for description of the LEV program).

A copy of each state's commitments is available at the address listed in the Addresses section above.

EPA is approving these requests to reserve the opportunity to opt-out of the clean fuel fleet program as SIP revisions without prior proposal because the Agency views these as noncontroversial amendments and anticipates no adverse comments. This action will be effective November 29, 1993, unless by October 29, 1993 notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by simultaneously publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on November 29, 1993.

EPA has reviewed these requests for revision of the federally-approved State Implementation Plans for conformance with the provisions of the 1990 amendments enacted on November 15, 1990. EPA has determined that this action conforms with those requirements and is conditionally approving these commitments under section 110(k)(4) of the CAA.

EPA will require much greater detail describing why and how the substitute program is sufficient to provide long-term reductions in ozone producing and toxic air emissions equal to or greater than those provided by the federal clean fuel fleet program in the state's submittal to meet its commitment. A failure to submit the necessary detail in the SIP submittal would result in EPA disapproval. EPA expects that the states will consider their reasonable further progress goals (as defined in section 171 of the CAA) in making their decision whether or not to opt-out of the clean fuel fleet program.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

II. Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Conditional approvals of SIP submittal under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k) for any State, based on that State's failure to meet the commitment, it will not affect any existing State requirements applicable to small entities. Federal disapproval of the State submittal does not affect its State-enforceability. Moreover, EPA's

disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 29, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

This action to approve Delaware's, Maryland's, and Virginia's requests to preserve the opportunity to opt-out of the clean fuel fleet program by committing to submit a substitute program has been classified as a Table 2 action for signature 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 Table 3 SIP revisions from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Tables 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Reporting and recordkeeping requirements.

Dated: June 30, 1993.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

40 CFR part 52, is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart I—Delaware

2. Section 52.422 is amended by designating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

§ 52.422 Approval status.

* * * * *

(b) Letter of February 26, 1993 from the Delaware Department of Natural Resources and Environmental Control transmitting a commitment to adopt either the Federal clean fuel fleet program or an alternative substitute program by May 15, 1994.

Subpart V—Maryland

3. Section 52.1073 is amended by adding paragraph (f) to read as follows:

§ 52.1073 Approval status.

* * * * *

(f) Letter of November 13, 1993 from the Maryland Department of the Environment transmitting a commitment to adopt either the Federal clean fuel fleet program or an alternative substitute program by May 15, 1994.

Subpart VV—Virginia

4. Section 52.2423 is amended by adding paragraph (j) to read as follows:

§ 52.2423 Approval status.

* * * * *

(j) Letter of January 25, 1993 from the Commonwealth of Virginia transmitting a commitment to adopt either the Federal clean fuel fleet program or an alternative substitute program by May 15, 1994.

[FR Doc. 93–23743 Filed 9–28–93; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[OR–4–1–5164; FRL–4694–7]

Approval and Promulgation of Implementation Plans: Oregon

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is approving the revisions to the State of Oregon Implementation Plans which were submitted on May 15, 1991 by the Oregon Department of Environmental Quality (DEQ). The purpose of these revisions is to bring about attainment of the National ambient air quality standards for volatile organic compound emissions in ozone nonattainment areas in a timely manner, as required by the Clean Air Act. This action to approve this plan permits EPA the authority to enforce the adopted requirements.

EFFECTIVE DATE: November 29, 1993.

ADDRESSES: Documents which are incorporated by reference are available for public inspection at: Environmental Protection Agency, Jerry Kurtzweg ANR–443, 401 M Street, SW., Washington, DC 20460. Copies of material submitted to EPA may be examined during normal business hours at the following locations: Environmental Protection Agency, Jerry Kurtzweg ANR–443, 401 M Street, SW., Washington, DC 20460; Air Programs Branch, Environmental Protection Agency, Docket # OR4–1–5164, 1200 Sixth Avenue (AT–082), Seattle, Washington 98101; Oregon Department of Environmental Quality, 811 SW., Sixth Avenue, Portland, Oregon 97204–1390.

FOR FURTHER INFORMATION CONTACT: Michael J. Lidgard, Air and Radiation Branch, Air Program Development Section (AT–082), US Environmental Protection Agency, Region 10, Seattle, Washington 98101, (206) 553–4233.

SUPPLEMENTARY INFORMATION:

I. Background

Section 172(a)(2) and (b)(3) of the Clean Air Act, as amended in 1977 (1977 Act), required sources of volatile organic compounds (VOC) to install, at a minimum, reasonably available control technology (RACT) in order to reduce emissions of this pollutant. EPA has defined RACT as the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53761, September 17, 1979). EPA has developed Control Technology Guidelines (CTG) for the purpose of informing state and local air pollution control agencies of air pollution control techniques available for reducing emissions of VOC from various categories of sources. Each CTG contains recommendations to the states of what EPA calls the "presumptive norm" for RACT. This general statement of agency policy is based on EPA's evaluation of the capabilities and problems associated with control technologies currently used by facilities within individual source categories. EPA has recommended that the states adopt requirements consistent with the presumptive norm level.

On March 3, 1978, the entire Portland-Vancouver Interstate Air Quality Maintenance Area was designated by the EPA as a nonattainment area for Ozone. The Portland-Vancouver Interstate Air Quality Maintenance Area contains the urbanized portions of three counties in Oregon (Clackamas, Multnomah and Washington) and one county (Clark) in the state of Washington.

The 1977 Act required states to submit plans to demonstrate how they

would attain and maintain compliance with national ambient air standards for those areas designated nonattainment. The 1977 Act further required these plans to demonstrate compliance with primary standards no later than December 31, 1982. An extension up to December 31, 1987, was possible if the state could demonstrate that despite implementation of all reasonably available control measures the December 31, 1982 date could not be met.

On October 7, 1982, EPA approved the Portland-Vancouver area ozone attainment plan including an extension of the attainment date to December 31, 1987 (47 FR 44262).

On June 15, 1988, pursuant to section 110(a)(2)(H) of the pre-amended Clean Air Act, former EPA Regional Administrator Robie Russell notified the state of Oregon by letter that the SIP for the Portland-Vancouver area was substantially inadequate to provide for timely attainment of the NAAQS. In that letter, EPA identified specific actions needed to correct deficiencies in State regulations representing RACT for sources of volatile organiccompounds (VOC). Further, the Clean Air Act, as amended in 1990 (amended Act) also requires states to correct deficiencies. In amended section 182(a)(2)(A), Congress statutorily adopted the requirement that ozone nonattainment areas fix their deficient RACT rules for ozone. Areas designated nonattainment before the effective date of the Amendments and which retained that designation and were classified as marginal or above as of the effective date are required to meet the RACT fix-up requirement. Under section 182(a)(2)(A), states with such nonattainment areas were mandated to correct their RACT requirements by May 15, 1991. The corrected requirements were to be in compliance with section 172(b) as it existed before the amendments and as that section was interpreted in the pre-amendment guidance.[1] The SIP call letters interpreted that guidance and indicated corrections necessary for specific nonattainment areas. The Portland part of the Portland, Oregon-Vancouver, Washington nonattainment area is classified as marginal.[2] Therefore, this area is subject to the RACT fix-up requirement and the May 15, 1991 deadline.

On May 15, 1991, the state of Oregon submitted Oregon Administrative Rules (OAR) 340–22–100 through 340–22–220, General Emission Standards for Volatile Organic Compounds, as an amendment to the Oregon State Implementation Plan (SIP). This **Federal Register** Notice is to propose approval of the rules as an amendment to the SIP. Below is a brief summary of the changes in each section of rules 340–22–100 through 340–22–220 (refer to Oregon SIP submitted May 15, 1991, docket # OR4–1–5164).

II. Today's Action

EPA is approving the revision to the State of Oregon Implementation Plan submitted on May 15, 1991 as an amendment. The revision for OAR 340–22–100 through 340–22–220, General Emission Standards for Volatile Organic Compounds, meets all of the applicable requirements of the Act as determined by EPA.

III. Response To Comments

EPA received no comments on its June 25, 1993, (58 FR 34394–34397) **Federal Register** proposal of OAR 340–22–100 through 340–22–220, General Emission Standards for Volatile Organic Compounds, as a revision.

IV. Administrative Review

This action has been classified as a Table 2 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 (OMB) waived Table 2 and Table 3 SIP revisions from the requirements of Section 3 of Executive Order 12291 for a period of two years (54 FR at 2222). EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of stateaction. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any revision to any state implementation plan. Each plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

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 29, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)). (See 42 U.S.C. 7607(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Environmental protection, Hydrocarbons, Incorporation by reference, Ozone, Volatile organic compounds.

Note: Incorporation by reference of the Implementation Plan for the State of Washington was approved by the Director of the Office of **Federal Register** on July 1, 1982.

[1] Among other things, the pre-amendment guidance consists of the Post-87 policy, 52 FR 45044 (November 24, 1987); the Bluebook, "Issues Relating to VOC Regulation Cutpoints, Deficiencies and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice" (of which notice of availability was published in the Federal Register on May 25, 1988); and the existing CTGs.

[2] Portland, OR retained its designation of nonattainment and was classified by operation of law pursuant to section 107(d) and 181(a) upon enactment of the Amendments. 47 FR 44261.

Dated: August 10, 1993.

Gerald A. Emison,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c)(100) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(100) On May 15, 1991, the Director of the Department of Environmental Quality submitted revisions to the State of Oregon Implementation plans for volatile organic compound emissions (OAR 340–22–100 through 340–22–220, General Emission Standards for Volatile Organic Compounds), to bring about attainment of the National ambient air quality standards in ozone nonattainment areas.

(i) Incorporation by reference.

(A) May 15, 1991 letter from Oregon Department of Environmental Quality to EPA Region 10 submitting the VOC nonattainment area state implementation plan for Oregon.

(B) OAR 340–22–100 through 340–22–220, General Emission Standards for Volatile Organic Compounds, as adopted on May 14, 1991 and became effective on May 16, 1991.

[FR Doc. 93–23761 Filed 9–28–93; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[CA15–2–5791; FRL–4734–2]

Approval and Promulgation of Implementation Plans California State Implementation Plan Revision South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final rulemaking (NFR).

SUMMARY: EPA is finalizing a limited approval and a limited disapproval of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on September 22, 1992 and September 23, 1992. The revisions concern rules from the South Coast Air Quality Management District (SCAQMD). This final action will incorporate these rules into the federally approved SIP. The intended effect of finalizing this action is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended (CAA or the Act). The revised rules control VOC emissions from semiconductor manufacturing operations and commercial bakery ovens.

EFFECTIVE DATE: October 29, 1993.

ADDRESSES: Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Rulemaking Section I (A–5–4), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Jerry Kurtzweg ANR 443, 401 "M" Street, SW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814–1095.

South Coast Air Quality Management District, Planning & Rules Division, P.O. Box 4939, Diamond Bar, CA 91765–0939.

FOR FURTHER INFORMATION CONTACT: Wendy Colombo, Rulemaking Section I (A–5–4), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1202.

SUPPLEMENTARY INFORMATION:

Background

On September 22, 1992, at 57 FR 43648, and on September 23, 1992, at 57 FR 43957, EPA proposed granting limited approval and limited disapproval of the following two rules into the California SIP: SCAQMD Rule 1164, Semiconductor Manufacturing Operations and SCAQMD Rule 1153, Commercial Bakery Ovens. Rule 1164 was adopted by SCAQMD on December 7, 1990 and Rule 1153 was adopted by SCAQMD on January 4, 1991. Rules 1164 and 1153 were both submitted by the California ARB to EPA on May 13, 1991. These rules were submitted in response to EPA's 1988 SIP Call and the CAA section 182(a)(2)(A) requirement that nonattainment areas fix their Reasonably Available Control Technology rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amendment Act. A detailed discussion of the background for each of the above rules and nonattainment areas is provided in the above-referenced notices of proposed rulemaking (NPR).

EPA has evaluated the above rules for consistency with the requirements of the CAA and EPA regulations and EPA's interpretation of these requirements as expressed in the various EPA policy guidance documents referenced at 57 FR 43648. EPA is finalizing the limited approval of these rules in order to strengthen the SIP and finalizing the limited disapproval requiring the correction of the remaining deficiencies. A detailed discussion of the rule provisions and evaluations has been provided at 57 FR 43648 and 57 FR 43957 and in the technical support documents (TSDs) available at EPA's Region IX office.

Response to Public Comments

A 30-day public comment period was provided at 57 FR 43648 and at 57 FR 43957. EPA received no comments on the NPRs.

EPA Action

EPA is finalizing a limited approval and a limited disapproval of the above-referenced rules. The limited approval of these rules is being finalized under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited in the sense that the rules strengthen the SIP. However, the rules do not meet the section 182(a)(2)(A) CAA requirement because of the rule deficiencies which were discussed in the NPR. Thus, in order to strengthen the SIP, EPA is granting limited approval of these rules under sections 110(k)(3) and 301(a) of the CAA. This combined action approves the rules into the SIP as federally enforceable rules.

At the same time, EPA is finalizing the limited disapproval of these rules because they contain deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rules do not fully meet the requirements of Part D of the Act. As stated in the NPR, upon the effective date of this NFR, the 18 month clock for sanctions and the 24 month Federal Implementation Plan (FIP) clock will begin. Sections 179(a) and 110(c). If the State does not submit the required corrections and EPA does not approve the submittal within 18 months of the effective date, either the highway sanction or the offset sanction will be imposed at the 18 month mark. It should be noted that the rules covered

by this NFR have been adopted by the SCAQMD and are currently in effect in the South Coast Air Basin. EPA's limited disapproval action in this NFR does not prevent the SCAQMD and/or EPA from enforcing these rules.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

This action has been classified as a Table 2 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 Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 29, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: September 10, 1993.

Jeffrey Zelikson,

Acting, Regional Administrator.

Title 40 of the Code of Federal Regulations, part 52, is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(184)(i)(B)(*3*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(184) * * *

(i) * * *

(B) * * *

(*3*) Rules 1153 and 1164, adopted on January 4, 1991 and December 7, 1990, respectively.

* * * * *

[FR Doc. 93–23762 Filed 9–28–93; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Parts 52 and 81

[Region II Docket No. 123, NY7–1–6046; FRL–4728–2]

Approval and Promulgation of Implementation Plans; Designation of Areas For Air Quality Planning Purposes; State of New York

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to New York's State Implementation Plan (SIP) which includes the Syracuse carbon monoxide (CO) maintenance plan. EPA is also approving a request to redesignate Onondaga County to attainment of the CO air quality standard.

EFFECTIVE DATE: This action will be effective on September 29, 1993.

ADDRESSES: Copies of the State submittals are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Library, 26 Federal Plaza, room 402, New York, New York 10278.

Environmental Protection Agency, Jerry Kurtzweg ANR–443, 401 M Street, SW., Washington, DC 20460.

New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT: Robert Kelly, Acting Chief, State Implementation Plan Section, Air Programs Branch, Environmental Protection Agency, 26 Federal Plaza, room 1034A, New York, New York 10278, (212) 264–2517.

SUPPLEMENTARY INFORMATION: On November 12, 1992 New York submitted a request to revise its SIP for Onondaga County for CO. The revision consisted of a maintenance plan for CO. At the same time New York also requested the redesignation of Onondaga County to attainment for CO.

EPA proposed to approve the State's maintenance plan and redesignation on July 15, 1993 (58 FR 38108). In that notice, EPA described how the State met the Clean Air Act requirements for redesignation. The State's request showed that the existing SIP has produced demonstrated attainment of the CO standard in Onondaga County. The State's submittal also included an approvable revision to the New York SIP providing for maintenance of the air quality standard for the next ten years by continued implementation of the SIP. This SIP revision met the requirements of section 175A for maintenance plans. The maintenance plan will be a federally enforceable part of the CO SIP for Onondaga County. The Clean Air Act requires that eight years from the date of this redesignation, New York State must submit a revised maintenance plan to assure maintenance of the CO standard for another ten years. The reader is referred to the July 15, 1993 **Federal Register** for further information.

EPA received several letters commenting on the proposal to approve the maintenance plan and to redesignate Onondaga County to attainment. Most letters supported the proposal. Two letters disagreed with EPA's proposed action. In one letter the writer requested that EPA continue Onondaga County's designation as not attaining the air quality standard. The writer perceives that air quality in Syracuse is "dirty" in general and that use of oxygenated fuels would be a small price to pay for cleaner air. This rulemaking to redesignate Onondaga County is based solely on measured air quality in Syracuse that is better than national air quality standards for CO without the emission reductions attributable to oxygenated fuels. Since the measured air quality is from the peak CO "hot-spot" in downtown Syracuse, EPA is assured that the CO standard is met in the entire County. In addition, the maintenance plan will insure that the measures that brought about the improved air quality will provide for CO concentrations that continue to meet national air quality standards. The

maintenance plan also provides for the reinstitution of the oxygenated fuels program if air quality concentrations exceed the national ambient air quality standards for CO. Thus, this letter did not provide any information that challenged the information provided by New York in its redesignation request.

The other writer that disagreed with EPA's action presented three reasons why EPA should not approve New York's redesignation request: (1) Onondaga County might have violated the air quality standard for CO during the winter of 1992–3 if the oxygenated fuels program had not been in place; (2) The oxygenated fuels program allows the use of ethanol as an oxygenate, thus decreasing use of imported oil and fossil fuels in general and supports farmers in America that grow corn for ethanol; and (3) New York State regulations mandate the sale of oxygenated fuels in the Syracuse area and if EPA redesignates the area to attainment, New York will have to enforce an unnecessary law. The first comment states that the use of oxygenated fuels masked any possible violations of the CO standard in Syracuse last winter. However, as EPA noted in its proposed action, monitoring data from Syracuse showed attainment with air quality standards in 1990 and 1991, without the help of oxygenated fuels. These data met the EPA requirement for two years of data attaining the air quality standard that is needed for redesignation. Air quality data from 1992 shows that the air quality standard was not exceeded in 1992, and the Syracuse area only had oxygenated fuel for the last two months of that year. The maintenance plan submitted by New York demonstrates that the federal motor vehicle program and local transportation programs will continue to reduce CO emissions and CO concentrations in Syracuse. If the CO standard is exceeded at the monitoring site in the future, the maintenance plan commits New York to re-implement the oxygenated fuels program. Comments 2 and 3 do not provide information that challenge the State's demonstration that national air quality standards will be attained and maintained in Onondaga County.

Since neither commenter provided information that contradicts EPA's finding that the area has met the criteria for redesignation to attainment, delay in redesignating Onondaga County to attainment is unwarranted and would deny redesignation to an area that meets Clean Air Act requirements. Therefore, EPA is approving New York's redesignation request.

Conclusion

EPA is approving New York's request to redesignate Onondaga County to attainment of CO standard because the State's submittals meet the requirements of Federal law for redesignations to attainment. These requirements are in section 107(d)(3)(E) of the Clean Air Act. This approval will put into place a revision to the SIP for Onondaga County, New York that will assure that the CO standard continues to be maintained for the next ten years. Because EPA is approving the maintenance plan and because the area meets Clean Air Act requirements for redesignation to attainment, Onondaga County will be designated as attaining the CO national ambient air quality standards.

EPA is making this rule effective upon date of publication in the **Federal Register** to provide as much time as possible should New York decide to revise its oxygenated fuel rule to exempt the Syracuse metropolitan area and for fuel distributors to modify distribution plans in response to these changes. In addition, this approval imposes no new requirements on sources since the measures in the maintenance plan were previously approved as part of the SIP and the maintenance plan contains no new requirements for the area. (See 5 U.S.C. 553d(1).)

Nothing in this rule should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This rule has been classified as a table 2 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 (OMB) waived tables 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for tables 2 and 3 SIP revisions from the requirements of section 3 of Executive Order 12291. OMB has agreed to continue the temporary wavier until such time as it rules on EPA's request.

Under section 307(b)(1) of the Act, petitions for judicial review of this rule must be filed in the United States Court of Appeals for the appropriate circuit within 60 days from date of publication. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This rule may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Air pollution control, Carbon monoxide, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: September 3, 1993.

William J. Muszynski, P.E.,

Acting Regional Administrator.

Title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Authority: 42 U.S.C. 7401–7671q.

Subpart HH—New York

2. Section 52.1670 is amended by adding paragraph (c)(86) to read as follows:

§ 52.1670 Identification of plan.

* * * * *

(c) * * *

(86) Revision to the state implementation plan for Onondaga County was submitted by the Governor on November 13, 1992. Revisions include a maintenance plan which demonstrates continued attainment of the NAAQS for carbon monoxide through the year 2003.

(i) Incorporation by reference.

(A) Maintenance Plan—Chapter 8 of New York State Implementation Plan Redesignation Request for Onondaga County as Attainment for Carbon Monoxide, November 1992.

(ii) Additional information.

(A) New York State Implementation Plan—Redesignation Request for Onondaga County as Attainment for Carbon Monoxide, November 1992.

(B) January 12, 1993 letter from Thomas M. Allen, NYSDEC to Conrad Simon, EPA, providing the results of the public hearing on the State's proposal.

(C) January 12, 1993 letter from Thomas M. Allen, NYSDEC, to Conrad

Simon, EPA, providing documentation of emission inventory submitted on November 13, 1992.

(D) June 18, 1993 letter from Thomas M. Allen, NYSDEC, to Conrad Simon, EPA, correcting submitted material.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In section 81.333 the designation table for carbon monoxide is amended by revising the entry for Onondaga County under Syracuse Area to read as follows:

§ 81.333 New York.

* * * * *

NEW YORK-CARBON MONOXIDE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * *	* * *	* * *		
Syracuse Area:				
Onondaga County	September 29, 1993	Unclassifiable/attainment.		
* * *	* * *	* * *		

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 93–23760 Filed 9–28–93; 8:45 am]

BILLING CODE 6560-50-P

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40 CFR Part 180

[OPP-300291A; FRL-4641-1]

RIN 2070-AB78

2-Butenedioic Acid (Z)-, Polymer With Ethenol and Ethenyl Acetate, Sodium Salt; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of 2-butenedioic acid (Z)-, polymer with ethenol and ethenyl acetate, sodium salt (CAS Reg. No. 139871-83-3) when used as an inert ingredient in pesticide formulations applied to growing crops only. This regulation was requested by Nippon Gohsei (U.S.A.) Co., Ltd.

EFFECTIVE DATE: This regulation becomes effective September 29, 1993.

ADDRESSES: Written objections, identified by the document control number, [OPP-300291A], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Registration Support Branch, Registration Division (H7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8320.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 28, 1993 (58 FR 40394), EPA issued a proposed rule that gave notice that the Nippon Gohsei (U.S.A.) Co., Ltd., 1002 Pennsylvania Ave., SE., Washington, DC 20003, had submitted a pesticide petition (PP) 3E4208 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(d)), propose to amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for residues of 2-butenedioic acid (Z)-, polymer with ethenol and ethenyl acetate, sodium salt when used as an inert ingredient (component of water-soluble film) in pesticide formulations applied to growing crops only.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance exemption will protect the public health. Therefore, the tolerance exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the

requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or food additive regulations, or raising tolerance levels or food additive regulations, or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Environmental protection, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 10, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(d) is amended in the table therein by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
* * *	* * *	* * *
2-Butenedioic acid (Z)-, polymer with ethenol and ethenyl acetate, sodium salt (minimum number average molecular weight 75,000; CAS No. 139871-83-3)..	.....	Component of water-soluble film
* * *	* * *	* * *

* * * * *

[FR Doc. 93-23865 Filed 9-28-93; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 271

[FRL-4781-8]

Oklahoma: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: The State of Oklahoma has applied for final authorization of revision to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Oklahoma's application and has made a decision, subject to public review and comment, that Oklahoma's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Oklahoma's hazardous waste program revisions, subject to the authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984. Oklahoma's application for program revision is available for public review and comment.

DATES: This final authorization for Oklahoma shall be effective November 29, 1993 unless EPA publishes a prior Federal Register (FR) action withdrawing this immediate final rule. All comments on Oklahoma's program revision application must be received by the close of business October 29, 1993.

ADDRESSES: Copies of the Oklahoma program revision application and the materials which EPA used in evaluating the revision are available from 8:30 a.m. to 4 p.m., Monday through Friday at the following addresses for inspection and copying: State of Oklahoma, Department of Environmental Quality, 1000 Northeast Tenth Street, Oklahoma City, Oklahoma, 73117-1299 and U.S. EPA, Region 6 Library, 12th Floor, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 65202, phone (214) 655-6444. Written comments, referring to Docket Number OK-93-1, should be sent to Dick Thomas, Region 6 Authorization Coordinator, Grants and Authorization Section (6H-HS), RCRA Programs Branch, U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, (214) 655-8528.

FOR FURTHER INFORMATION CONTACT: Dick Thomas, Region 6 Authorization Coordinator, Grants and Authorization Section (6H-HS), RCRA Programs Branch, U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, (214) 655-8528.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA or the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98.616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive interim authorization for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260 through 266, 268, and 270.

B. Oklahoma

Oklahoma initially received final authorization on January 10, 1985, (see 49 FR 50362) to implement its base hazardous waste management program. Oklahoma received authorization for revisions to its program on June 18, 1990 (see 55 FR 14280), November 27, 1990 (see 55 FR 39274), June 3, 1991 (see 56 FR 13411), and November 19, 1991 (see 56 FR 47675). On October 15, 1992, Oklahoma submitted a final complete program revision application for additional program approvals. Today, Oklahoma is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Oklahoma's application, and has made an immediate final decision that Oklahoma's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Oklahoma. The public may submit written comments on EPA's final decision until October 29, 1993. Copies of Oklahoma's application for program revision are available for inspection and copying at the locations indicated in the "ADDRESSES" section of this notice.

Approval of Oklahoma's program revision shall become effective 60 days from the date this notice is published, unless an adverse written comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse written comment is received, EPA will publish either: (1) A withdrawal of the immediate final decision or (2) a notice containing a response to the comment that either affirms that the immediate final decision takes effect or reverses the decision.

Oklahoma's program revision application includes State regulatory changes that are equivalent to the rules promulgated in the Federal RCRA implementing regulations in 40 CFR parts 124, 260 through 262, 264, 265, and 270 that were published in the **Federal Register** through May 4, 1990. This proposed approval includes the provisions that are listed in the chart below. This chart also lists the State analogs that are being recognized as equivalent to the appropriate Federal requirements.

Federal citation	State analog
1. Delay of Closure Period for Hazardous Waste Management Facilities, August 14, 1989 (54 FR 33376); Checklist 64.	Oklahoma Controlled Industrial Waste Disposal Act of 1991 (O.S.) 63 §§ 1-2004(2); 1-2005(A); 1-2009; and Regulations for Industrial Waste Management, ODH Bulletin 0525, Title 310, Rules 270-3-1 and 270-3-2, as last amended on April 30, 1992, effective June 22, 1992.
2. Mining Waste Exclusion I, September 1, 1989 (54 FR 36592); Checklist 65.	63 O.S. 1991, § 1-2005(A); and ODH Bulletin 0525, Title 310, Rules 270-3-1 and 270-3-2, as last amended on April 30, 1992, effective June 22, 1992.
3. Testing and Monitoring Activities, September 29, 1989 (54 FR 40260); Checklist 67.	63 O.S. 1991, § 1-2005(A); and ODH Bulletin 0525, Title 310, Rules 270-3-1 and 270-3-2, as last amended on April 30, 1992, effective June 22, 1992.
4. Changes to Part 124 Not Accounted for by Present Checklists, June 30, 1983 (48 FR 30113); July 26, 1988 (53 FR 28118); September 26, 1988 (53 FR 37396); and January 4, 1989 (54 FR 246); Checklist 70.	63 O.S. 1991, §§ 1-2004(1); 1-2005; 1-2006; 1-2008; 1-2009.1; and ODH Bulletin 0525, Title 310, Rules 270-3-1 and 270-3-2, as last amended on April 30, 1992, effective June 22, 1992.
5. Criteria for Listing Toxic Wastes; Technical Amendment, May 4, 1990 (55 FR 18726); Checklist 76.	63 O.S. 1991, § 1-2005(A); and ODH Bulletin 0525, Title 310, Rules 270-3-1 and 270-3-2, as last amended on April 30, 1992, effective June 22, 1992.
6. Mining Waste Exclusion II, January 23, 1990 (55 FR 2322); Checklist 71.	63 O.S. 1991, §§ 1-2004(5); 1-2005; 1-2005(A); 1-2010; and ODH Bulletin 0525, Title 310, Rules 270-3-1 and 270-3-2, as last amended on April 30, 1992, effective June 22, 1992.
7. Modification of F019 Listing, February 14, 1990 (55 FR 5340); Checklist 72.	63 O.S. 1991, § 1-2005(A); and ODH Bulletin 0525, Title 310, Rules 270-3-1 and 270-3-2, as last amended on April 30, 1992, effective June 22, 1992.
8. Testing and Monitoring Activities; Technical Corrections, March 9, 1990 (55 FR 8948); Checklist 73.	63 O.S. 1991, § 1-2005(A); and ODH Bulletin 0525, Title 310, Rules 270-3-1 and 270-3-2, as last amended on April 30, 1992, effective June 22, 1992.
9. Financial Responsibility; Settlement Agreement (Amendment to Checklist 24's Optional Designation of 264.113 and 265.113), June 26, 1990 (55 FR 25976); Checklist 24A.	63 O.S. 1991, §§ 1-2004(1); 1-2005(A); 1-2008; 1-2009; and ODH Bulletin 0525, Title 310, Rules 270-3-1 and 270-3-2, as last amended on April 30, 1992, effective June 22, 1992.

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

C. Decision

I conclude that Oklahoma's application for program revision meets the statutory and regulatory requirements established by RCRA. Accordingly, Oklahoma is granted final authorization to operate its hazardous waste program as revised.

Oklahoma now has responsibility for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Oklahoma also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

D. Codification in Part 272

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

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Oklahoma's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. This authorization does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

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

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

Dated: September 17, 1993.

W.B. Hathaway,

Acting Regional Administrator.

[FR Doc. 93-23877 Filed 9-28-93; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 92-264; DA 93-1081]

Broadcast Service; Cable Television Act; Correction

AGENCY: Federal Communications Commission.

ACTION: Final Rule; correction.

SUMMARY: This document contains a correction to the decision text and the final regulations adopted in the Report and Order segment of the Commission's Report and Order/Further Notice of Proposed Rule Making (Report and Order) in MM Docket No. 92-264, found at 58 FR 42013, August 6, 1993 (FR Doc. 93-18652). The Report and Order adopted regulations interpreting and implementing the anti-trafficking and cross-ownership provisions of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act").

EFFECTIVE DATE: September 29, 1993.

FOR FURTHER INFORMATION CONTACT: Jackie E. Chorney, Mass Media Bureau, (202) 632-6990.

SUPPLEMENTARY INFORMATION:

Background

The text and the regulations that are the subject of this correction amends the Commission's Rules to implement the cable/Multichannel Multipoint Distribution Service (MMDS) and the cable/satellite master antenna television service (SMATV) cross-ownership restrictions mandated by the 1992 Cable Act.

Need for Correction

As published, the final rules contained an error which may prove to be misleading and is therefore in need of clarification.

Correction of Publication

Accordingly, the publication on August 6, 1993 of the final rules, which were the subject of FR Doc. 93-18652, is corrected as follows:

Section 76.501 is amended by revising paragraph (e)(1), on page 42019, column 2 to read as follows:

§ 76.501 Cross-ownership

* * * * *

(e)(1) A cable operator may offer SMATV service within the portion of the franchise area served by the cable operator's cable system only if the cable operator's SMATV system was owned, operated, controlled by, or under common control with the cable operator as of October 5, 1992, or is constructed by the cable operator and provided that such SMATV service is offered in accordance with the terms and conditions of the cable franchise agreement.

* * * * *

Federal Communications Commission.

William H. Johnson,

Acting Chief, Mass Media Bureau.

[FR Doc. 93-23784 Filed 9-28-93; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 921185-3021; I.D. 092293C]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Apportionment of reserve; request for comments.

SUMMARY: NMFS announces that amounts of the reserve are needed in the fishery for Atka mackerel in the Central Aleutian District (statistical area 542) of the Aleutian Islands subarea (AI) within the Bering Sea and Aleutian Islands management area (BSAI), and apportions 12,600 metric tons (mt) from the reserve to this fishery. This action implements the recommendation of the North Pacific Fishery Management Council (Council) and is intended to promote the goals and objectives of the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP).

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), September 29, 1993, until 12 midnight, A.l.t., December 31, 1993. Comments must be received at the following address no later than 4:30 p.m., (A.l.t.), October 14, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907-586-7228.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, Alaska 99802-1668 (Attn: Lori Gravel), or be delivered to the fourth floor of the Federal Building, 709 West 9th Street, Juneau, AK.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the FMP prepared by the Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The total allowable catch (TAC) for the Central Aleutian District was established by a revision to the final 1993 initial specifications for groundfish (58 FR 37660, July 13, 1993) as 14,400 mt. At its June 1993 meeting,

the Council recommended that NMFS apportion an amount from the reserve to authorize a harvest of 27,000 mt. In reviewing the Council's recommendation, the Director of the Alaska Region, NMFS, has determined that the TAC specified for Atka mackerel needs to be supplemented from the reserve. Therefore, in accordance with § 675.20(b)(1)(i), NMFS apportions 12,600 mt to the Atka mackerel TAC in the Central Aleutian District.

This apportionment is consistent with § 675.20(a)(2)(i) and does not result in overfishing of Atka mackerel.

Classification

This action is taken under § 675.20 and is in compliance with E.O. 12291.

The Assistant Administrator for Fisheries, NOAA, finds for good cause that providing prior notice and public comment or delaying the effective date of this notice is impracticable and contrary to the public interest. NMFS expects the TAC for Atka mackerel in the Central Aleutian District to be reached within the next 30 days. Without this apportionment, U.S. groundfish fishermen would have to forgo harvest of Atka mackerel resulting in unnecessary economic loss. Under § 675.20(b)(2), interested persons are invited to submit written comments on this apportionment to the above address until October 14, 1993.

List of Subjects in 50 CFR Part 675

Fish, Reporting and recordkeeping requirements.

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

Dated: September 23, 1993.

David S. Crestin,

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

[FR Doc. 93-23849 Filed 9-28-93; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 675

[Docket No. 921185-3021; I.D. 092293B]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Recision of a closure.

SUMMARY: NMFS is rescinding the closure to directed fishing for pollock by operators of trawl vessels using nonpelagic trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to fully utilize the 1993 Pacific halibut bycatch mortality allowance for the trawl pollock/Atka mackerel/"other species" fishery. Bycatch limitation zone 1 (Zone 1) and bycatch limitation zone 2 (Zone 2) of the BSAI remain closed to directed fishing for pollock by operators of trawl vessels using nonpelagic trawl gear under separate actions.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), until 12 midnight, A.l.t., December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Goundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The directed fishery for pollock by operators of trawl vessels using nonpelagic trawl gear in the BSAI was previously closed under § 675.21(c)(1)(iv) (58 FR 45076, August 26, 1993).

The Regional Director, Alaska Region, NMFS, has determined that the 1993 Pacific halibut bycatch mortality allowance for the trawl pollock/Atka mackerel/"other species" fishery in the BSAI has not been reached. Therefore, NMFS is rescinding that closure and is reopening directed fishing for pollock by operators of trawl vessels using nonpelagic trawl gear in the BSAI, effective at 12 noon, A.l.t., September 29, 1993, until 12 midnight, A.l.t., December 31, 1993.

Other closures remain in full force and effect, including the closures to directed fishing for pollock by operators of trawl vessels using nonpelagic trawl gear in Zone 1 (58 FR 30130, May 26, 1993) and Zone 2 (58 FR 29362, May 20, 1993).

Classification

This action is taken under § 675.21 and complies with E.O. 12291

List of Subjects in 50 CFR 675

Fish, Reporting and recordkeeping requirements.

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

Dated: September 23, 1993.

David S. Crestin,

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

[FR Doc. 93-23850 Filed 9-28-93; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 58, No. 187
Wednesday, September 29, 1993

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150–AE67

Informal Hearing Procedures For Materials Licensing Adjudications

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is considering amending its regulations to provide that requests for hearing in certain materials license proceedings be filed within 30 days of actual notice of the amendment application. The amendment applies only to materials licensing actions which are not of sufficient importance to warrant notice in the **Federal Register**. The proposed rule would eliminate an ambiguous provision in the Commission's current regulations and would ensure that hearing requests are filed as promptly as possible in order to resolve any concerns or objections to the pending application in a timely manner.

DATES: The comment period expires on November 15, 1993. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch. Hand deliver comments to: Office of the Secretary, Docketing and Service Branch, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD. 20852, between 7:45 and 4:15 p.m. on Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Marjorie S. Nordlinger, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–504–1607.

SUPPLEMENTARY INFORMATION:

Background

A recent decision in a Nuclear Regulatory Commission materials-licensing proceeding has highlighted the need to clarify a portion of one of the Commission's Rules of Practice and Procedure. See In the Matter of Umetco Minerals Corporation, LBP–92–20, 36 NRC 112 (August 5, 1992). 10 CFR 2.1205(c) sets forth the time period within which a request for hearing must be filed in a proceeding held under the Commission's rules for informal hearing procedures for adjudications set forth in subpart L to part 2. These rules apply to materials and operator license proceedings only and not to other more formal proceedings such as those involving reactors or commercial waste disposal.

Section 2.1205(c)(1) provides that, in a proceeding which is noticed in the **Federal Register**, a request for hearing must be filed within "Thirty (30) days of the agency's publication of the initial **Federal Register** notice referring or relating to an application or the licensing action requested by an application." When a **Federal Register** notice is not published, § 2.1205(c)(2) provides that a request for hearing must be filed the earlier of:

(i) Thirty (30) days after the requestor receives actual notice of a pending application or an agency action granting an application; or

(ii) One hundred and eighty (180) days after agency action granting an application.

The presiding officer in Umetco Minerals construed paragraph (c)(2)(i) as providing two separate opportunities for hearing: after receiving notice of a pending application, and after receiving notice of the agency's action on the application. Thus, the presiding officer found that a hearing request filed by the State of Utah within thirty days of issuance of a license amendment to the Umetco Minerals Corporation was timely, even though Utah had notice of the pending application and failed to request a hearing on the application.

Because the Commission felt that the language of the regulation was arguably ambiguous and susceptible of the meaning given it by the presiding officer, it declined to disturb that decision. However, such a reading is inconsistent with the goal of achieving the earliest possible resolution of safety issues. The Commission considers it preferable to hear any interested persons' concerns that have arisen early in the review process, if possible. To allow a concerned person or entity with knowledge of the proceeding to wait to air those concerns until after the Commission has already taken action benefits neither the Commission nor the requestor.

The Commission is therefore proposing to amend § 2.1205(c)(2) to make it clear that a request for hearing must be filed within the specified time period as soon as a requestor has actual notice of the proceeding. Publication of a **Federal Register** notice under § 2.1205(c)(1) may provide an additional opportunity for hearing in some cases, but a requestor with actual notice may not rely on this possibility to excuse a failure to file the request should a **Federal Register** notice not be published.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0136.

Regulatory Analysis

The Nuclear Regulatory Commission is proposing to amend current regulations that would clarify the requirements concerning informal hearing procedures for materials licensing adjudications. The proposed rule presents discussion in an area in which the Commission proposes to clarify or narrow the obligations in the current regulation. This proposed rule would have no significant impact on health, safety, or the environment. There would be no substantial cost to licensees or the NRC.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed rule sets forth the time frame within which a person other than an applicant must file a request for a hearing in a licensing proceeding held under the informal procedures set forth in 10 CFR part 2, subpart L. The proposed rule, by itself, does not impose any obligations on regulated entities that may fall within the definition of "small entities" as set forth in section 601(3) of the Regulatory Flexibility Act, or within the definition of "small business" as found in section 3 of the Small Business Act, 15 U.S.C. 632, or within the small business size standards contained in 13 CFR part 121.

Backfit Analysis

This proposed rule does not involve any new provisions which would impose backfits as defined in 10 CFR 50.109(a)(1). Accordingly, no backfit analysis pursuant to 10 CFR 50.109(c) is required for this proposed rule.

List of Subjects 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 2.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721, also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955 as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.104 also issued under sec. 193, Pub. L. 101–575, 104 Stat. 2835 (42 U.S.C. 2243). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161 b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 and table 1A of appendix C also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29; Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135).

2. In § 2.1205(c), introductory text is republished and paragraph (c)(2) is revised to read as follows:

§ 2.1205 Request for a hearing; petition for leave to intervene.

* * * * *

(c) A person other than an applicant shall file a request for a hearing within—

* * * * *

(2) If a **Federal Register** notice is not published in accordance with paragraph (c)(1) of this section, the earliest of—

(i) Thirty (30) days after the requestor receives actual notice of a pending application, or

(ii) Thirty (30) days after the requestor receives actual notice of an agency action granting an application in whole or in part, or

(iii) One hundred and eighty (180) days after agency action granting an application in whole or in part.

* * * * *

Dated at Rockville, Maryland, this 23rd day of September, 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93–23835 Filed 9–28–93; 8:45 am]

BILLING CODE 7590–01–P

10 CFR Part 171

RIN 3150–AE83

Restoration of the Generic Exemption From Annual Fees for Nonprofit Educational Institutions

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: On July 20, 1993, the Nuclear Regulatory Commission ("NRC" or "Commission") published a final rule establishing annual fee schedules for its licensees for fiscal year 1993. The final rule eliminated a generic exemption from annual fees previously applicable to nonprofit educational institutions (educational exemption). Following publication of this rule, the Commission received a petition for reconsideration requesting reinstatement of the educational exemption. The Commission views the petition as a request to conduct a new rulemaking to amend the final rule by restoring the exemption. The Commission grants the request for a new rulemaking. The new rulemaking reconsiders whether nonprofit educational institutions should receive a generic exemption from annual fees. The Commission requests public comment on that question. The rulemaking proceeding will address no other annual fee question.

DATE: Comment period expires October 29, 1993. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attn: Docketing and Service Branch.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:45 a.m. and 4:15 p.m. Federal workdays. (Telephone 301–504–1966.)

Copies of comments received may be examined and copied for a fee at the NRC Public Document Room, 2120 L Street NW., (Lower Level) Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: L. Michael Rafky, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301–504–1606.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Section-by-section analysis.
III. Environmental impact: categorical exclusion.
IV. Paperwork reduction act statement.
V. Regulatory analysis.

VI. Regulatory flexibility analysis.
VII. Backfit analysis.

I. Background

On July 20, 1993 the Commission published its final annual fee rule for FY 1993 (58 FR 38666). The final rule principally set out the Commission's fee schedules for FY 1993, but it also discussed in some detail the 3–2 Commission decision to revoke a generic exemption previously applicable to nonprofit educational institutions. A court of appeals decision, issued in March 1993, had necessitated the Commission's rethinking of the educational exemption. *See Allied-Signal, Inc.* v. *NRC*, 988 F.2d 146 (D.C. Cir. 1993). That decision cast doubt on the NRC's stated rationale—which included a purported inability to "pass through" costs—for exempting nonprofit educational institutions from annual fees.

In reaction to the court decision, the Commission initially proposed to retain the educational exemption, but with a fresh rationale. In its proposed FY 1993 annual fee rule, the Commission requested comments on retaining the exemption, and asked specifically for comments on the court's suggestion that perhaps the exemption could be justified if "education yields exceptionally large externalized benefits that cannot be captured in tuition or other market prices." 988 F.2d at 151. The Commission also requested comments on whether the exemption should be revoked.

Following the close of the comment period, the Commission faced a dilemma. It remained committed to the value of nuclear education and related research as a policy matter, but it had received only a few comments, and cursory ones at that, supporting a continued generic exemption. Additionally, some NRC licensees had submitted comments requesting abandonment of the exemption altogether or a more equitable spread of its costs to all licensees. Still other commenters urged that the exemption be retained, but that it be expanded to include various other licensed activities.

After considering the material before it, a split Commission, by a 3–2 vote, "reluctantly concluded that in view of the court decision and the administrative record developed during the comment period it cannot justify a generic 'educational' exemption for FY 1993" (58 FR 38668–69). Therefore, the Commission informed formerly exempt nonprofit educational institutions that they would have to pay annual fees beginning in FY 1993. The Commission did point out that many of these institutions might be able to make individualized showings of financial hardship and externalized benefits sufficient to justify a "public interest" exemption under 10 CFR 171.11(b) (58 FR 38669). The two dissenting Commissioners took the view that the Commission should continue in force the generic educational exemption (58 FR 36875).

Almost immediately the Commission began receiving letters from many colleges and universities protesting the change in its longstanding policy. Many of these letters were sent as comments regarding the Commission's concurrent fee policy study now being conducted as required by the Energy Policy Act of 1992 (58 FR 21116). In these letters and comments (available in the NRC Public Document Room ("PDR")), educational institutions described the "externalized benefits" derived from their programs and the problems created by the new annual fees, including the prospect of major cutbacks in nuclear education. Some licensees also pointed out that their programs were already heavily subsidized by the Federal government (in particular by the Department of Energy), precisely because the programs were not sustainable absent public sector support.

The Commission also received a formal petition for reconsideration of the FY 1993 final rule with the aim of restoring the nonprofit educational exemption. See Petition for Reconsideration of Final Rule (July 30, 1993). In this petition for reconsideration (which is being published as an appendix to this proposed rule), a number of formerly exempt colleges and universities asserted with some specificity a number of benefits that educational institution research reactors provide to both the nuclear industry and the public at large. Prominent was the continued training of nuclear scientists and engineers (petition at 3–4). The petitioners also stated that nuclear technology was used in fields as varied as medicine, geology, archaeology, food science and textiles and that the public additionally benefitted from people who could provide knowledgeable opinions on nuclear topics, as well as from tours of research reactors (petition at 4–5).

The petitioners went on to argue that education provides significant "externalized benefits" warranting public subsidy. They cited a letter from economist Alfred Kahn (also available in the attached appendix) stating that the knowledge generated by university-related research is itself a public good that cannot be quantified using market indices (petition at 6–7). Mr. Kahn's letter argues that it is "inefficient" and "socially and economically undesirable" to charge people for access to pure knowledge, because the benefits of that knowledge "are largely unpredictable." Letter from Alfred Kahn to Shirley Egan, Associate University Counsel, Cornell University (July 15, 1993).

The petitioners also stressed the harm to university nuclear programs as a result of the newly imposed annual fees (petition at 8–9). Using Cornell University's nuclear program as an example, they asserted that Federal grants (in addition to those already provided) might be necessary to meet the additional costs of NRC annual fees (petition at 9–10). Finally, the petitioners argued that the Commission's longstanding exemption for nonprofit educational institutions was rooted in sound policy, and that reinstating the exemption would be consistent with the already extensive direct Federal funding provided many college and university licensees (petition at 12–13).

In August, while the petition for reconsideration was under consideration, the Commission undertook an effort of its own to develop guidance for considering individual "public interest" exemption requests by colleges and universities. As part of this effort, the NRC staff visited a number of colleges and universities to learn more about their educational activities and the benefits of non-power reactors and the use of nuclear materials in education programs. The Commission concluded that the new annual fees ($62,100 for each research reactor license; lesser amounts for each materials license) would jeopardize the educational and related research benefits provided by a number of colleges and universities.

As a result of the new and more detailed information and arguments developed in the petition for reconsideration and in the other sources described above, and after careful reflection, the Commission now is inclined to return to its previous practice of exempting nonprofit educational institutions from annual fees. The Commission therefore grants the petition for reconsideration of the FY 1993 final rule and now proposes to exempt nonprofit educational institutions from annual fees. The Commission does not intend to create any other generic exemption categories in this rulemaking.

The Commission does not propose lightly this further shift in a policy that has already gone through a major change in a short time. The Commission

was sharply divided from the outset on the wisdom of eliminating the generic educational exemption. New information and fresh thinking have persuaded the entire Commission that restoration of the exemption reflects a sound policy choice that avoids placing in jeopardy valuable educational resources that are indispensable to the nuclear industry, to numerous other educational activities, to the NRC itself and to the public at large.

The Commission solicits public comment on its proposed rule that would restore the exemption. Comments on other annual fee issues will not be entertained in connection with this proposed rule. The Commission already has received some information on the "externalized benefits" of non-power reactors and the use of licensed nuclear materials in various educational activities and related research at colleges and universities. However, the Commission is interested in more data on the benefits of non-power reactors and the use of licensed nuclear materials in education in its broadest sense, in the expectation that more data may well substantiate the argument in the petition for reconsideration that non-power reactors and the use of licensed nuclear materials in educational activities are prime examples of activities that provide "externalized benefits" warranting public support.

The Commission expects commenters to address the "externalized benefits" question by providing data on (but not limited to) the size and subject areas of classes using licensed material in studies or research, the number of faculty and students using licensed material in their studies or research, the type and availability of work for graduates of nuclear programs and other programs in which licensed nuclear materials are used, and the relation between education and research in institutions of higher learning. The Commission has particular interest in comments on the extent to which the benefits of nuclear education and other programs using licensed nuclear materials (not simply education in general) are "externalized" and would not be produced by market forces. The Commission would appreciate detailed information on the many non-nuclear fields of study that use licensed nuclear material in the course of educating their students. The Commission has received some information in letters addressing the fee policy study required by the Energy Policy Act of 1992 described above, but more data is needed for the Commission's deliberations.

This notice, of course, does not represent a final Commission decision to reinstate the educational exemption, but simply the Commission's proposed resolution of the question based on its current best information and best thinking. But, with the Commission proposing to restore a generic exemption, it is not necessary for formerly exempted educational licensees to apply for individual public interest exemptions. Therefore, the Commission requests nonprofit educational licensees not to seek such exemptions at this time. If after reconsideration, the Commission decides that it cannot justify a generic exemption it will provide educational licensees ample time to seek individual exemptions. The Commission will hold in abeyance all individual exemption requests it already has received from educational licensees.

The issue of refunds to nonprofit educational licensees who may have paid the FY 1993 annual fee will be addressed, if applicable, in the final rule. Nonprofit educational licensees who have requested termination, downgrade, possession-only or combined licenses to avoid the FY 1993 annual fee will be advised accordingly what action, if any, is needed if they choose to rescind those applications as a result of this proposed rulemaking.

There is one final point warranting clarification. The FY 1993 final rule eliminating the educational exemption indicated that, because of the remand from the court of appeals, the Commission would issue new fee schedules retracting the exemption for FY 1991–92 and offer appropriate refunds. The Commission now proposes not to issue revised fee schedules reflecting retraction of the educational exemption because of its inclination to restore the exemption. Commenters, if they choose, may address this point.

As the final rule made clear (58 FR 38669), the Commission did not intend retroactively to charge fees to nonprofit educational institutions for FYs 1991–92, but did intend to make refunds to those licensees (power reactors) that made up the shortfall in 100 percent fee recovery created by the educational exemption. Should the Commission restore the exemption, however, no new fee schedule for FYs 1991–92 will be necessary and no refunds will be made. On the other hand, because of the timing of this reconsideration proceeding and if the Commission reinstates the educational exemption, no licensee will be assessed additional fees to make up any shortfall created for FY 1993. For future fiscal years, however, the Commission will recover from other licensees the shortfall resulting from the educational exemption, pursuant to its current statutory mandate to recover 100 percent of its budget.

II. Section-by-Section Analysis

Section 171.11 Exemptions

Paragraph (a) of this section is amended by adding nonprofit educational institutions, as defined in § 171.5, to the list of those entities exempted from annual fees by the Commission. A discussion of this change in fee policy is found in Section I of this proposed rule.

III. Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental assessment nor an environmental impact statement has been prepared for the proposed regulation.

IV. Paperwork Reduction Act Statement

This proposed rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

V. Regulatory Analysis

With respect to 10 CFR part 171, on November 5, 1990, the Congress passed Pub. L. 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90). For FYs 1991 through 1995, OBRA–90 requires that approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. To accomplish this statutory requirement, on July 20, 1993 (58 FR 38666), the NRC, in accordance with § 171.13, published in the **Federal Register** the final amount of the FY 1993 annual fees for operating reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and devices and QA program approvals, and Government agencies. OBRA–90 and the Conference Committee Report specifically state that—

(1) The annual fees be based on the Commission's FY 1993 budget of $540.0 million less the amounts collected from part 170 fees and the funds directly appropriated from the NWF to cover the NRC's high level waste program;

(2) The annual fees shall, to the maximum extent practicable, have a reasonable relationship to the cost of

regulatory services provided by the Commission; and

(3) The annual fees be assessed to those licensees that the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment.

Therefore, when developing the annual fees for operating power reactors the NRC continued to consider the various reactor vendors, the types of containment, and the location of the operating power reactors. The annual fees for fuel cycle licensees, materials licensees, and holders of certificates, registrations and approvals and for licenses issued to Government agencies take into account the type of facility or approval and the classes of the licensees.

10 CFR part 171, which established annual fees for operating power reactors effective October 20, 1986 (51 FR 33224; September 18, 1986), was challenged and upheld in its entirety in *Florida Power and Light Company* v. *United States*, 846 F.2d 765 (D.C. Cir. 1988), *cert. denied*, 490 U.S. 1045 (1989).

10 CFR part 171, which established fees based on the FY 1989 budget, were also legally challenged. As a result of the Supreme Court decision in *Skinner* v. *Mid-American Pipeline Co.*, 109 S. Ct. 1726 (1989), and the denial of certiorari in *Florida Power and Light*, all of the lawsuits were withdrawn.

The NRC's FY 1991 annual fee rule was largely upheld recently by the D.C. Circuit Court of Appeals in *Allied Signal* v. *NRC*.

VI. Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed rule affects about 110 operating power reactors which are not considered to be small entities.

VII. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and that a backfit analysis is not required for this proposed rule. The backfit analysis is not required because these amendments do not require the modification of or additions to systems, structures, components, or design of a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct or operate a facility.

List of Subjects in 10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, registrations, and approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 171.

PART 171—ANNUAL FEES FOR REACTOR OPERATING LICENSES, AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

1. The authority citation for Part 171 is revised to read as follows:

Authority: Sec. 7601, Pub. L. 99–272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100–203, 101 Stat. 1330, as amended by Sec. 3201, Pub. L. 101–239, 103 Stat. 2106 as amended by sec. 6101, Pub. L. 101–508, 104 Stat. 1388, (42 U.S.C. 2213); sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201(w)); sec. 201, 88 Stat. 1242 as amended (42 U.S.C. 5841); sec. 2903, Pub. L. 102–486, 106 Stat. 3125, (42 U.S.C. 2214 note).

2. In § 171.11, paragraph (a) is revised to read as follows:

§ 171.11 Exemptions.

(a) An annual fee is not required for:

(1) A construction permit or license applied for by, or issued to, a nonprofit educational institution for a production or utilization facility, other than a power reactor, or for the possession and use of byproduct material, source material, or special nuclear material. This exemption does not apply to those byproduct, source, or special nuclear material licenses which authorize:

(i) Human use;

(ii) Remunerated services to other persons;

(iii) Distribution of byproduct material, source material, or special nuclear material or products containing byproduct material, source material, or special nuclear material; or

(iv) Activities performed under a Government contract.

(2) Federally owned research reactors used primarily for educational training and academic research purposes. For purposes of this exemption, the term research reactor means a nuclear reactor that—

(i) Is licensed by the Nuclear Regulatory Commission under section 104 c. of the Atomic Energy Act of 1954 (42 U.S.C. 2134(c)) for operation at a thermal power level of 10 megawatts or less; and

(ii) If so licensed for operation at a thermal power level of more than 1 megawatt, does not contain—

(A) A circulating loop through the core in which the licensee conducts fuel experiments;

(B) A liquid fuel loading; or

(C) An experimental facility in the core in excess of 16 square inches in cross-section.

* * * * *

Dated at Rockville, MD, this 23d day of September 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

Appendix To Proposed Rule—Petition of Reconsideration of Final Rule

I. Introduction

The Nuclear Regulatory Commission ("NRC" or "Commission") has long exempted nonprofit educational institutions from paying annual fees.[1] Although the Commission traditionally justified this exemption on the grounds that colleges and universities could not readily pass the cost of the fees on to students through tuition and other charges, a recent federal court decision questioned this rationale.[2] The court explained, however, that the externalized benefits of education potentially supported such an exemption.[3]

Although the Commission at first defended its educational exemption in a rulemaking proceeding prompted by the court's decision, it abandoned the exemption in the final version of its annual fee rule.[4] Petitioners contend that in so doing the Commission erred and respectfully request that the Commission reconsider its ruling and reinstate the exemption for nonprofit educational licensees.[5]

II. The Allied-Signal Court Clearly Invited the Commission To Grant an Exemption to Educational Institutions

Although the decision in *Allied-Signal, Inc.* v. *U.S. Nuclear Regulatory Comm'n*, 988 F.2d 146 (D.C. Cir. 1993), compelled the Commission to reconsider its exemption of nonprofit educational facilities, the court suggested a valid reason for exempting

[1] *See* 10 CFR 171.11(a) (1993).

[2] *See Allied-Signal, Inc.* v. *U.S. Nuclear Regulatory Comm'n*, 988 F.2d 146 (D.C. Cir. 1993), discussed in section II *infra*.

[3] *Id.* at 151; section II *infra*.

[4] FY 1991 and 1992 Final Rule Implementing the U.S. Court of Appeals Decision and Revision of Fee Schedules; 100% Fee Recovery, FY 1993, 58 FR 38666, 38668–69 (Nuclear Regulatory Comm'n, July 20, 1993) ("Final Rule").

[5] Petitioner Cornell University has submitted similar comments supporting the exemption in response to the Commission's fee policy review. *See* Letter from N. Scott to Secretary and Commissioners in response to RIN 3150–AE54 (July 16, 1993).

educational reactor licensees from annual fees. The court merely asked the NRC to marshal a rationale based on "externalized benefits" of education "that cannot be captured in tuition or other market prices." *Id.* at 151. Indeed, the Allied-Signal court explained that "there is at least a serious possibility" that the Commission can "substantiate" such an exemption. *Id.*

In its Final Rule, however, the Commission "missed an opportunity to consider seriously the classic 'externalized benefits' argument" proposed by the court.[6] While Petitioners believe that the Commission should have decided to continue the exemption at issue and should have based its decision on the court's discussion and on the many comments supporting the exemption, they seek in this petition to provide the Commission with additional information about the considerable externalized benefits of nuclear reactor programs at nonprofit educational institutions.

III. Nuclear Reactors at Nonprofit Educational Institutions Provide Significant Benefits to the Commercial Nuclear Industry and the General Public

Universities, including the Petitioners, train scientists and engineers who enter the commercial nuclear industry and government regulatory agencies such as the NRC itself. Distinguished faculty, many of whom have worked in the field since its infancy, instruct the students in basic research and new technologies. Without study at educational reactors, these students would lack the knowledge and skill necessary to adequately maintain the efficiency and safety of the nuclear industry.

Nuclear engineering programs, which can thrive only by including hands-on laboratory study at a working reactor, assist the commercial nuclear industry directly through pure and applied science. Cornell researchers, for example, have analyzed the behavior of reactors under severe accident conditions. Universities contribute to the power reactor industry by developing concepts for better cooling systems, moderators, and other components of power reactors systems.

University researchers also use reactors to develop new applications of nuclear technology in fields as varied as medicine, geology, archaeology, food science, and textiles. These new research findings in turn provide opportunities for profitable commercial ventures.

By operating nuclear reactors, educational institutions assist industry and government in other important ways. They provide a source of respected, informed, and independent opinion on the benefits and burdens of nuclear technology for a society addressing its implications. Students and members of the public who tour the educational reactor facilities gain insight into the varied uses of nuclear technology and come to appreciate the contribution of nuclear industries to the quality of their lives.

The Commission itself has acknowledged its continued belief that "educational research provides an important benefit to the nuclear industry and the public at large and should not be discouraged."[7] A "vibrant nuclear education sector also is important as a source of talent and ideas for the NRC itself and for the whole government," the Commission avowed in the course of its rulemaking process. *Id.* The wide array of externalized benefits generated by nuclear reactor programs at nonprofit educational institutions is thus apparent from the Commission's statements and from the many comments submitted in support of the contested exemption.[8]

IV. Economic Theory Supports the Nonprofit Educational Exemption

The Commission's long-standing exemption for nonprofit educational facilities is wholly consistent with "externalized benefits" economic theory. As Commissioners Remick and DePlanque explained in their opinion, "education, like national defense, [and] the administration of justice * * * provides large and indispensable benefits to the whole society, not just to purchasers." Final Rule, 58 FR at 38675. Indeed, the "exceptionally large" benefits of nuclear reactor programs at universities are recounted in section III above and in the many comments submitted to the Commission during its rulemaking process.[9]

From ground-breaking discovers to vital core data, university nuclear research is openly published and freely debated to ensure the highest academic standards and widest availability. Such "[p]ure knowledge is the archetypal 'public good,'"—once produced, it can be distributed widely at no incremental cost. Letter from Alfred E. Kahn to Shirley K. Egan (July 15, 1993) ("Kahn Letter") at 1. As Commissioners Remick and DePlanque reasoned, the free market may fail "to supply the necessary amount of education" and other public goods because the "buyers" or students lack information sufficient to set the "right price" or are unable to pay that price. Final Rule, 58 FR at 38675. The inefficiency of charging for access to nonproprietary research and education thus supports what noted economist Alfred Kahn calls "the strong and universally recognized case for public financing of pure research." Kahn Letter at 1.

Kahn explains that it would be "futile for universities to try to recover the cost by charging potential users" for research and education, as well as "socially and economically undesirable for them to do so." *Id.* Instead, he reasons, "a flat charge on business beneficiaries is superior to a specific charge by the University for particular pieces of knowledge." *Id.* The Commission's relatively small costs associated with licensing educational reactors may easily be recovered from those licensees who benefit immeasurably from the activities of the distinguished teaching and research community at our nation's universities, and those who, in the Commission's discretion, can fairly, equitably, and practically make such payments.

V. The Proposed Annual Fees Threaten Serious Injury to University Nuclear Programs

Not only is it economically inefficient to levy annual fees on university research reactors, it also places an undue financial burden on nuclear science education and threatens to chill nuclear research vital to industry and the general public alike.[10] The situation at Cornell is illustrative of these potential problems.[11] Cornell uses two reactors for teaching and research. The larger, a 500-kilowatt TRIGA, is used most frequently. A staff of four—two engineers and two lab technicians—maintains the reactors. The annual operating budget runs approximately $230,000.[12] The proposed NRC annual fee for Cornell's reactors—$124,200—thus represents over half of the entire reactor budget.[13]

Indeed, the federal government is the sole source of grant monies supporting Cornell's nuclear science and engineering programs, and federal research dollars comprise nearly half of the nuclear science and engineering department's annual research budget. The Department of Energy not only contributes substantial grant monies but also donates all of the fuel for the reactors. Cornell nuclear

[6] Differing Views of Commissioners Remick and DePlanque, Final Rule, 58 FR at 38675.

[7] FY 1991 and 1992 Proposed Rule Implementing the U.S. Court of Appeals Decision and Revision of Fee Schedules; 100% Fee Recovery, FY 1993, 58 FR 21662, 21664 (Nuclear Regulatory Comm'n, April 23, 1993) ("Proposed Rule") (citations omitted).

[8] *See also* descriptions of Petitioners' nuclear reactor programs attached as Exhibit B.

[9] Because the *Allied-Signal* court gave no explanation of what benchmark externalized benefits should be measured by, it is unclear what the court meant by "exceptionally large." *Allied-Signal*, 988 F.2d at 151. Furthermore, it is practically impossible to quantify the contributions that university nuclear science and engineering programs make to commercial users of nuclear energy. This petition, together with the many comments submitted by educational licensees, does however illustrate the extent and variety of such benefits.

[10] The Commission has also suggested that it may in the future impose license and inspection fees, established under authority of the Independent Offices Appropriation Act ("IOAA"), on nonprofit educational licensees. *See* Final Rule, 58 FR at 38666; 10 CFR 170.11(a)(4) (1993) (exempting nonprofit educational institutions from IOAA fees). Because these fees vary with the cost of inspecting particular reactor facilities, their precise impact on Cornell and other universities is difficult to estimate. The economic and public policy rationales for exempting colleges and universities from NRC annual fees apply with equal force to IOAA fees, however.

[11] *See* Nuclear Reactor Budgets, Use, and Federal Funding at Petitioner Institutions attached as Exhibit A.

[12] The reactors are used primarily by three nuclear science and engineering faculty and approximately twelve graduate students per year, with additional limited use by as many as ten faculty and fifteen graduate students from fields such as geology, chemistry, textiles, and archaeology. Undergraduate teaching and demonstration, public tours, and incidental tests account for about a quarter of the reactor's total use.

[13] A 1991 study chaired by Dr. Marcus H. Voth found that of the 37 university reactors then operating, 15 incurred annual costs below $65,000. Letter from Marcus H. Voth and Edward H. Klevans to Samuel J. Chilk (July 12, 1993) at 2.

researchers receive grants from the National Science Foundation as well.[14]

If the Commission abandons the educational exemption, Cornell will be forced to seek increased federal grants to cover the NRC charges. Rather than accomplishing the budgetary goals of the Omnibus Reconciliation Act. Public Law No. 101-508, 104 Stat. 1388 (1990), the Commission's action will merely shift monies from one federal pocket to another. As a federal court has logically noted, "[i]t is self-evident that a transfer of funds from one agency to another fails to increase federal revenue." *Florida Power & Light Co.* v. *United States*, 846 F.2d 765, 771 (D.C. Cir. 1988).

If Cornell attempted to recoup the NRC fees through general tuition increases rather than through grants, all students, many of whom receive extensive financial aid from the government and private funds, would be forced to subsidize a relatively small department at the university. Alternatively, a major increase in laboratory fees imposed on nuclear science and engineering students alone would place the program utterly beyond their financial reach. Cost increases of such magnitude would make any institution's nuclear program a prime target for elimination.

Since the Commission's Final Rule seeks to collect annual charges for fiscal year 1993, it also threatens to disrupt university budgets, which have already allocated scarce resources for this year. Because of the significant lag time required for approval of grant proposals, it may take as long as two years for universities to learn whether monies necessary to cover the major expense of NRC fees will even be available. This financial stress comes as a shock to the educational community in the wake of the Commission's vigorous argument supporting the exemption in its Proposed Rule.[15]

Although the Commission proposes to alleviate the financial burden on colleges and universities by considering individual requests for exemption from annual fees and for installment payments, these suggestions provide small consolation. Installment payment plans fail to address the real problem confronting universities—how to pay for such annual fees at all. Furthermore, any attempt by the Commission to examine numerous individual exemption requests could consume more NRC administrative resources than a blanket educational exemption. The sheer number of universities joining in this petition underscores this concern.

[14] Grants from the Atomic Energy Commission and the National Science Foundation first enabled Cornell to obtain its two reactors. See David D. Clark, *The Nuclear Frontier: Cornell's Program of Basic and Applied Research*, Cornell Eng'g Q., Spring 1992, at 3.

[15] See Final Rule, 58 FR at 38675; Proposed Rule, 58 FR at 21664 ("The Commission proposes to continue to exempt these (nonprofit educational) licensees from fees for FYs 1991, 1992 and 1993, as it has for many years in the past * * * (and) continues to believe that 'educational research provides an important benefit to the nuclear industry and the public at large and should not be discouraged.'") (citations omitted).

VI. The Educational Exemption Reflects Sound Public Policy and a Tradition of Support for Education

Given the significant benefits realized by the nuclear industry from university research and education, any additional fees imposed on commercial licensees to cover costs associated with nonprofit educational reactors are a bargain, not a burden. Commercial power reactors have historically been the only NRC licensees asked to absorb the cost of supporting educational reactors. The $7.1 million in fiscal year 1993 costs associated with licensing nonprofit educational reactors, if divided equally among the 109 commercial power reactors now in operation, amounts to only $65,000 per commercial reactor and adds a mere 2% to the proposed average fee for commercial reactors. See Proposed Rule, 58 FR at 21674. The costs borne by power reactor licensees could, in the Commission's discretion, be decreased somewhat by spreading them equitably among all commercial licensees.

That federal sources already support extensive nuclear research and education at both private and public institutions speaks to the national importance of this discipline. The Commission's traditional exemption for nonprofit educational facilities reflects a history of federal support for higher education reflected in universities' nonprofit tax status and exemplified by the Morrill Act, which first established land-grant colleges such as many of the Petitioners. The efforts of Congress and the NRC to reduce the federal budget deficit are praiseworthy, but only if this effort encourages growth by strengthening the nation's long-standing superiority in science and technology. In the long term, the loss of the Commission's educational exemption will hinder the advancement of nuclear science, the nuclear industry, the NRC itself, and the national interest.

VII. Conclusion

For the foregoing reasons, Petitioners request that the Commission reconsider its Final Rule and reinstate its annual fee exemption for nonprofit educational institutions.

Respectfully submitted,

By: _____

Cornell University,

Shirley K. Egan,

Associate Counsel, Cornell University, 500 Day Hall, Ithaca, NY 14853-2801.

By: _____

Counsel for Cornell University,

Joseph C. Bell, Melissa R. Jones,

Hogan & Hartson, 555 Thirteenth Street, NW., Washington, DC 20004-1109.

By: _____

Kansas State University,

Jennifer Kassebaum,

Assistant University Attorney, Kansas State University, 111 Anerson Hall, Manhattan, KS 66506-0115.

By: _____

Manhattan College.

Walter Matystik,

Assistant Provost, Manhattan College, 4513 Manhattan College Pkwy., Bronx, NY 10471.

By: _____

Massachusetts Institute of Technology.

George H. Dummer,

Director, Office of Sponsored Programs, Massachusetts Institute of Technology, 77 Massachusetts Avenue, room 4-110, Cambridge, MA 02139.

By: _____

North Carolina State University,

Dr. Larry Monteith,

Chancellor, North Carolina State University, A Holladay Hall, Box 7001, Raleigh, NC 27695-7001.

By: _____

Reed College,

Steven Koblik,

President, Reed College, 3203 Southeast Woodstock Blvd., Portland, OR 97202.

By: _____

University of Rhode Island,

Louis J. Saccoccio,

Assistant Legal Counsel, Carlotti Administration Bldg., Office of the General Counsel, University of Rhode Island, Kingston, RI 02881.

By: _____

The Board of Trustees of The University of Illinois,

Donald A. Henss,

Associate University Counsel, University of Illinois, Suite 258, Henry Administration Bldg., 506 South Wright Street, Urbana, IL 81801.

By: _____

The Curators of the University of Missouri,

Phillip J. Hoskins,

Counsel, University of Missouri System, 227 University Hall, Columbia, MO 65211.

By: _____

University of New Mexico,

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University Counsel, University of New Mexico, 150 Scholes Hall, Albuquerque, NM 87131.

By: _____

The University of Texas System,

Robert Giddings,

Attorney, The University of Texas System, 201 West Seventh Street, Austin, TX 78701.

By: _____

University of Utah,

Williams T. Evans,

Educational Division Chief, Utah Attorney General's Office, Beneficial Life Tower, 11th Fl., 36 South State Street, Salt Lake City, UT 84111.

Service may be made upon:

Joseph C. Bell, Melissa R. Jones,

Hogan & Hartson, 555 Thirteenth Street, NW., Washington, DC 20004-1109, Counsel for Cornell University.

Dated: July 30, 1993.

Exhibit 1

July 15, 1993.

Ms. Shirley K. Egan,

Associate University Counsel, 500 Day Hall, Cornell University, Ithaca, NY 14853.

Dear Ms. Egan: Your draft of a possible submission to the NRC captures most of the argument that I and, I am sure, the Circuit Court had in mind.

There is one observation you make, however, that I think can usefully be expanded, and it is an argument that anyone familiar with the literature on externalities would quickly appreciate. It has do with the social benefits of the non-proprietary pure research to which you allude, and of the associated practice of not charging possible users for access to the knowledge that it produces.

Pure knowledge is the archetypal "public good," in economic terms, the essential characteristic of which is that, once produced, it can be made available more and more widely at zero incremental cost. This means that it is inefficient to charge people for access to it.

That fact, taken together with the difficulty of the producer of pure knowledge appropriating the benefits of it in charges to potential users—because those benefits are largely unpredictable—together make the strong and universally recognized case for public financing of pure research. The University's policy, which you do correctly emphasize, of conducting research on a non-proprietary basis is therefore—as you clearly imply but do not, I think, stress adequately—socially highly desirable, and it would be both futile for universities to try to recover the cost by charging potential users and socially and economically undesirable for them to do so.

This does not answer the question of who should pay the charges in question: on this I have nothing to add to your statement, except to point out that recovery in the form of a flat charge on business beneficiaries is superior to a specific charge by the University for particular pieces of knowledge.

I urge you to consider expanding the argument slightly along these lines, mainly because I think I can assure you that anyone who raises the possible consideration of externalities will be receptive to such an expansion to embrace the concept of public goods.

I've taken the liberty of correcting a few minor errors on the draft you sent me and raising one or two minor specific questions.

Please call on me if you think I can be of any additional assistance.

With best regards,

Sincerely,

Alfred Kahn.

EXHIBIT A—NUCLEAR REACTOR BUDGETS, USE, AND FEDERAL FUNDING AT PETITIONER INSTITUTIONS

Institution	Annual reactor operating budget (dollars)	Proposed NRC annual fees (dollars)	No. persons using reactor (faculty/grad. students/undergraduates)	Percentage of dept. budget from federal sources (percent)
Cornell Univ	[1] 240,000	124,200	3F/12G	52.
Kansas State Univ	134, 462	62,100	4F/7G/30U	67.
Manhattan College	15,000	62,100	3F/20G/30U	Not Available.[5]
M.I.T	[2] 1,270,000	62,100	35F/86G/53U	63.
N. Carolina State Univ	435,000	62,100	6F/50G/87U	25.
Reed College	60,000	62,100	8F/0G/13U	33.
Univ. Illinois-Urbana	[3] 200,000	124,200	4F/14G	75.
Univ. Missouri-Rolla[4]	108,350	62,100	6F/12G/39U	Not Available.
Univ. New Mexico	27,000	62,100	8F/62G/25U	89.
Univ. Rhode Island	533,769	62,100	22F/12G	85.
Univ. Texas-Austin	267,183	62,100	4F/11G	100.
Univ. Utah	50,000	62,100	6F/15G/7U	48.

[1] Combined figure for the two reactors at Cornell.
[2] Facility operates at a deficit of $650,000.
[3] Combined figure for the two reactors at Illinois-Urbana.
[4] Data from the Rolla campus reactor only.
[5] Total 1992 federal grants for the Department equalled $40,000.

Exhibit B

Nuclear Reactor Programs at Petitioner Institutions

Cornell University

In its 30 years of operation, the Cornell TRIGA has been used extensively in undergraduate and graduate courses and research by non-specialists. In one project, neutron-induced autoradiography is used to map the location of specified pigments to reveal images in the successive layers painted by artists as a painting evolves from preliminary sketch to final version. This non-destructive technique allows the art historian to infer the artist's developing intentions. In another, neutron radiography is used to study the distribution of water between soils and the roots of living plants. Neutron activation analysis is widely used in archaeology to characterize elemental compositions of articles such as pottery shards and obsidian and metallic artifacts. Sufficient differences in elemental composition among clay sources distinguish local wares from imported ones. The effectiveness of detergents has been studied by determining residues of labeled oils on treated specimens. Nuclear methods of characterization for trace elements have been a key to resolving many materials quality issues for silicon semiconductor device fabrication.

Cornell has the only cold neutron beam program at a university reactor in the United States.

Additional nuclear methods that will shortly come into use at Cornell include prompt gamma-ray neutron activation analysis and neutron depth profiling based on monoenergetic conversion electrons produced by neutron reactions as well as the familiar method based on alpha particle or proton production.

Kansas State University

The program at Kansas State is valuable to institutions without research and teaching reactors. The school's reactor, under the Department of Energy Reactor Sharing program, is used by 13 different institutions, including Stanford, Louisiana State, the University of Southern California, and the National Transportation Safety Board. Within the University, the reactor is used mostly by chemistry students, followed by nuclear engineering students. Research is conducted in a wide range of fields including geology, biology, animal sciences, textiles, and grain sciences.

Manhattan College

The college's teaching and research reactor program is private and primarily undergraduate. It is very small but economically run. As the only teaching and research reactor in the metropolitan New York area available to educational institutions, it provides a significant resource for the area. Three to four area institutions of higher learning regularly use it for teaching and research. Colleges such as New York Maritime College would otherwise have no access to such a facility. In addition, hundreds of area high school and middle school students enjoy tours and demonstrations at the reactor each year as part of their science curriculum. The school district in which the college is located has

the highest proportion of minority students of any community school district in New York City, and among the highest in the nation.

Massachusetts Institute of Technology

A large research program is carried on at the MIT Research Center. In Nuclear Engineering there are studies in (1) *Dose Reduction* in which pressurized loops that stimulate both PWR and BWR environments have been constructed and operated in the core of the reactor for the purpose of identifying coolant chemistries that will minimize corrosion; (2) *Irradiation-Assisted Stress Corrosion Cracking* to investigate the formation and growth of cracks in reactor structural alloys; (3) testing the efficacy of in-core sensors, known as the *SENSOR Project*, involving in-core sensors that detect changes in electro-chemical potential (ECP) and the effect of water chemistry additives on the halting of crack growth; and (4) *Digital Control* to develop and experimentally verify a generic methodology for the closed-loop digital control of neutronic power, core temperature, and other plant parameters. In over a decade of work, results have included demonstration of signal validation, the development of a supervisory controller using reactivity constraints, a rule-based controller, closed-form laws for the time-optimal trajectory-tracking of reactor power, the on-line reconfiguration of control laws, automated power increases from subcritical, and the use of various forms of feedback. Parallels between control strategies for reactors characterized by spatial dynamics and control of multi-modular reactors have also been studied.

Space Science also benefits from the Research Center with studies to determine the feasibility of low-temperature annealing of radiation-induced defects in electronic components such as will be used on a spacecraft for interplanetary missions of several years duration, and an upcoming study to investigate thermionic energy conversion in spacecraft reactors.

Neutron activation analysis and track-etch techniques are being used in Earth Sciences to investigate fundamental questions about the earth from meteorite composition, lava characteristics, and crack growth in granitic rock to continental drift. Neutron activation is also being used to study the movements and trace the origins of atmospheric pollutants.

North Carolina State University

Since 1973 the university's reactor has been used to support "Research Reactor Training" for local utilities' training of licensed reactor operators. Newly available in 1990 are training programs for individuals in the industrial community, such as engineers, supervisors, and maintenance personnel, to strengthen their understanding of how a power reactor operates. Representative of the research uses of the university's reactor are the (1) *Irradiation of Reactor Vessel Steels Project* for long term irradiation performed in specially designed baskets in the reactor, a project seeking a better understanding of degradation of the physical properties of steel in the reactor vessels at nuclear power plants; (2) *Synergistic Effects on Carbon Limiters Project* to assess synergistic effects of both neutron exposure and ion bombardment to carbon limiters in fusion reactors by providing long term irradiation of carbon samples; (3) *Neutron Activation Analysis* in many quantitative analysis needs such as environmental monitoring, forensic and criminal work, certification of material purity, rare-earth tagging for study of marine larval dispersion, analysis of mercury in fish tissue, analysis of fossil power plant reservoirs for selenium, and industrial tagging; and (4) *Neutron Depth Profiling Project* consisting of characterization studies of borosilicate glass films on silicon wafers.

Reed College

Reed College is the only educational institution in the United States to operate a reactor without a graduate or engineering program. Although under the Chemistry Department, the reactor is used by six faculty for classes in physics, natural science, and art history, as well as chemistry. Undergraduate and faculty research involves about 5 students each year, however, in the last 2 years approximately 20 faculty members from 11 additional colleges and universities have used the reactor facility for classes or research in the fields of biology, chemistry, physics, environmental science, forensic science and art history. Each year as many as 20 high school students use the facility for classes and research. A non-credit, semester seminar series on "reactor, radiation and the environment" is offered to the public. Between 30 and 50 people attend it each year, two-thirds of them not affiliated with Reed College.

University of Illinois-Urbana

The University of Illinois Nuclear Reactor Laboratory is a two-reactor facility, using the Advanced TRIGA and LOPRA reactors. Neutron Activation Analysis, materials damage studies and nuclear pumped laser research are the research foci of the facility, in addition to its teaching goals.

University of Missouri-Rolla

The primary uses of the reactor at the Rolla campus of the University of Missouri are education and training of graduate and undergraduate students and nuclear-related research. The reactor is used mostly by students from the fields of nuclear engineering, chemistry, life science, and physics. In addition, about 540 students and instructors from other institutions use the reactor through the University Reactor Sharing Program.

University of New Mexico

Four research projects have been carried out using the AGN–201M reactor over the past seven years. One of the major research projects involves measurement of basic physics parameters in a highly thermal system. No other thermal facility system has the flexibility and low intrinsic source strength required for this research. This feature is unique to the university facilities. A second project is a small sample reactivity measurement technique that is being applied to geologic samples to determine their thermal neutron cross sections and relative water content. This work has application in both the oil well core logging industry and in the waste disposal area. In a third project, foils of different materials are activated to determine their responses to thermal neutrons and to analyze content, particularly with respect to impurities that may be present. A recent doctoral research project examined the role of fuzzy logic controllers in nuclear reactor control. The conclusion was that fuzzy logic controllers appear to be feasible and useful when applied to rod positioning and timing.

University of Rhode Island

Rhode Island Nuclear Science Center has a long history of conducting environmental research. The University of Rhode Island Graduate School of Oceanography uses the reactor to perform neutron activation analysis on environmental samples collected from locations all over the globe. Important research discoveries in acid rain, geology, and environmental pollution have been achieved over the years because of the availability of the reactor. The URI physics department conducts extensive neutron scattering experiments at the reactor and usually has several post-doctoral researchers at the facility on a full time basis. As the only nuclear facility in the state, RINSC provides a significant number of tours to students from high schools and universities. The positive uses of nuclear technology in environmental and materials research can be observed on a first hand basis.

University of Texas

Research currently under way at the Nuclear Engineering Teaching Lab includes the (1) *Texas Cold Neutron Source Project* for the development of a neutron source with low neutron energies for research in prompt gamma activation and scattering; (2) *Neutron Depth Profiling Project* for the measurement of boron and other (n,a) reactions to determine depth concentrations in various materials such as glass and silicon; (3) *Neutron Capture Therapy Project* for measurements of the dose to head phantoms from the neutron activation of gadolinium; (4) various *Neutron Activation Projects* in support of investigators, including irradiation of biological fluids, geological samples, and others; and (5) *Digital Reactor Control Project* for the development of an artificial intelligence software tool to provide software functional diversity.

University of Utah

The program at the University of Utah is multidisciplinary in nature, allowing researchers in a variety of fields to discover the potential of reactor use. The reactor is used mostly by nuclear engineers, mechanical engineers, chemical engineers, and electronic engineers.

[FR Doc. 93–23836 Filed 9–28–93; 8:45 am]

BILLING CODE 7590-01-P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 931

[No. 93–73]

Modification of Definition of Deposits in Banks or Trust Companies

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board (Board) is proposing to amend the definition of "deposits in banks or trust companies," contained in its regulations, to include the sale of federal funds to a bank or trust company. The proposed change is intended to enable the Federal Home Loan Banks (FHLBanks) to include sales of federal funds to banks and trust companies in the category of investments eligible to fulfill the FHLBanks' statutory liquidity requirement. The proposed change also clarifies that for purposes of definition, the term "bank" does not include a savings association.

DATES: Comments on this proposed rule must be received on or before November 29, 1993.

ADDRESSES: Comments may be mailed to: Executive Secretariat, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Brandon B. Straus, Attorney-Advisor, Office of Legal and External Affairs, (202) 408–2589, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

The Federal Home Loan Bank Act (Bank Act), see 12 U.S.C. 1421 *et seq.*, authorizes the FHLBanks to accept deposits from financial institutions that are members of the FHLBank System. See 12 U.S.C. 1431(e)(1). Section 11(g) of the Bank Act requires the FHLBanks to maintain investments equal to the amount of these deposits in the form of, among other things, "deposits in banks or trust companies." See 12 U.S.C. 1431(g). Section 931.5 of the Board's regulations defines "deposits in banks or trust companies" as including: a deposit in another FHLBank, a demand account of a FHLBank with a Federal Reserve Bank, or a deposit in such other depository as the FHLBank's board of directors may designate which, unless otherwise authorized, is a member of the Federal Reserve System or the Federal Deposit Insurance Corporation (FDIC).

II. Analysis of the Proposed Rule

The proposed rule amends § 931.5 to expressly include sales of federal funds to banks and trust companies in the category of investments that the FHLBanks may use to fulfill the liquidity requirement in section 11(g) of the Bank Act. The liquidity requirement ensures that the FHLBanks maintain sufficient liquid investments to make liquidity advances to their members. Among the eligible investments set forth in section 11(g) are "deposits in banks or trust companies." 12 U.S.C. 1431(g). Since sales of federal funds are highly liquid investments that are essentially equivalent to inter-bank deposits, the Board believes that they constitute investments that may be considered "deposits in banks or trust companies" within the meaning of section 11(g).

For purposes of this proposed rule, a sale of federal funds means either a conventional federal funds transaction or a correspondent-respondent federal funds transaction. A conventional sale of federal funds would involve the unsecured sale of funds held by a FHLBank in an account maintained at its district Federal Reserve Bank to a bank in need of additional funds to meet its legal reserve requirement.[1] A correspondent-respondent federal funds sale would involve the unsecured sale of funds directly from a FHLBank (the respondent) to a correspondent bank in need of funds to meet its legal reserve requirement.

The proposed rule also changes the current reference to deposits in depositories that are members of the Federal Reserve System or the FDIC. The proposed rule refers to deposits in, or sales of federal funds to, banks, as defined in section 3 of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. 1813, or trust companies that are members of the Federal Reserve System or the FDIC. This change is being made in order to conform § 931.5 to changes in the structure of the deposit insurance system made by the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), Public Law No. 101–73, 103 Stat. 183 (1989). In particular, this change is intended to make clear that deposits in, and sales of federal funds to, savings associations, as defined in section 3 of the FDIA, 12 U.S.C. 1813, are not included in the definition of "deposits in banks or trust companies."

Prior to the enactment of FIRREA, only deposits in banks could be insured by the FDIC. Therefore, prior to FIRREA, the reference in § 931.5 to deposits in members of the FDIC could be read only to refer to deposits in bank. Thus, § 931.5 reflected the statutory requirement that deposits in banks or trust companies, but not in savings associations, are investments eligible to meet the liquidity requirement of section 11(g) of the Bank Act. See 12 U.S.C. 1431(g).

FIRREA transferred the responsibility for insuring deposits in savings associations to the FDIC. See 12 U.S.C. 1821. Therefore, subsequent to the enactment of FIRREA, it is possible that § 931.5 could be read erroneously to include deposits in savings associations within the definition of "deposits in banks or trust companies."

In order to make clear that deposits in, and sales of federal funds to, banks and trust companies, but not savings associations, are included in the definition of "deposits in banks or trust companies," the proposed rule refers specifically to deposits in, and sales of federal funds to, banks, as defined in section 3 of the FDIA, 12 U.S.C. 1813, and trust companies.

The proposed rule continues to provide that "deposits in banks or trust companies" includes deposits in, or sales of federal funds to, such banks and trust companies as are designated by a FHLBank's board of directors, which, unless otherwise authorized, are members of the Federal Reserve System or the FDIC.

III. Regulatory Flexibility Act

This proposed rule does not impose any additional regulatory requirements on small entities. Therefore, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Board hereby certifies that this proposed rule, as promulgated, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 931

Banks, banking, Federal home loan banks.

Accordingly, chapter IX, title 12, part 931, Code of Federal Regulations is hereby proposed to be amended as follows:

[1] Section 19(b)(2)(A) of the Federal Reserve Act requires depository institutions to maintain reserves against transaction accounts at their Federal Reserve Bank as prescribed by the Board of Governors of the Federal Reserve System for the purpose of implementing monetary policy. *See* 12 U.S.C. 461(b)(2)(A) (1988). Depository institutions meet these legal reserve requirements by either maintaining accounts with their district Federal Reserve Bank or by holding cash in vaults. These reserves are commonly referred to as "federal funds. A depository institution with excess reserves may sell the excess to another depository institution in need of additional funds to meet its legal reserve requirements.

PART 931—DEFINITIONS

1. The authority citation for part 931 continues to read as follows:

Authority; 12 U.S.C. 1422a, 1422b, 1427.

2. Section 931.5 is proposed to be amended to read as follows:

§ 931.5 Deposits in banks or trust companies.

Includes:

(a) A deposit in another Bank;

(b) A demand account of a Bank with a Federal Reserve Bank; and

(c) A deposit in, or a sale of federal funds to, such bank (as defined in 12 U.S.C. 1813) or trust company, as the Bank's board of directors may designate which, unless otherwise authorized, is a member of the Federal Reserve System or the Federal Deposit Insurance Corporation.

By the Federal Housing Finance Board.

Dated: September 22, 1993.

Daniel F. Evans, Jr.,

Chairman.

[FR Doc. 93-23825 Filed 9-28-93; 8:45 am]

BILLING CODE 6725-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-NM-116-AD]

Airworthiness Directives; de Havilland Model DHC-8-300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain de Havilland Model DHC-8-300 series airplanes. This proposal would require modifying the airplane fire detection system and revising the Airplane Flight Manual (AFM) to include procedures related to operating the system. This proposal is prompted by several oil fires in the inter compressor case (ICC) assembly. The actions specified by the proposed AD are intended to prevent severe structural damage to the airplane due to an internal engine fire within the ICC.

DATES: Comments must be received by November 24, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-116-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Richard Fiesel, Aerospace Engineer, Propulsion Branch, ANE-174, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11582; telephone (516) 791-7422; fax (516) 791-9024.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93-NM-116-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-116-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain de Havilland Model DHC-8-300 series airplanes. Transport Canada Aviation advises that there have been several oil fires within the inter compressor case (ICC) installed on Pratt & Whitney Canada PW100 series engines. The fires were undetected by the flight crew until the fires were no longer contained by the ICC. Subsequent investigation revealed that the fires were either low intensity or high intensity in nature. The low intensity fires were caused by engine oil leaking from various sources into the ICC assembly, and the high intensity torching fire was caused by oil leaking from an adjacent failed bearing. An oil fire internal to the engine, if not readily detected by the flight crew, could breach the ICC, which could cause severe structural damage to the airplane.

De Havilland Model DHC-8-300 series airplanes are equipped with Pratt & Whitney Canada PW100 series engines and, therefore, are susceptible to such engine ICC fires.

The subject Pratt & Whitney Canada series engines are also installed on other airplane models, including British Aerospace Model ATP airplanes. The FAA previously issued AD 92-18-10, Amendment 39-8354 (57 FR 40837, September 8, 1992), to address the unsafe condition presented by these oil fires internal to the ICC on Pratt & Whitney PW126 series engines. That AD, which is applicable to certain British Aerospace Model ATP airplanes, requires installing an ICC fire detection system, and revising the Airplane Flight Manual (AFM) to provide the flight crew with operating procedures associated with the ICC fire detection system.

De Havilland has issued Service Bulletin S.B. 8-26-14, dated March 6, 1992, that describes procedures for modifying the engine fire detection system. This modification entails replacing the existing air switching valve-to-rear inlet case sealing air tube assembly with a similar tube assembly featuring an integral fire detector. Additionally, a wiring assembly is connected to the existing fire detection

loop in the nacelle. Incorporation of an engine mounted fire detection system, which is connected to the existing airplane fire detection system, will provide advance warning to the flight crew in the event of an internal engine fire within the ICC. (This service bulletin includes Pratt & Whitney Canada Service Bulletin PW100-72-21113, dated February 21, 1992, for additional service information.) Transport Canada Aviation classified this service bulletin as mandatory and issued Canadian Airworthiness Directive CF-92-06R1, dated April 8, 1993, in order to assure the continued airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require installing an ICC fire detection system, connecting the ICC fire detection system to the airplane fire detection system, and revising the AFM to provide the flight crew with operating procedures associated with the ICC fire detection system. The installation would be required to be accomplished in accordance with the service bulletin described previously.

This is considered interim action. Pratt & Whitney Canada is currently developing a modification of the Pratt & Whitney Canada PW100 series engines that will provide a more reliable bearing, and will effectively preclude an ICC fire resulting from a bearing failure. Once such modification is developed, approved, and available, the FAA may consider further rulemaking.

The FAA estimates that 19 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 9 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $985 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $28,120, or $1,480 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

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 the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13—[Amended]

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

De Havilland, Inc.: Docket 93-NM-116-AD.

Applicability: Model DHC-8-301, -311, and -314 series airplanes, serial numbers 100 through 332 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent severe structural damage to the airplane due to an internal engine fire within the inter compressor case, accomplish the following:

(a) Within 90 days after the effective date of this AD, accomplish paragraphs (a)(1), (a)(2), and (a)(3) of this AD;

(1) Install an inter compressor case (ICC) fire detection system in accordance with de Havilland Service Bulletin S.B. 8-26-14, dated March 6, 1992.

(2) Connect the ICC fire detection system to the airplane fire detection system in accordance with de Havilland Service Bulletin S.B. 8-26-14, dated March 6, 1992.

(3) Revise Section 4, "Abnormal Procedures", Page 4-10-1, of the FAA-approved Airplane Flight Manual (AFM), by adding the following steps immediately after step 1 of paragraph 4-10, "Engine Fire Detection System Failures". This may be accomplished by inserting a copy of this AD in the AFM.

"For aircraft incorporating de Havilland Modification 8/1835

2. FAULT A advisory light illuminates—Land as soon as practicable."

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

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

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

Issued in Renton, Washington, on September 23, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-23827 Filed 9-28-93; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 39

[Docket No. 93-NM-108-AD]

Airworthiness Directives; Lockheed Model L-1011 Series Airplanes Equipped With Rolls-Royce Model RB211-524 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Lockheed Model L-1011 series airplanes. This proposal would require modifying the engine high speed gearboxes. This proposal is prompted by

a fire in the engine high speed gearbox due to failure of the roller bearing. The actions specified by the proposed AD are intended to prevent a fire in the engine high speed gearbox, and to ensure that if a fire occurs, it is readily detected by the flight crew.

DATES: Comments must be received by November 24, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-108-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Lockheed Western Export Company, Dept. 693, Zone 0755, 86 South Cobb Drive, Marietta, Georgia 30063; or from Rolls-Royce plc, Technical Publications Department, P.O. Box 17, Parkside, Coventry, England CV1 2LZ. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Suite 210C, 1669 Phoenix Parkway, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Flight Test Branch, ACE-160A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Suite 210C, 1669 Phoenix Parkway, Atlanta, Georgia 30349; telephone (404) 991-3915; fax (404) 991-3606.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93-NM-108-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-108-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

An operator has reported that an oil fire occurred in a high speed gearbox on a Rolls-Royce RB211-524 series engine installed on a Lockheed Model L-1011 series airplane. In this incident, shortly after the airplane reached the top of climb, the flight crew noticed an increase of the oil temperature in the number 3 engine, and a decrease in the oil pressure in that engine. Consequently, the flight crew shut down the engine, and landed the airplane without incident. During this incident, the flight crew did not detect any fire warning in the cockpit. (Lockheed Model L-1011 series airplanes equipped with Rolls Royce RB211-524 series engines are equipped with either Walter Kidde or Graviner fire detection systems.) Subsequent inspection of the gearbox revealed that the oil fire inside the engine high speed gearbox was caused by failure of the roller bearing. It was also determined that the fire had burned a hole through the engine high speed gearbox in the vicinity of the breather rotor. Failure of a roller bearing in the engine high speed gear box, could cause a fire internal to the gearbox, which could eventually breach the engine breather duct and potentially breach the gearbox.

The cause of this fire (failure of the roller bearing) is consistent with the cause of a number of fires that had occurred previously on Lockheed Model L-1011 series airplanes equipped with Rolls-Royce RB211-22B series engines. The FAA previously issued AD 87-07-10, Amendment 39-5597 (52 FR 10736, April 3, 1987), to address the unsafe condition presented by these gearbox fires on these airplanes. That AD requires installation of a special fire sensor loop.

Lockheed Model L-1011 series airplanes equipped with Rolls-Royce RB211-524 series engines were not subject to AD 87-07-10, because the thicker gearbox housings on the RB211-524 series engine were considered, at that time, to be adequate in preventing bearing failure that could cause an oil fire. However, the fact that an oil fire has occurred in the high speed gearbox on a Rolls-Royce RB211-524 series engine installed on a Model L-1011 series airplane is positive indication that the thicker gearbox housing does not prevent roller bearing failure, as previously believed. Roller bearing failure could lead to an oil fire within the gearbox.

The FAA has reviewed and approved the following service bulletins:

1. Lockheed Service Bulletin 093-26-039, dated November 11, 1992, that describes procedures for installing the number 7 fire detection system sensor and rail assembly on the high speed gearbox on the number 1, number 2, and number 3 engines. (This service bulletin references Rolls-Royce Service Bulletin RB.211-72-9544, Revision 1, dated June 26, 1992, and Rolls-Royce Service Bulletin RB.211-72-9545, dated June 26, 1992, for additional service information.)

2. Rolls-Royce Service Bulletin RB.211-72-4666, Revision 4, dated, May 16, 1986, that describes procedures for installing a new vent tube in the gear compartment of the high speed gearbox on the number 1, number 2, and number 3 engines. Such installation would direct the main engine vent air to exhaust towards the top of the gearbox, thus ensuring that any debris carried by the vent air is discharged overboard via the gearbox breather without contaminating the gearbox bearings. By repositioning the vent air exit, the ratio of the oil/air mixture would be beyond the normal limits of combustion, thus reducing the possibility of internal fires should a failed bearing overheat. (Revision 3 of this service bulletin was referenced in AD 87-07-10.)

3. Lockheed Service Bulletin 093-71-067, Revision 2, dated December 12, 1988, that describes procedures for modifying the high speed gearbox breather duct installed on the number 2 engine. This modification entails replacing the aluminum sections with steel and the flex section with fire-resistant material. Such modification would allow the gearbox breather duct to be more fire-resistant in the event of roller bearing failure and consequent fire. (Revision 1 of this service bulletin was referenced in AD 87-07-10.)

Since an unsafe condition has been identified that is likely to exist or

develop on other products of this same type design, the proposed AD would require installation of an additional fire detection system on the high speed gearbox installed on the number 1, number 2, and number 3 engines; installation of a new vent tube in the gear compartment of the high speed gearbox installed on the number 1, number 2, and number 3 engines; and modification of the high speed gearbox breather duct installed on the number 2 engine. The actions would be required to be accomplished in accordance with the service bulletins described previously.

There are approximately 92 Lockheed Model L-1011 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 24 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 18 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. If the airplane is equipped with the Walter Kidde fire detection system, required parts would cost approximately $12,600 per airplane. If the airplane is equipped with the Graviner fire detection system, required parts would cost approximately $18,600 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be between $326,160 and $470,160, or between $13,590 and $19,590 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

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 the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

Lockheed: Docket 93-NM-108-AD.

Applicability: Model L-1011 series airplanes, equipped with Rolls-Royce Model RB211-524 series engines; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a fire in the engine high speed gearbox, and to ensure that if a fire occurs, it is readily detected by the flight crew, accomplish the following:

(a) Within the next 16,000 flight hours after the effective date of this AD, or within 48 months after the effective date of this AD, whichever occurs first, accomplish paragraphs (a)(1), (a)(2), and (a)(3) of this AD:

(1) Install an additional fire detection system on the high speed gearbox on the number 1, number 2, and number 3 engines, in accordance with Lockheed Service Bulletin 093-26-039, dated November 11, 1992.

(2) Install a new vent tube in the gear compartment of the high speed gearbox on the number 1, number 2, and number 3 engines, in accordance with Rolls-Royce Service Bulletin RB.211-72-4666, Revision 4, dated May 16, 1986.

Note 1: Installation of a new vent tube in accordance with Rolls-Royce Service Bulletin RB.211-72-4666, Revision 3, dated October 14, 1977, prior to the effective date of this AD, is considered acceptable for compliance with this AD.

(3) Modify the breather duct of the high speed gearbox on the number 2 engine, in accordance with Lockheed Service Bulletin 093-71-067, Revision 2, dated December 12, 1988.

Note 2: Modification of the breather duct in accordance with Lockheed Service Bulletin 093-71-067, Revision 1, dated April 1, 1986, prior to the effective date of this AD, is considered acceptable for compliance with this AD.

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

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

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

Issued in Renton, Washington, on September 23, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-23826 Filed 9-28-93; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 39

[Docket No. 93-NM-20-AD]

Airworthiness Directives; McDonnell Douglas Model MD-11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD-11 series airplanes. This proposal would require visual inspection to detect inward buckling of the left and right main landing gear (MLG) pistons, and modification or replacement of the rebound check valves with new valves. If inward buckling is detected, this proposal would also require replacement of the MLG piston with a serviceable piston. This proposal is prompted by failures of the MLG piston on Model DC-10 series airplanes. The actions specified by the proposed AD are intended to prevent failure of the MLG piston and the subsequent reduced controllability of the airplane during landing.

DATES: Comments must be received by November 24, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-20-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–121L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5238; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–20–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–20–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Several operators have reported that the main landing gear (MLG) piston on several McDonnell Douglas Model DC–10–10 series airplanes have failed. One incident had resulted in the loss of the MLG. Subsequent investigation revealed that the piston had buckled and failed. These failures have been attributed to high differential pressures across the piston wall, which can develop when the airplane descends at a high rate and rebounds during landings. These conditions could cause the piston to buckle inwardly at the thin wall section between the upper bearing and chrome plated areas.

On December 12, 1992, the FAA issued AD 92–27–18, Amendment 39–8453 (58 FR 5259, January 21, 1993), applicable to certain DC–10 series airplanes to require visual inspection of the left and right MLG pistons to detect inward buckling, and replacement of the MLG piston, if necessary. That AD also requires either modification or replacement of the rebound check valve.

Since the issuance of that AD, McDonnell Douglas has re-examined the design cases for the MLG pistons that are installed on the Model MD–11 series airplanes. Structurally, the MLG piston assemblies on Model DC–10 series airplanes are similar to those installed on Model MD–11 series airplanes. The FAA has reviewed the results of this re-examination and has determined that the MLG pistons installed on McDonnell Douglas Model MD–11 series airplanes may also be subject to buckling and failure due to excessive rebound chamber pressure. Piston buckling and the resultant MLG failure, if not corrected, could result in reduced controllability of the airplane during landing.

The FAA has reviewed and approved McDonnell Douglas Service MD–11 Bulletin 32–19, Revision 1, dated August 12, 1993, that describes procedures for performing a visual inspection to detect inward buckling of the left and right MLG pistons, replacement of the MLG pistons with serviceable pistons, and modification and replacement of the rebound check valves with new valves. This modification entails increasing the number of orifices in the rebound check valve, which will reduce the rebound pressure during piston extension, and subsequently, reduce the risk of piston buckling.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require visual inspection to detect inward buckling of the left and right MLG pistons, and modification or replacement of the rebound check valves with new valves. If inward buckling is detected, this AD would also require replacement of the MLG pistons with serviceable pistons. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 63 Model MD–11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 22 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 9.5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $1,251 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $39,017, or $1,773.50 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

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 the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 93-NM-20-AD.

Applicability: Model MD-11 series airplanes, as listed in McDonnell Douglas MD-11 Service Bulletin 32-19, Revision 1, dated August 12, 1993 airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the main landing gear (MLG) piston and the subsequent reduced controllability of the airplane during landing, accomplish the following:

(a) Within 2 years after the effective date of this AD, perform a visual inspection to detect inward buckling of the left and right MLG pistons, in accordance with McDonnell Douglas MD-11 Service Bulletin 32-19, Revision 1, dated August 12, 1993.

(1) If any piston is found to be buckled inwardly, prior to further flight, accomplish the requirements of paragraphs (a)(1)(i) and (a)(1)(ii) of this AD, in accordance with McDonnell Douglas MD-11 Service Bulletin 32-19, Revision 1, dated August 12, 1993:

(i) Replace that MLG piston with a serviceable piston; and

(ii) Modify or replace the rebound check valves with new valves.

(2) If no piston is found to be buckled inwardly, prior to further flight, modify or replace the rebound check valves with new valves in accordance with McDonnell Douglas MD-11 Service Bulletin 32-19, Revision 1, dated August 12, 1993.

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

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

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

Issued in Renton, Washington, on September 23, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-23830 Filed 9-28-93; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 71

[Airspace Docket No. 93-ASO-9]

Proposed Alteration of Class E Airspace; Fort Pierce

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; correction; extension of comment period.

SUMMARY: This action corrects an error in the airspace description for the Fort Pierce, FL Class E airspace extension published in a notice of proposed rulemaking on August 3, 1993 (58 FR 41212), Airspace Docket No. 93-ASO-9. As a result of this correction, the comment period for this proposal is extended an additional 45 days until November 15, 1993.

DATES: Comments must be received on or before November 15, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 93-ASO-9, Manager, System Management Branch, ASO-590, P.O. Box 20636, Atlanta, Georgia 30320.

FOR FURTHER INFORMATION CONTACT: Armando Castro, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 93-18453, Airspace Docket No. 93-ASO-9, published on August 3, 1993 (58 FR 41212) proposed to establish a Class E extension to the Class D airspace for the St. Lucie County International Airport, Fort Pierce, FL. An error was discovered when a portion of the description was inadvertently omitted from this notice. This action corrects that error, and extends the comment period for 45 more days.

Correction to the Notice of Proposed Rulemaking

Accordingly, pursuant to the authority delegated to me, the description for the Fort Pierce, FL Class E airspace extension, as published in the Federal Register on August 3, 1993 (58 FR 41212), (Federal Register Document No. 93-18453; page 41213, third column) is corrected in the amendment to the incorporation by reference in 14 CFR 71.1 as follows:

§ 71.1 [Corrected]

Para. 6004 Class E airspace designated as an extension to a Class D surface.

* * * * *

ASO FL E4 Fort Pierce, FL [Corrected]

Fort Pierce, St. Lucie County International Airport, FL (lat. 27°29'42" N, long. 80°22'06" W)

Vero Beach VORTAC (lat. 27°40'42" N, long. 80°29'23" W)

Fort Pierce NDB (lat. 27°29'12" N, long. 80°22'24" W)

That airspace extending upward from the surface within 1.7 miles each side of the Vero Beach VORTAC 150° radial extending from the 4.2-mile radius of the St. Lucie County International Airport to 7 miles southeast of the Vero Beach VORTAC, within 2 miles each side of the 300° bearing from the Fort Pierce NDB, extending from the 4.2-mile radius of the airport to 7 miles northwest of the NDB, within 2 miles each side of the 060° bearing from the Fort Pierce NDB, extending from the 4.2-mile radius of the airport to 7 miles northeast of the NDB, excluding that within the Vero Beach FL, Class D airspace area. This airspace is effective during the specific days and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in East Point, Georgia, on September 15, 1993.

Walter E. Denley,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 93-23881 Filed 9-28-93; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AG59

Veterans Education; Clarification of Eligibility Requirements for the Montgomery GI Bill—Active Duty

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rules.

SUMMARY: Generally, someone who receives a commission upon graduating from a service academy or who receives

a commission upon completion of a program of educational assistance under the Reserve Officers Training Corps Scholarship Program is not eligible for educational assistance under the Montgomery GI Bill—Active Duty. However, this does not apply to those who already had established entitlement under this program before being commissioned. This proposal will make this policy clear to the public.

DATES: Comments must be received on or before October 29, 1993. Comments will be available for public inspection until November 8, 1993.

ADDRESSES: All written comments concerning these proposed regulations should be addressed 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 170 of the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until November 8, 1993.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, 202-233-2092.

SUPPLEMENTARY INFORMATION: Generally, someone who, after December 31, 1976, receives a commission upon graduating from a service academy or who receives a commission upon completion of a program of educational assistance under the Reserve Officers Training Corps Scholarship Program is not eligible for educational assistance under the Montgomery GI Bill—Active Duty. However, this does not apply to those who already had established entitlement under this program before being commissioned.

For example, there have been instances where someone established entitlement under the Montgomery GI Bill—Active Duty by entering active duty as an enlisted person after June 30, 1985; having his or her pay reduced by $1200; and serving for at least two years. Then the servicemember was chosen to attend a service academy. Upon graduation from the academy the individual sought educational assistance under the Montgomery GI Bill—Active Duty. By amending the appropriate regulations it will be clear that these individuals maintain their eligibility for educational assistance.

The Department of Veterans Affairs has determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no 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 Secretary of Veterans Affairs has certified that these amended regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. This certification can be made because the amended regulations directly affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Department of Veterans Affairs finds that good cause exists for making the amendments to §§ 21.7042 and 21.7044, when issued as a final rule, like the provisions of law they implement, retroactively effective on July 1, 1985.

It is necessary to make the effective date of the final regulations July 1, 1985. That date is the first date anyone could qualify for educational assistance under the Montgomery GI Bill—Active Duty. An effective date of July 1, 1985, will ensure that everyone who has filed a claim in the past and to whom these regulations apply would qualify for educational assistance.

The Catalog of Federal Domestic Assistance number for the program affected by this proposal is 64.124.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: August 26, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 21, subpart K is proposed to be amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart K—All Volunteer Force Educational Assistance Program (New GI Bill)

1. The authority citation for part 21, subpart K continues to read as follows:

Authority: 38 U.S.C. chapter 30, Pub. L. 98–525; 38 U.S.C. 501(a).

2. Section 21.7042 is amended by revising the introductory text in paragraph (f)(2); and adding paragraph (f)(3) and its authority citation to read as follows:

§ 21.7042 Basic eligibility requirements.

* * * * *

(f) *Restrictions on establishing eligibility.* * * *

(2) Except as provided in paragraph (f)(3) of this section, an individual is not eligible for educational assistance under 38 U.S.C. ch. 30, if after December 31, 1976, he or she receives a commission as an officer in the Armed Forces upon—

* * * * *

(3) Paragraph (f)(2) of this section does not apply to a veteran who has met the requirements for educational assistance under paragraph (a), (b), or (c) of this section before receiving a commission in the Armed Forces upon graduation from the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, the Coast Guard Academy; or upon completion of a program of educational assistance under 10 U.S.C. 2107 (the Reserve Officers Training Corps Scholarship Program).

(Authority: 38 U.S.C. 3011, 3012, 3018)

* * * * *

3. Section 21.7044 is amended by revising paragraph (d), introductory text, and adding paragraph (e) and its authority citation to read as follows:

§ 21.7044 Persons with 38 U.S.C. ch. 34 eligibility.

* * * * *

(d) *Restrictions on establishing eligibility.* Except as provided in paragraph (e) of this section, an individual, who would otherwise be eligible for educational assistance under paragraphs (a) or (b) of this section, is not eligible for educational assistance under 38 U.S.C. ch. 30, if after December 31, 1976, he or she receives a commission as an officer in the Armed Forces—

* * * * *

(e) *Exception to restrictions on establishing eligibility.* Paragraph (d) of this section does not apply to a veteran

who has met the requirements for educational assistance under paragraph (a) or (b) of this section before receiving a commission as an officer in the Armed Forces upon graduation from the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, or the Coast Guard Academy; or upon completion of a program of educational assistance under 10 U.S.C. 2107 (the Reserve Officers Training Corps Scholarship Program).

(Authority: 38 U.S.C. 3011, 3012, 3018)

[FR Doc. 93-23721 Filed 9-28-93; 8:45 am]

BILLING CODE 8320-01-U

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38 CFR Part 36

RIN 2900-AF39

Loan Guaranty: Credit Underwriting Standards and Procedures for Processing VA Guaranteed Loans

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulatory amendments.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its loan guaranty regulations by updating the credit underwriting standards and procedures for processing VA guaranteed home loans. Updating the standards and procedures to keep pace with current economic conditions will increase the likelihood that a veteran obtaining a VA guaranteed loan will be able to repay the loan.

DATES: Comments must be received on or before October 29, 1993.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to the Secretary of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written comments will be available for public inspection in room 172, Veterans Service Unit, at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until November 8, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Caden, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, Washington, DC 20420, (202) 233-3042.

SUPPLEMENTARY INFORMATION: The credit underwriting standards and procedures for processing VA guaranteed home loans are incorporated in the regulations at 38 CFR 36.4206 and 36.4337. VA proposes to amend section 36.4337 in order to update and clarify these standards and procedures. These changes will conform with changes first announced in Veterans Benefits Administration Circular 26-91-19, dated May 17, 1991.

VA proposes to amend the regulations as follows: (1) By updating the figures in the residual income guidelines; (2) by requiring that income tax returns be submitted with applications for borrowers who are self-employed, paid on a commission basis, employed in the building trades, or have seasonal jobs; (3) by providing more specific time frames for considering whether income from part-time employment, second jobs, overtime, self-employment, and commissions may be considered stable and reliable; (4) by adding guidelines for underwriting cases involving foreclosures and Federally-related debts; and (5) by deleting the requirement that lenders check with VA regional offices on prior VA loans. VA also proposes to delete union dues from items considered job-related expenses because these dues are part of the residual income figure.

One of the primary underwriting tools used in determining a veteran's ability to meet living expenses, including the monthly mortgage payment, is a calculation of the amount of the veteran's residual income after monthly obligations have been deducted from monthly income. Based on available statistical data, VA provides standards regarding what is recommended as the residual income for a veteran depending upon whether the amount of the loan is less than $70,000, or $70,000 or more, as well as the region in which the veteran resides. Based on recent regional data provided in the "Consumer Expenditure Survey" published by the Department of Labor, Bureau of Labor Statistics, VA proposes to increase by 8% the figures of its residual income guidelines. This increase reflects the increase in the cost of living since these figures were last revised in February, 1988.

The proposed amendments require that income tax returns be submitted with applications for borrowers who are self-employed, paid on a commission basis, or who are employed in the building trades or have other seasonal jobs. VA is proposing this requirement, which is similar to HUD, FNMA, and FHLMC guidelines, to obtain more reliable income data.

Currently the regulations provide guidelines for underwriting loans for borrowers who have been discharged in bankruptcy. VA is proposing to add similar guidelines for cases where the veteran or spouse has had a foreclosure on a prior mortgage. Also, in accordance with administrative policy set forth in OMB Circular A-129, the proposed regulations provide that an applicant for a Federally-assisted loan will not be considered a satisfactory credit risk if the applicant is presently delinquent or in default on any debt to the Federal Government. Examples of federal debts are a Small Business Administration loan, a U.S. Guaranteed Student loan, or a judgment lien against property for a debt owed the federal government.

VA proposes to add to the guidelines more specific time frames for determining when income from part-time and/or second jobs, overtime, self-employment, and commissions may be considered stable and reliable for qualifying purposes. VA also proposes to further define employment of short duration as less than 12 months. Previous guidelines were less specific. The proposed new guidelines should provide underwriters better guidance on when such income may be included as stable and reliable income for the purpose of determining whether the applicant meets VA income criteria.

At present the regulations require that when information available to the lender indicates the applicant has used VA guaranteed loan entitlement in connection with a prior loan, lenders processing loans on an automatic basis contact the VA regional office to obtain information on the status of the previous loan where information cannot be developed through the originator or holder. VA is proposing to amend the regulations to no longer require lenders to check the status of prior VA loans with regional offices. Any information about delinquencies on these loans should be available through credit bureaus as lenders are required to check the applicant's credit prior to closing loans on the automatic basis, and holders/servicers are required to report mortgage delinquencies to credit bureaus.

VA also proposes to amend the regulations to comply with a provision of the Veterans' Benefits Improvement and Health—Care Authorization Act of 1986 to allow the Secretary to waive the application of the credit underwriting standards under extraordinary circumstances. A new paragraph (b) would be added to § 36.4337 to this effect. There are also editorial changes. Former paragraph (d)(2) would be redesignated paragraph (f), and former paragraph (l) would be redesignated paragraph (k)(2). This would result in former paragraphs (b) through (m) being designated as paragraphs (c) through (n).

In the interest of clarity, VA is also proposing to amend three captions in paragraph 36.4337. The caption of

proposed paragraph (e) which presently reads *"Residual income"* would be amended to instead read *"Residual income guidelines"*; the caption of proposed paragraph (f), which presently reads *"Income"* would instead read *"Stability and reliability of income"*; and the caption for proposed paragraph (k), which presently reads *"Definitions"* would instead read *"Lender certification."*

Paperwork Reduction Act

Paragraphs (f)(6), (f)(7) and (f)(9) of Section 36.4337 of these regulations contain an information collection requirement which will result in a reporting burden. The reporting burden for this collection is estimated to average 20 minutes per response for a total of 2,062.5 hours.

The average estimated time per response includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

As requested by section 3504(h) of the Paperwork Reduction Act, the Department of Veterans Affairs is submitting to the Office of Management and Budget (OMB) a request that it approve this information collection requirement. Organizations and individuals desiring to submit comments for consideration by OMB on the proposed information collection requirement should address them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Joseph F. Lackey.

The Secretary hereby certifies that the proposed 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. These changes will not result in any major new administrative or procedural burdens on lenders or other program participants. They simply revise the criteria established by VA in determining whether home loans for veterans will be guaranteed by VA based on the veteran's income and credit history.

The Secretary has also determined that the proposed amendments are not a "major rule" within the meaning of Executive Order 12291, Federal Regulation. They will not have an annual effect on the economy of $100 million or more, and will not cause a major increase in costs or prices for consumers or individual industries, nor will they have other 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 64.114 and 64.119.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing Loan program—housing and community development, Manufactured homes, Veterans.

This amendment is proposed under the authority granted the Secretary by sections 501(a) and 3710 of title 38, United States Code.

Approved: June 9, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 36, is proposed to be amended as set forth below.

PART 36—LOAN GUARANTY

1. The authority citation for part 36 §§ 36.4300 through 36.4375 is revised to read as follows:

Authority: Sections 36.4300 through 36.4375 issued under 38 U.S.C. 501(a).

2. Section 36.4337 is revised to read as follows:

§ 36.4337 Underwriting standards, processing procedures, lender responsibility and lender certification.

(a) *Use of standards.* Except for refinancing loans guaranteed pursuant to 38 U.S.C. 3710(a)(8), the standards contained in paragraphs (c) through (j) of this section will be used to determine that the veteran's present and anticipated income and expenses, and credit history are satisfactory.

(b) *Waiver of standards.* Use of the standards in paragraphs (c) through (j) of this section for underwriting home loans will be waived only in extraordinary circumstances when the Secretary determines, considering the totality of circumstances, that the veteran is a satisfactory credit risk.

(c) *Methods.* The two primary underwriting tools that will be used in determining the adequacy of the veteran's present and anticipated income are debt-to-income ratio and residual income analysis. They are described in paragraphs (d) through (f) of this section. Ordinarily, to qualify for a loan, the veteran must meet both standards. Failure to meet one standard, however, will not automatically disqualify a veteran. The following shall apply to cases where a veteran does not meet both standards:

(1) If the debt-to-income ratio is 41 percent or less, and the veteran does not meet the residual income standard, the loan may be approved with justification, by the underwriter's supervisor, as set out in paragraph (c)(4) of this section.

(2) If the debt-to-income ratio is greater than 41 percent, (unless it is larger due solely to the existence of tax-free income which should be noted in the loan file) the loan may be approved with justification, by the underwriter's supervisor, as set out in paragraph (c)(4) of this section.

(3) If the ratio is greater than 41 percent and the residual income exceeds the guidelines by at least 20 percent the second level review and statement of justification is not required.

(4) In any case described by paragraphs (c)(1) and (c)(2) of this section, the lender must fully justify the decision to approve the loan or submit the loan to the Secretary for prior approval in writing. The lender's statement must not be perfunctory, but should address the specific compensating factors, as set forth in paragraph (c)(5), justifying the approval or submission of the loan. The statement must be signed by the underwriter's supervisor. It must be stressed that the statute requires not only consideration of a veteran's present and anticipated income and expenses, but also that the veteran be a satisfactory credit risk. Therefore, meeting both the debt-to-income ratio and residual income standards does not mean the loan is automatically approved. It is the lender's responsibility to base the loan approval or disapproval on all the factors present for any individual veteran. The veteran's credit must be evaluated based on criteria set forth in paragraph (g) of this section as well as a variety of compensating factors that should be evaluated.

(5) The following are examples of acceptable compensating factors to be considered in the course of underwriting a loan:

(i) Excellent long-term credit;

(ii) Conservative use of consumer credit;

(iii) Minimal consumer debt;

(iv) Long-term employment;

(v) Significant liquid assets;

(vi) Downpayment or the existence of equity in refinancing loans;

(vii) Little or no increase in shelter expense;

(viii) Military benefits;

(ix) Satisfactory homeownership experience;

(x) High residual income; and

(xi) Low debt-to-income ratio.

This list is not exhaustive and the items are not in any priority order. Valid

compensating factors should represent unusual strengths rather than mere satisfaction of basic program requirements. Compensating factors must be relevant to the marginality or weakness.

(d) *Debt-to-income ratio.* A debt-to-income ratio that compares the veteran's anticipated monthly housing expense and total monthly obligations to his or her stable monthly income will be computed to assist in the assessment of the potential risk of the loan. The ratio will be determined by taking the sum of the monthly Principal, Interest, Taxes and Insurance (PITI) to the loan being applied for, homeowners and other assessments such as special assessments, condominium fees, homeowners association fees, etc., and any long-term obligations divided by the total of gross salary or earnings and other compensation or income. The ratio should be rounded to the nearest two digits; e.g., 35.6 percent would be rounded to 36 percent. The standard is 41 percent or less. If the ratio is greater than 41 percent (unless it is larger due solely to the existence of tax-free income which should be noted in the loan file), the steps cited in paragraphs (c)(1) through (c)(5) of this section apply.

(e) *Residual income guidelines.* The guidelines provided in this paragraph for residual income will be used to determine whether the veteran's monthly residual income will be adequate to meet living expenses after estimated monthly shelter expenses have been paid and other monthly obligations have been met. The guidelines for residual income are based on data supplied in the Consumer Expenditure Survey (CES) published by the Department of Labor's Bureau of Labor Statistics. Regional minimum incomes have been developed for loan amounts up to $69,999 and for loan amounts of $70,000 and above. It is recognized that the purchase price of the property may affect family expenditure levels in individual cases. This factor may be given consideration in the final determination in individual loan analyses. For example, a family purchasing in a higher-priced neighborhood may feel a need to incur higher than average expenses to support a lifestyle comparable to that in their environment, whereas a substantially lower-priced home purchase may not compel such expenditures. It should also be clearly understood from this information that no single factor is a final determinant in any applicant's qualification for a VA guaranteed loan. Once the residual income has been established, other important factors must be examined. One such consideration is the amount being paid currently for rental or housing expenses. If the proposed shelter expense is materially in excess of what is currently being paid, the case may require closer scrutiny. In such cases, consideration should be given to the ability of the borrower and spouse to accumulate liquid assets, such as cash and bonds, and to the amount of debts incurred while paying a lesser amount for shelter. For example, if an application indicates little or no capital reserves and excessive obligations, it may not be reasonable to conclude that a substantial increase in shelter expenses can be absorbed. Another factor of prime importance is the applicant's manner of meeting obligations. A poor credit history alone is a basis for disapproving a loan, as is an obviously inadequate income. When one or the other is marginal, however, the remaining aspect must be closely examined to assure that the loan applied for will not exceed the applicant's ability or capacity to repay. Therefore, it is important to remember that the figures provided below for residual income are to be used as a guide and should be used in conjunction with the steps outlined in paragraphs (c) through (j) of this section. The residual income guidelines are as follows:

(1) Table of residual incomes by region (for loan amounts of $69,999 and below):

TABLE OF RESIDUAL INCOMES BY REGION

[For loan amounts of $69,999 and below]

Family size [1]	Northeast	Midwest	South	West
1	$375	$367	$367	$409
2	629	616	616	686
3	758	742	742	826
4	854	835	835	930
5	886	867	867	965

[1] For families with more than five members, add $75 for each additional member up to a family of seven.

(2) Table of residual incomes by region (for loan amounts of $70,000 and above):

TABLE OF RESIDUAL INCOMES BY REGION

[For loan amounts of $70,000 and above]

Family size [1]	Northeast	Midwest	South	West
1	$433	$424	$424	$472
2	726	710	710	791
3	874	855	855	952
4	986	964	964	1074
5	1021	999	999	1113

[1] For families with more than five members, add $80 for each additional member up to a family of seven.

(3) Geographic regions for residual income guidelines: Northeast—Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and Vermont; Midwest—Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin; South—Alabama, Arkansas, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland,

Mississippi, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, Texas, Virginia, West Virginia; West—Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming.

(4) Military adjustments: For loan applications involving an active-duty serviceperson or military retiree, the residual income figures will be reduced by a minimum of 5 percent if there is a clear indication that the borrower or spouse will continue to receive the benefits resulting from the use of facilities on a nearby military base. (This reduction applies to tables in this paragraph (e).)

(f) *Stability and reliability of income.* Only stable and reliable income of the veteran and spouse can be considered in determining ability to meet mortgage payments. Income can be considered stable and reliable if it can be concluded that it will continue during the foreseeable future.

(1) *Verification.* Income of the borrower and spouse which is derived from employment and which is considered in determining the family's ability to meet the mortgage payments, payments on debts and other obligations, and other expenses, must be verified. If the spouse is employed and will be contractually obligated on the loan, the combined income of both the veteran and spouse is considered when the income of the veteran alone is not sufficient to qualify for the amount of the loan sought. In other than community property States, if the spouse will not be contractually obligated on the loan, Regulation B, promulgated by the Federal Reserve Board pursuant to the Equal Credit Opportunity Act prohibits any request for, or consideration of information concerning the spouse (including income, employment, assets, or liabilities), except that if the applicant is relying on alimony, child support, or maintenance payments from a spouse or former spouse as a basis for repayment of the loan, information concerning such spouse or former spouse may be requested and considered (see paragraph (f)(4) of this section). In community property States, information concerning a spouse may be requested and considered in the same manner as that for the applicant. The standards applied to income of the veteran are also applicable to that of the spouse. There can be no discounting of income on account of sex, marital status, or any other basis prohibited by the Equal Credit Opportunity Act. Income claimed by an applicant that is not or cannot be verified cannot be given consideration when analyzing the loan. If the veteran or spouse has been employed by a present employer for less than 2 years, a 2-year history covering prior employment, schooling or other training must be secured. Any periods of unemployment must be explained. Employment verifications and pay stubs must be no more than 90 days old to be considered valid. For loans closed automatically, this requirement will be considered satisfied if the date of the employment verification is within 90 days of the date of the veteran's application to the lender.

(2) *Active Duty Applicants.*

(i) In the case of an active duty applicant, a military Leave & Earnings Statement is required and will be used instead of an employment verification. The statement must be no more than 90 days old and must be the original or a lender-certified copy of the original. For loans closed automatically, this requirement is satisfied if the date of the Leave and Earnings Statement is within 90 days of the date of the borrower's application to the lender.

(ii) For service members within 12 months of release from active duty one of the following is also required:

(A) Documentation that the service member has in fact already reenlisted or extended his/her period of active duty to a date beyond the 12 month period following the projected closing of the loan.

(B) Verification of a valid offer of local civilian employment following release from active duty. All data pertinent to sound underwriting procedures (date employment will begin, earnings, etc.) must be included.

(C) A statement from the service member that he/she intends to reenlist or extend his/her period of active duty to a date beyond the 12 month period following the projected loan closing date, and a statement from the service member's commanding officer confirming that the service member is eligible to reenlist or extend his/her active duty as indicated and that the commanding officer has no reason to believe that such reenlistment or extension of active duty will not be granted.

(D) Other unusually strong positive underwriting factors, such as a downpayment of at least 10 percent, significant cash reserves, or clear evidence of strong ties to the community coupled with a nonmilitary spouse's income so high that only minimal income from the active duty service member is needed to qualify.

(iii) Each active duty member who applies for a loan must be counseled through the use of VA Form 26–0592, Counseling Checklist for Military Homebuyers. Lenders must submit a signed and dated VA Form 26–0592 with each prior approval loan application or automatic loan report involving a borrower on active duty.

(3) *Income reliability.* Income received by the borrower and spouse is to be used only if it can be concluded that the income will continue during the foreseeable future and thus should be properly considered in determining ability to meet the mortgage payments. There can be no discounting of income solely because it is derived from an annuity, pension or other retirement benefit, or from part-time employment. However, unless income from overtime work and part-time or second jobs can be accorded a reasonable likelihood that it is continuous and will continue in the foreseeable future, such income should not be used. Generally, the reliability of such income cannot be demonstrated unless the income has continued for 2 years. The hours of duty and other work conditions of the applicant's primary job, and the period of time in which the applicant was employed under such arrangement must be such as to permit a clear conclusion as to a good probability that overtime or part-time or secondary employment can and will continue. Income from overtime work and part-time jobs not eligible for inclusion as primary income may, if properly verified for at least 12 months, be used to offset the payments due on debts and obligations of an intermediate term, i.e., 6 to 24 months. Such income must be described in the loan file. The amount of any pension or compensation and other income such as dividends from stocks, interest from bonds, savings accounts, or other deposits, rents, royalties, etc., will be used as primary income if it is reasonable to conclude that such income will continue in the foreseeable future. Otherwise, it may be used only to offset intermediate-term debts, as above. Also, the likely duration of certain military allowances cannot be determined, and therefore will be used only to offset intermediate-term obligations. Such allowances are: pro-pay, flight or hazard pay, and overseas or combat pay, all of which are subject to periodic review and/or testing of the recipient to ascertain whether eligibility for such pay will continue. Only if it can be shown that such pay has continued for a prolonged period and can be expected to continue because of the nature of the recipient's assigned duties, will such income be considered as primary income. For instance, flight pay verified for a pilot can be regarded as probably

continuous and thus should be added to the base pay. Income derived from service in the reserves or National Guard may be used if the applicant has served in such capacity for a period of time sufficient to evidence good probability that such income will continue. The total period of active and reserve service may be helpful in this regard. Otherwise, such income may be used to offset intermediate-term debts. There are a number of additional income sources whose contingent nature precludes their being considered as available for repayment of a long-term mortgage obligation. Temporary income items such as VA educational allowances and unemployment compensation do not represent stable and reliable income and will not be taken into consideration in determining the ability of the veteran to meet the income requirement of the governing law. As required by the Equal Opportunity Act Amendments of 1976, Public Law 94–239, income from public assistance programs is used to qualify a loan if it can be determined that the income will probably continue for a substantial fraction of the term of the loan; i.e., one-third or more. For instance, aid to dependent children being received for a 5-year old child that will continue until the child achieves majority would be used to qualify for a 30-year loan.

(4) *Alimony, child support, maintenance payments.* If an applicant chooses to reveal income from alimony, child support, or maintenance payments (after first having been informed that any such disclosure is voluntary pursuant to the Federal Reserve Board's Regulation B), such payments are considered as income to the extent that the payments are likely to be consistently made. Factors to be considered in determining the likelihood of consistent payments include, but are not limited to: whether the payments are received pursuant to a written agreement or court decree; the length of time the payments have been received; the regularity of receipt; the availability of procedures to compel payment; and the creditworthiness of the payor, including the credit history of the payor when available under the Fair Credit Reporting Act or other applicable laws. However, the Fair Credit Reporting Act (15 U.S.C. 1681(b)) limits the permissible purposes for which credit reports may be ordered, in the absence of written instructions of the consumer to whom the report relates, to business transactions involving the subject of the credit report or extensions of credit to the subject of the credit report.

(5) *Military quarters allowance.* With respect to off-base housing (quarters) allowances for service personnel on active duty, it is the policy of the Department of Defense (DoD) to utilize available on-base housing when possible. In order for a quarters allowance to be considered as continuing income, it is necessary that the applicant furnish written authorization from his or her commanding officer for off-base housing. This authorization should verify that quarters will not be made available and that the individual should make permanent arrangements for nonmilitary housing. DD Form 1747, Status of Housing Availability, is used by the Family Housing Office to advise personnel regarding family housing. The applicant's quarters allowance cannot be considered unless item b (Permanent) or d is completed on DD Form 1747, dated October 1990. Of course, if the applicant's income less quarters allowance is sufficient, there is no need for assurance that the applicant has permission to occupy nonmilitary housing provided that a determination can be made that the occupancy requirements of the law will be met. Also, authorization to obtain off-base housing will not be required when certain duty assignments would clearly qualify service personnel with families for quarters allowance. For instance, off-base housing authorizations need not be obtained for service personnel stationed overseas who are not accompanied by their families, recruiters on detached duty, or military personnel stationed in areas where no on-base housing exists. In any case in which no off-base housing authorization is obtained, an explanation of the circumstances justifying its omission must be included with the loan application except when it has been established by the VA facility of jurisdiction that the waiting lists for off-base housing are so long that it is improbable that individuals desiring to purchase off-base housing would be precluded from doing so in the foreseeable future. If stations make such a determination, a release shall be issued to inform lenders.

(6) *Commissions.* When all or a major portion of the veteran's income is derived from commissions, it will be necessary to establish the stability of such income if it is to be considered in the loan analysis for the repayment of the mortgage debt and/or short-term obligations. In order to assess the value of such income, lenders should obtain written verification of the actual amount of commissions paid to date, the basis for the payment of such commissions and when commissions are paid; i.e., monthly, quarterly, semiannually, or annually. Lenders should also obtain signed and dated individual income tax returns, plus applicable schedules, for the previous 2 years, or for whatever additional period is deemed necessary to properly demonstrate a satisfactory earnings record. The length of the veteran's employment in the type of occupation for which commissions are paid is also an important factor in the assessment of the stability of the income. If the veteran has been employed for a relatively short time, the income should not normally be considered stable unless the product or service was the same or closely related to the product or service sold in an immediate prior position. Generally, income from commissions is considered stable when the applicant has been receiving such income for at least 2 years. Less than 2 years of income from commissions cannot usually be considered stable. When an applicant has received income from commissions for less than 1 year, it will rarely be possible to demonstrate that the income is stable for qualifying purposes; such cases would require in-depth development.

(7) *Self-employment.* Generally, income from self-employment is considered stable when the applicant has been in business for at least 2 years. Less than 2 years of income from self-employment cannot usually be considered stable unless the applicant has had previous related employment and/or extensive specialized training. When an applicant has been self-employed less than 1 year, it will rarely be possible to demonstrate that the income is stable for qualifying purposes; such cases would require in-depth development. The following documentation is required for all self-employed borrowers:

(i) A profit and loss statement for the prior fiscal year (12-month accounting cycle), plus the period year to date since the end of the last fiscal year (or for whatever shorter period records may be available), and a current balance sheet showing all assets and liabilities. The profit and loss statement and balance sheet will be prepared by an accountant based on the financial records. In some cases the nature of the business or the content of the financial statement may necessitate an independent audit certified as accurate by the accountant. Depending on the situation, this data may be on the veteran and/or the business; and

(ii) Copies of signed individual income tax returns, plus all applicable

schedules for the previous 2 years, or for whatever additional period is deemed necessary to properly demonstrate a satisfactory earnings record, must be obtained. If the business is a corporation or partnership, copies of signed federal business income tax returns for the previous 2 years plus all applicable schedules for the corporation or partnership must be obtained; and

(iii) If the business is a corporation or partnership, a list of all stockholders or partners showing the interest each holds in the business will be required. Some cases may justify a written credit report on the business as well as the applicant. When the business is of an unusual type and it is difficult to determine the probability of its continued operation, explanations as to the function and purpose of the business may be needed from the applicant and/or any other qualified party with the acknowledged expertise to express a valid opinion.

(8) *Recently discharged veterans.* Loan applications received from recently discharged veterans who have little or no employment experience other than their military occupation and from veterans seeking VA-guaranteed loans who have retired after 20 years of active military duty require special attention. The retirement income of the latter veterans in many cases may not be sufficient to meet the statutory income requirements for the loan amount sought. Many have obtained full-time employment and have been employed in their new jobs for a very short time.

(i) It is essential in determining whether veterans in these categories qualify from the income standpoint for the amount of the loan sought, that the facts in respect to their present employment and retirement income be fully developed, and that each case be considered on its individual merits.

(ii) In most cases the veteran's current income or current income plus his or her retirement income is sufficient. The problem lies in determining whether it can be properly concluded that such income level will continue for the foreseeable future. If the veteran's employment status is that of a trainee or apprentice, this will, of course, be a factor. In cases of the self-employed, the question to be resolved is whether there are reasonable prospects that the business enterprise will be successful and produce the required income. Unless a favorable conclusion can be made, the income from such source should not be considered in the loan analysis.

(iii) If a recently discharged veteran has no prior employment history and the veteran's verification of employment shows he or she has not been on the job a sufficient time in which to become established, consideration should be given to the duties the veteran performed in the military service. When it can be determined that the duties a veteran performed in the service are similar or are in direct relation to the duties of the applicant's present position, such duties may be construed as adding weight to his or her present employment experience and the income from the veteran's present employment thus may be considered available for qualifying the loan, notwithstanding the fact that the applicant has been on the present job only a short time. This same principle may be applied to veterans recently retired from the service. In addition, when the veteran's income from retirement, in relation to the total of the estimated shelter expense, long-term debts and amount available for family support, is such that only minimal income from employment is necessary to qualify from the income standpoint, it would be proper to resolve the doubt in favor of the veteran. It would be erroneous, however, to give consideration to a veteran's income from employment for a short duration in a job requiring skills for which the applicant has had no training or experience.

(iv) To illustrate the provisions of this paragraph (f), it would be proper to use short-term employment income in qualifying a veteran who had experience as an airplane mechanic in the military service and the individual's employment after discharge or retirement from the service is in the same or allied fields; e.g., auto mechanic or machinist. This presumes, however, that the verification of employment included a statement that the veteran was performing the duties of the job satisfactorily, the possibility of continued employment was favorable and that the loan application is eligible in all other respects. An example of nonqualifying experience is that of a veteran who was an Air Force pilot and has been employed in insurance sales on commission for a short time. Most cases, of course, fall somewhere between those extremes. It is for this reason that the facts of each case must be fully developed prior to closing the loan automatically or submitting the case to VA for prior approval.

(9) *Employment of short duration.* The provisions of paragraph (f)(7) of this section are similarly applicable to applicants whose employment is of short duration. Such cases will entail careful consideration of the employer's confirmation of employment, probability of permanency, past employment record, the applicant's qualifications for the position, and previous training, including that received in the military service. In the event that such considerations do not enable a determination that the income from the veteran's current position has a reasonable likelihood of continuance, such income should not be considered in the analysis. Applications received from persons employed in the building trades, or in other occupations affected by climatic conditions, should be supported by documentation evidencing the applicant's total earnings to date and covering a period of not less than 1 year as well as signed and dated copies of complete income tax returns, including all schedules for the past 2 years or for whatever additional period is deemed necessary to properly demonstrate a satisfactory earnings record. If the applicant works out of a union, evidence of the previous year's earnings should be obtained together with a verification of employment from the current employer.

(10) *Rental-income.*

(i) *Multi-unit subject property.* When the loan pertains to a structure with more than a one-family dwelling unit, the prospective rental income will not be considered unless the veteran can demonstrate a reasonable likelihood of success as a landlord, and sufficient cash reserves are verified to enable the veteran to carry the mortgage loan payments (principal, interest, taxes, and insurance) without assistance from the rental income for a period of at least 6 months. The determination of the veteran's likelihood of success as a landlord will be based on documentation of any prior experience in managing rental units, or other collection activities. The amount of rental income to be used in the loan analysis will be based on the prior rental history of the units as verified by the seller's financial records (e.g., prior years' tax returns) for existing structures or, for proposed construction, the appraiser's opinion of the property's fair monthly rental. Adjustments will be applied to reduce estimated gross rental income by proper allowances for operating expenses and vacancy losses.

(ii) *Rental of existing home.* Proposed rental of a veteran's existing property may be used to offset the mortgage payment on that property, provided there is no indication that the property will be difficult to rent. If available, a copy of the rental agreement should be obtained. It is the responsibility of the loan underwriter to be aware of the condition of the local rental market. For instance, in areas where the rental market is very strong the absence of a lease should not automatically prohibit

the offset of the mortgage by the proposed rental income.

(iii) *Other rental property.* If income from rental property will be used to qualify for the new loan, the documentation required of a self-employed applicant should be obtained together with evidence of cash reserves equaling 3 months PITI on the rental property. As for any self-employed earnings (see paragraph (f)(7) of this section), depreciation claimed may be added back in as income. In the case of a veteran who has no experience as a landlord, it is unlikely that the income from a rental property may be used to qualify for the new loan.

(11) *Taxes and other deductions.* Deductions to be applied for Federal income taxes and Social Security may be obtained from the Employer's Tax Guide (Circular E) issued by the Internal Revenue Service (IRS). (For veterans receiving a mortgage credit certificate (MCC), see paragraph (f)(12) of this section.) Any State or local taxes should be estimated or obtained from charts similar to those provided by IRS which may be available in those States with withholding taxes. A determination of the amount paid or withheld for retirement purposes should be made and used when calculating deductions from gross income. In determining whether a veteran-applicant meets the income criteria for a loan, some consideration may be given to the potential tax benefits the veteran will realize if the loan is approved. This can be done by using the instructions and worksheet portion of IRS Form W-4, Employee's Withholding Allowance Certificate, to compute the total number of permissible withholding allowances. That number can then be used when referring to IRS Circular E and any appropriate similar State withholding charts to arrive at the amount of Federal and State income tax to be deducted from gross income.

(12) *Mortgage credit certificates.*

(i) The Internal Revenue Code, as amended by the Tax Reform Act of 1984, allows States and other political subdivisions to trade in all or part of their authority to issue mortgage revenue bonds for authority to issue MCCs. Veterans who are recipients of MCCs may realize a significant reduction in their income tax liability by receiving a Federal tax credit for a percentage of their mortgage interest payment on debt incurred on or after January 1, 1985.

(ii) Lenders must provide a copy of the MCC to VA with the home loan application. The MCC will specify the rate of credit allowed and the amount of certified indebtedness; i.e., the indebtedness incurred by the veteran to acquire a principal residence or as a qualified home improvement or rehabilitation loan.

(iii) For credit underwriting purposes, the amount of tax credit allowed to a veteran under an MCC will be treated as a reduction in the monthly Federal income tax. For example, a veteran having a $600 monthly interest payment and an MCC providing a 30-percent tax credit would receive a $180 (30% × $600) tax credit each month. However, because the annual tax credit, which amounts to $2,160 (12 × $180), exceeds $2,000 and is based on a 30-percent credit rate, the maximum tax credit the veteran can receive is limited to $2,000 per year (Pub. L. 98-369) or $167 per month ($2,000 ÷ 12). As a consequence of the tax credit, the interest on which a deduction can be taken will be reduced by the amount of the tax credit to $433 ($600 − $167). This reduction should also be reflected when calculating Federal income tax.

(iv) For underwriting purposes, the amount of the tax credit is limited to the amount of the veteran's maximum tax liability. If, in the example in paragraph (f)(12)(iii), the veteran's tax liability for the year were only $1,500, the monthly tax credit would be limited to $125 ($1,500 ÷ 12).

(g) *Credit.* The conclusion reached as to whether or not the borrower and spouse are satisfactory credit risks must also be based on a careful analysis of the available credit data. Regulation B (Equal Credit Opportunity Act) requires that lenders include, in evaluating creditworthiness on a veteran's request, the credit history, when available, of any account reported in the name of the veteran's spouse or former spouse which the veteran can demonstrate reflects accurately the veteran's willingness or ability to repay.

(1) *Adverse data.* If the analysis develops any derogatory credit information and, despite such facts, it is determined that the borrower and spouse are satisfactory credit risks, the basis for the decision must be explained. If a borrower and spouse have debts outstanding which have not been paid timely, or which they have refused to pay, the fact that the outstanding debts are paid after the acceptability of the credit is questioned or in anticipation of applying for new credit does not, of course, alter the fact that the record for paying debts has been unsatisfactory. With respect to unpaid debts, lenders may take into consideration a veteran's claim of bona fide or legal defenses. This is not applicable when the debt has been reduced to judgment.

(2) *Bankruptcy.* When the credit information shows that the borrower or spouse has been discharged in bankruptcy under the "straight" liquidation and discharge provisions of the bankruptcy law, this would not in itself disqualify the loan. However, in such cases it is necessary to develop complete information as to the facts and circumstances concerning the bankruptcy. Generally speaking, when the borrower or spouse, as the case may be, has been regularly employed (not self-employed) and has been discharged in bankruptcy within the last 2 or 3 years, it probably would not be possible to determine that the borrower or spouse is a satisfactory credit risk unless both of the following requirements are satisfied:

(i) The borrower or spouse has obtained credit subsequent to the bankruptcy and has met the credit payments in a satisfactory manner over a continued period, and

(ii) The bankruptcy was caused by circumstances beyond control of the borrower or spouse, e.g., unemployment, prolonged strikes, medical bills not covered by insurance. The circumstances alleged must be verified. If a borrower or spouse is self-employed, has been adjudicated bankrupt, and subsequently obtains a permanent position, a finding as to satisfactory credit risk may be made provided there is no derogatory credit information prior to self-employment, there is no evidence of derogatory credit information subsequent to the bankruptcy, and the failure of the business was not due to misconduct. A bankruptcy discharged more than 5 years ago may be disregarded. A bankruptcy discharged between 3 and 5 years ago may be given some consideration, depending upon the circumstances of the bankruptcy, and submission of evidence that the veteran has been paying his or her obligations in a timely manner.

(3) *Petition under chapter 13 of Bankruptcy Law.* A wage earner's petition under chapter 13 of the Bankruptcy Law filed by the borrower or spouse is indicative of an effort to pay their creditors. Some plans may provide for full payment of debts while others arrange for payment of scaled down debts. Regular payments are made to a court-appointed trustee over a 2- to 3-year period (or up to 5 years in some cases). When the borrowers have made all payments in a satisfactory manner, they may be considered as having reestablished satisfactory credit. When they apply for a home loan before completion of the payout period, favorable consideration may

nevertheless be given if at least three-fourths of the payments have been made satisfactorily and the Trustee or Bankruptcy Judge (Referee) approves of the new credit.

(4) *Foreclosures.*

(i) When the credit information shows that the veteran or spouse has had a foreclosure on a prior mortgage, e.g., a VA guaranteed, or HUD insured mortgage, this will not in itself disqualify the borrower from obtaining the loan. Lenders and field station personnel should refer to the preceding guidelines on bankruptcies for cases involving foreclosures. As with a borrower who has been adjudicated bankrupt, it is necessary to develop complete information as to the facts and circumstances of the foreclosure.

(ii) When VA pays a claim on a VA guaranteed loan as a result of a foreclosure, the original veteran may be required to repay any loss to the Government. In some instances VA may waive the veteran's debt, in part or totally, based on the facts and circumstances of the case. However, guaranty entitlement cannot be restored unless the Government's loss has been repaid in full, regardless of whether or not the debt has been waived, compromised, or discharged in bankruptcy. Therefore, a veteran who is seeking a new VA loan after having experienced a foreclosure on a prior VA loan will in most cases have only remaining entitlement to apply to the new loan. The lender should assure that the veteran has sufficient entitlement for its secondary marketing purposes.

(5) *Federal debts.* An applicant for a Federally-assisted loan will not be considered a satisfactory credit risk for such loan if the applicant is presently delinquent or in default on any debt to the Federal Government, e.g., a Small Business Administration loan, a U.S. Guaranteed Student loan, a debt to the Public Health Service, or where there is a judgment lien against the applicant's property for a debt owed to the Government. The applicant may not be approved for the loan until the delinquent account has been brought current or satisfactory arrangements have been made between the borrower and the Federal agency owed, or the judgment is paid or otherwise satisfied. Of course, the applicant must also be able to otherwise qualify for the loan from an income and remaining credit standpoint. Refinancing under VA's interest rate reduction refinancing provisions, however, is allowed even if the borrower is delinquent on the VA guaranteed mortgage being refinanced. Prior approval processing is required in such cases.

(6) *Absence of credit history.* The fact that recently discharged veterans may have had no opportunity to develop a credit history will not preclude a determination of satisfactory credit. Similarly, other loan applicants may not have established credit histories as a result of a preference for purchasing consumer items with cash rather than credit. There are also cases in which individuals may be genuinely wary of acquiring new obligations following bankruptcy, consumer credit counseling (debt proration), or other disruptive credit occurrence. The absence of the credit history in these cases will not generally be viewed as an adverse factor in credit underwriting. However, before a favorable decision is made for cases involving bankruptcies or other derogatory credit factors, efforts should be made to develop evidence of timely payment of non-installment debts such as rent and utilities. It is anticipated that this special consideration in the absence of a credit history following bankruptcy would be the rare case and generally confined to bankruptcies which occurred over 3 years ago.

(7) *Long-term v. short-term-debts.* All known debts and obligations including any alimony and/or child support payments of the borrower and spouse must be documented. Significant liabilities to be deducted from the total income in determining ability to meet the mortgage payments are accounts that, generally, are of a relatively long-term; i.e., 6 months or over. Other accounts for terms of less than 6 months must, of course, be considered in determining ability to meet family expenses. Certainly any account with less than 6 months' duration which requires payments so large as to cause a severe impact on the family's resources for any period of time must be considered in the loan analysis. For example, monthly payments of $300 on an auto loan with a remaining balance of $1,500 would be included in those obligations to be deducted from the total income regardless of the fact that the account can be expected to pay out in 5 months. It is clear that the applicant will, in this case, continue to carry the burden of those $300 payments for the first, most critical, months of the home loan. Similarly, when the credit information shows open accounts of several years' duration which are clearly of a revolving or open-end type, the regular monthly payment for such accounts should be considered as a long-term obligation to be deducted from income.

(8) *Requirements for verification.* If the credit investigation reveals debts or obligations of a material nature which were not divulged by the applicant, lenders must be certain to obtain clarification as to the status of such debts from the borrower. A proper analysis is obviously not possible unless there is total correlation between the obligations claimed by the borrower and those revealed by a credit report or deposit verification. Conversely, significant debts and obligations reported by the borrower must be rated. If the credit report fails to provide necessary information on such accounts, lenders will be expected to obtain their own verifications of those debts directly from the creditors. Credit reports and verifications must be no more than 90 days old to be considered valid. For loans closed automatically, this requirement will be considered satisfied if the date of the credit report or verification is within 90 days of the date of the veteran's application to the lender. Of major significance are the applicant's rental history and outstanding, assumed, or recently retired mortgages, if any, particularly prior VA loans. Lenders should be sure ratings on such accounts are obtained; a written explanation is required when ratings are not available. A determination is necessary as to whether alimony and/or child support payments are required. Verification of the amount of such obligations should be obtained, although documentation concerning an applicant's divorce should not be obtained automatically unless it is necessary to verify the amount of any alimony or child support liability indicated by the applicant. If in the routine course of processing the loan application, however, direct evidence is received (e.g., from the credit report) that an obligation to pay alimony or child support exists (as opposed to mere evidence that the veteran was previously divorced), the discrepancy between the loan application and credit report can and should be fully resolved in the same manner as any other such discrepancy would be handled.

(9) *Job-related expenses.* Known job-related expenses should be documented. This will include costs for any dependent care, significant commuting costs, etc. When a family's circumstances are such that dependent care arrangements would probably be necessary, it is important to determine the cost of such services in order to arrive at an accurate total of deductions.

(10) *Credit reports.* Credit reports obtained by lenders on VA guaranteed loan applications must be in conformance with the Residential Mortgage Credit Report Standards formulated jointly by the Department of Veterans Affairs, Federal National

Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration, Farmers Home Administration, credit repositories, repository affiliated consumer reporting agencies and independent consumer reporting agencies. The Residential Mortgage Credit Report is a detailed account of the credit, employment, and residence history as well as public records information concerning an individual. All credit reports obtained by the lender must be submitted to VA.

(h) *Borrower's personal and financial status.* The number and ages of dependents have an important bearing on whether income after deduction of fixed charges is sufficient to support the family. Type and duration of employment of both the borrower and spouse are important as an indication of stability of their employment. The amount of liquid assets owned by the borrower or spouse, or both, is an important factor in determining that they have sufficient funds to close the loan, as well as being significant in analyzing the overall qualifications for the loan. (It is imperative that adequate cash assets from the veteran's own resources are verified to allow the payment of any difference between the sales price of the property and the loan amount, in addition to that necessary to cover closing costs, if the sales price exceeds the reasonable value established by VA (38 CFR 36.4336(a)(3)). Verifications must be no more than 90 days old to be considered valid. For loans closed on the automatic basis, this requirement will be considered satisfied if the date of the deposit verification is within 90 days of the date of the veteran's application to the lender. Current monthly rental or other housing expense is an important consideration when compared to that to be undertaken in connection with the contemplated housing purchase.

(i) *Estimated monthly shelter expenses.* It is important that monthly expenses such as taxes, insurance, assessments and maintenance and utilities be estimated accurately based on property location and type of house; e.g., old or new, large or small, rather than using or applying a "rule of thumb" to all properties alike. Maintenance and utility amounts for various types of property should be realistically estimated. Local utility companies should be consulted for current rates. The age and type of construction of a house may well affect these expenses. In the case of condominiums or houses in a planned unit development (PUD), the monthly amount of the maintenance assessment payable to a homeowners association should be added. If the amount currently assessed is less than the maximum provided in the covenants or master deed, and it appears likely that the amount will be insufficient for operation of the condominium or PUD, the amount used will be the maximum the veteran could be charged. If it is expected that real estate taxes will be raised, or if any special assessments are expected, the increased or additional amounts should be used. In special flood hazard areas, include the premium for any required flood insurance.

(j) *Lender responsibility.*

(1) Lenders are fully responsible for developing all credit information; i.e., for obtaining verifications of employment and deposit, credit reports, and for the accuracy of the information contained in the loan application.

(2) Verifications of employment and deposits, and requests for credit reports and/or credit information must be initiated and received by the lender.

(3) In cases where the real estate broker/agent or any other party requests any of this information, the report(s) must be returned directly to the lender. This fact must be disclosed by appropriately completing the required certification on the loan application or report and the parties must be identified as agents of the lender.

(4) Where the lender relies on other parties to secure any of the credit or employment information or otherwise accepts such information obtained by any other party, such parties shall be construed for purposes of the submission of the loan documents to VA to be authorized agents of the lender, regardless of the actual relationship between such parties and the lender, even if disclosure is not provided to VA under paragraph (j)(3) of this section. Any negligent or willful misrepresentation by such parties shall be imputed to the lender as if the lender had processed those documents and the lender shall remain responsible for the quality and accuracy of the information provided to VA.

(5) All credit reports secured by the lender or other parties as identified in paragraphs (j)(3) and (j)(4) of this section shall be provided to VA. If updated credit reports reflect materially different information than that in other reports such discrepancies must be explained by the lender and the ultimate decision as to the effects of the discrepancy upon the loan application fully addressed by the underwriter.

(k) *Lender certification.* Lenders originating loans are responsible for determining and certifying to VA on the appropriate application or closing form that the loan meets all statutory and regulatory requirements. Lenders will affirmatively certify that loans were made in full compliance with the law and loan guaranty regulations as prescribed in this section.

(l) *Definitions.* The definitions contained in part 42 of this chapter and the following definitions are applicable in this section.

(i) *Another appropriate amount.* In determining the appropriate amount of a lender's civil penalty in cases where the Secretary has not sustained a loss or where two times the amount of the Secretary's loss on the loan involved does not exceed $10,000, the Secretary shall consider:

(A) The materiality and importance of the false certification to the determination to issue the guaranty, or to approve the assumption;

(B) The frequency and past pattern of such false certifications by the lender; and,

(C) Any exculpatory or mitigating circumstances.

(ii) *Complaint* includes the assessment of liability served pursuant to this section.

(iii) *Defendant* means a lender named in the complaint.

(iv) *Lender* includes the holder approving loan assumptions pursuant to 38 U.S.C. 3714.

(2) *Procedures for certification.*

(i) As a condition to VA issuance of a loan guaranty on all loans closed on or after [THE EFFECTIVE DATE OF THE FINAL RULE], and as a prerequisite to an effective loan assumption on all loans assumed pursuant to 38 U.S.C. 3714 on or after [THE EFFECTIVE DATE OF THE FINAL RULE], the following certification shall accompany each loan closing or assumption package:

"The undersigned lender certifies that the (loan) (assumption) application, all verifications of employment, deposit, and other income and credit verification documents have been processed in compliance with 38 CFR part 36; that all credit reports obtained or generated in connection with the processing of this borrower's (loan) (assumption) application have been provided to VA; that, to the best of the undersigned lender's knowledge and belief the (loan) (assumption) meets the underwriting standards recited in chapter 37 of title 38, United States Code and 38 CFR part 36; and that all information provided in support of this (loan) (assumption) is true, complete and accurate to the best of the undersigned lender's knowledge and belief."

(ii) The certification shall be executed by an officer of the lender authorized to

execute documents and act on behalf of the lender.

(3) Any lender who knowingly and willfully makes a false certification required pursuant to § 36.4337(k)(2) shall be liable to the United States Government for a civil penalty equal to two times the amount of the Secretary's loss on the loan involved or to another appropriate amount, not to exceed $10,000, whichever is greater.

(l) *Assessment of liability.*

(1) Upon an assessment confirmed by the Under Secretary for Benefits, in consultation with the Investigating Official, that a certification, as required in this section, is false, a report of findings of the Under Secretary for Benefits shall be submitted to the Reviewing Official setting forth:

(i) The evidence that supports the allegations of a false certification and of liability;

(ii) A description of the claims or statements upon which the allegations of liability are based;

(iii) The amount of the VA demand to be made; and

(iv) Any exculpatory or mitigating circumstances that may relate to the certification.

(2) The Reviewing Official shall review all of the information provided and will either inform the Under Secretary for Benefits and the Investigating Official that there is not adequate evidence, that the lender is liable, or serve a complaint on the lender stating:

(i) The allegations of a false certification and of liability;

(ii) The amount being assessed by the Secretary and the basis for the amount assessed;

(iii) Instructions on how to satisfy the assessment and how to file an answer to request a hearing, including a specific statement of the lender's right to request a hearing by filing an answer and to be represented by counsel; and

(iv) That failure to file an answer within 30 days of the complaint will result in the imposition of the assessment without right to appeal the assessment to the Secretary.

(m) *Hearing procedures.*

A lender hearing on an assessment established pursuant to this section shall be governed by the procedures recited at 38 CFR 42.8 through 42.47.

(n) *Additional remedies.*

Any assessment under this section may be in addition to other remedies available to VA, such as debarment and suspension pursuant to 38 U.S.C. 3704 and part 44 of this title or loss of automatic processing authority pursuant to 38 U.S.C. 3702, or other actions by the Government under any other law including but not limited to title 18, U.S.C. and 31 U.S.C. 3732.

(Authority: 38 U.S.C. 3710)

(Information collection requirements contained in 36.4337 were approved by the Office of Management and Budget under control number 2900–0521)

[FR Doc. 93–23723 Filed 9–28–93; 8:45 am]

BILLING CODE 8320–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 57–9–6018; FRL–4781–6]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) adopted by the South Coast Air Quality Management District (SCAQMD) on August 2, 1991 and on March 6, 1992. The California Air Resources Board (CARB) submitted these revisions to EPA on May 13, 1993 and on September 14, 1992. The revisions concern the following SCAQMD rules: Rule 1125, Metal Container, Closure, and Coil Coating Operations; Rule 1136, Wood Products Coatings; and Rule 1130, Graphic Arts. The intended effect of proposing limited approval and limited disapproval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this notice of proposed rulemaking (NPR) will incorporate these rules into the federally approved SIP. EPA has evaluated the revisions to Rules 1125, 1136, and 1130 and is proposing a limited approval under provisions of the CAA regarding EPA actions on SIP submittals and general rulemaking authority because these revisions strengthen the SIP. At the same time, EPA is proposing a limited disapproval under these CAA provisions because the rules do not meet the CAA provisions regarding plan submissions and requirements for nonattainment areas.

DATES: Comments must be received on or before October 29, 1993.

ADDRESSES: Comments may be mailed to: Daniel Meer, Rulemaking Section II (A–5–3), Air and Toxics Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765–4182.

FOR FURTHER INFORMATION CONTACT: Chris Stamos, Rulemaking Section II (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Telephone: (415) 744–1187

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the 1977 Clean Air Act (1977 CAA or pre-amended Act) that included the Los Angeles-South Coast Air Basin. 43 FR 8964; 40 CFR 81.305. Because the Los Angeles-South Coast Air Basin was unable to reach attainment by the statutory attainment date of December 31, 1982, California requested under pre-amended section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. 40 FR 52238. The Los Angeles-South Coast Air Basin did not attain the ozone standard by the approved attainment date. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended Act, that the SCAQMD portion of the SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, amendments to the 1977 CAA were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas

to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The Los Angeles-South Coast Air Basin is classified as extreme;[2] therefore, this area is subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules to EPA for incorporation into its SIP on May 13, 1993 and on September 14, 1992, including the rules being acted on in this document.[3] This document addresses EPA's proposed action for Rule 1125, Metal Container, Closure, and Coil Coating Operations; Rule 1136, Wood Products Coatings; and Rule 1130, Graphic Arts. These submitted rules were found to be complete on July 19, 1993 and on November 11, 1992 pursuant to EPA's completeness criteria as revised on August 26, 1991 (56 FR 42216) and set forth in 40 CFR part 51, appendix V and are being proposed for limited approval and limited disapproval.

Rule 1125 controls emissions from metal container, closure, and coil coating operations; Rule 1136 controls VOC emissions from wood products coating operations; and Rule 1130 controls VOC emissions from graphic arts operations. VOCs contribute to the production of ground level ozone and smog. SCAQMD Rule 1125, Rule 1136, and Rule 1130 were originally adopted as part of the SCAQMD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and have been revised in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for SCAQMD Rules 1125, 1136, and 1130.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents which specify the minimum requirements that a rule must contain in order to be approved into the SIP. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to Rule 1125, Metal Container, Closure, and Coil Coating Operations, is entitled, "Control of Volatile Organic Emissions from Existing Stationary Sources"—Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks, EPA–450/2–77–008. The CTG applicable to Rule 1130, Graphic Arts, is entitled, "Control of Volatile Organic Emissions from Existing Stationary Sources"—Volume VIII: Graphic Arts—Rotogravure and Flexography, EPA–450/2–78–033. Submitted Rule 1136 controls emissions from a source category for which EPA has not issued a CTG. Consequently, Rule 1136 was evaluated against the general RACT requirements of the Clean Air Act (section 110 and part D), 40 CFR part 51, Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations—Clarification to Appendix D of November 24, 1987 **Federal Register**; May 25, 1988 (EPA's "Blue Book"), and other EPA policy including the EPA Region 9 CARB document entitled, Guidance Document for Correcting VOC Rule Deficiencies (April, 1991) and CARB's "Determination of RACT/BARCT for Wood Products Coatings." Further interpretations of EPA policy are found in the Blue Book. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

SCAQMD Rule 1125, Rule 1136, and 1130 are all significantly improved from their EPA-approved versions, which date back to February 6, 1985, October 27, 1983, and September 15, 1980 respectively. Among the improvements in Rule 1125 are:

- Additional and improved definitions in its definitions section,
- More clearly delineated coatings categories,
- Lower VOC limits,
- Recordkeeping requirements (by reference to SCAQMD Rule 109),
- And transfer efficiency specifications.

Among the improvements in Rule 1136 are:

- Additional and improved definitions in its definitions section,
- More clearly delineated coatings categories,
- Transfer efficiency specifications,
- Cleanup solvent and equipment cleaning sections,
- And an improved test methods section.

And among the changes in Rule 1130 are:

- An updated definition of VOCs,
- An established capture efficiency requirement,
- Added monitoring and records section,
- A reduction in the source exemption limit from 15 tons per year to 1.46 tons per year,
- An expansion of the types of regulated sources covered by Rule 1130 so as to include lithographic, letterpress, and screen printing operations,
- Added cleanup regulations,
- And additional test methods.

EPA has evaluated SCAQMD submitted Rules 1125, 1136, and 1130 for consistency with the CAA, EPA regulations, and EPA policy and has found that the revisions address and

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] The Los Angeles-South Coast Air Basin retained its designation and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

[3] The rules submitted on these dates were substantially similar to earlier VOC rules adopted by SCAQMD, except they added a termination date to an exemption for aerosol containers. After the rules were submitted, other SCAQMD VOC rules that also terminated the aerosol container exemption were invalidated in trial court rulings. See, e.g., *Dunn-Edwards Corp.* v. *South Coast Air Quality Management District*, No. BC753978 (L.A. Super. Ct. Aug. 21, 1990), *rev'd*, No. B0655562 (2d App. Dist. May 19, 1993). Following these decisions, SCAQMD deleted the invalidated language from its VOC rules, including those contained in this rulemaking notice.

To preserve its rights while appealing the trial court decisions, SCAQMD did not hold a public hearing to formally readopt the revised rules. Nevertheless, EPA may approve these rules into the SIP because the deleted provisions are severable from the adopted rules. Moreover, the deletion of language terminating the aerosol container exemption does not create new regulations; rather, the deletion revives SCAQMD's original rules (which were fully adopted) that also exempted aerosol containers. See *Board of Osteopathic Examiners* v. *Board of Medical Examiners*, 53 Cal. App. 3d 78, 85, 125 Cal. Rptr. 619, 623–624 (1976).

correct many deficiencies previously identified by EPA. These corrected deficiencies have resulted in clearer, more enforceable rules.

Although SCAQMD Rules 1125, 1136, and 1130 will strengthen the SIP, these rules still contain deficiencies which were required to be corrected pursuant to the section 182(a)(2)(A) requirement of part D of the CAA. These deficiencies are related to recordkeeping requirements, test method references, Executive Officer discretion, control device equivalency, VOC limits, and rule applicability—a detailed discussion of rule deficiencies can be found in Technical Support Documents (TSDs) for SCAQMD's Rule 1125, Rule 1136, and Rule 1130 (TSDs dated 04/30/93 and 07/21/93) which are available from the U.S. EPA, Region 9 office. Because of these deficiencies, the rules are not approvable pursuant to the section 182(a)(2)(A) of the CAA because they are not consistent with the interpretation of section 172 of the 1977 CAA as found in the Blue Book and may lead to rule enforceability problems.

Because of the above deficiencies, EPA cannot grant full approval of these rules under section 110(k)(3) and part D. Also, because the submitted rules are not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rules under section 110(k)(3). However, EPA may grant a limited approval of the submitted rules under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is proposing a limited approval of SCAQMD submitted Rules 1125, 1136, and 1130 under sections 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also proposing a limited disapproval of these rules because they contain deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rules do not fully meet the requirements of part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: Highway funding and offsets. The 18 month period referred to in section 179(a) will begin at the time EPA publishes final notice of this disapproval. Moreover, the final disapproval triggers the federal implementation plan (FIP) requirement under section 110(c). It should be noted that the rules covered by this NPR have been adopted by the SCAQMD and are currently in effect in the South Coast. EPA's limited disapproval action in this NPR does not prevent EPA and SCAQMD from enforcing these rules.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

Limited approvals under sections 110 and 301 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

EPA's limited disapproval of the State request under sections 110 and 301 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state enforceability. Moreover, EPA's limited disapproval of the submittal does not impose any new federal requirements. Therefore, EPA certifies that this limited disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it impose any new federal requirements.

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 (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 22, 1993.

John C. Wise,

Acting Regional Administrator.

[FR Doc. 93–23859 Filed 09–28–93; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[CA 37–3–6008; FRL–4781–7]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; El Dorado County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) adopted by the El Dorado County Air Pollution Control District (APCD) on September 16, 1991. The California Air Resources Board submitted these revisions to EPA on June 19, 1992. The revisions concern El Dorado's Rule 224, Cutback Asphalt Paving Material, which prohibits the emission of volatile organic compounds (VOCs) from road paving, construction or maintenance. The intended effect of proposing limited approval and limited disapproval of this rule is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act).

EPA's final action on this notice of proposed rulemaking (NPR) will incorporate this rule into the federally approved SIP. EPA has evaluated the revisions to Rule 224 and is proposing a limited approval under provisions of the CAA regarding EPA actions on SIP submittals and general rulemaking authority because these revisions strengthen the SIP. At the same time, EPA is proposing a limited disapproval under these CAA provisions because the rule does not meet the CAA provisions regarding plan submissions and requirements for nonattainment areas.

DATES: Comments must be received on or before October 29, 1993.

ADDRESSES: Comments may be mailed to: Esther J. Hill, Chief, Rulemaking Section I (A-5-4), Air and Toxics Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report of the rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

El Dorado County Air Pollution Control District, 7563 Green Valley Road, Placerville, CA 95667.

FOR FURTHER INFORMATION CONTACT: Duane James, Rulemaking Section I (A-5-4), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105,Telephone: (415) 744-1191.

SUPPLEMENTARY INFORMATION:

Background

On September 12, 1979, EPA promulgated a list of ozone nonattainment areas under the provisions of the 1977 Clean Air Act (1977 CAA or pre-amended Act), that included a portion of El Dorado County APCD [1]. 44 FR 53081, 40 CFR 81.305. Because that portion of the El Dorado County was unable to reach attainment by the statutory attainment date of December 31, 1982, California requested under pre-amended section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. 40 CFR 52.222 and 52.238. El Dorado County did not attain the ozone standard by the approved attainment date. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended Act, that El Dorado County APCD's portion of the SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, amendments to the 1977 CAA were enacted. Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre amended section 172(b) as interpreted in pre-amendment guidance. [2] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The Mountain Counties portion of the El Dorado County APCD is classified as serious [3]; therefore, this area is subject to the RACT fix-up requirement and the May 15, 1991 deadline. Rule 224 applies only to the Mountain Counties portion of the El Dorado County APCD.

The State of California submitted many revised RACT rules to EPA for incorporation into its SIP on June 19, 1992, including the rule being acted on in this document. This document addresses EPA's proposed action for Rule 224, Cutback Asphalt Paving Material. This submitted rule was found to be complete on August 27, 1992 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V [4] and is being proposed for limited approval and limited disapproval.

Rule 224 controls the emission of volatile organic compounds (VOCs) from road asphalt operations. VOCs contribute to the production of ground level ozone and smog. El Dorado County's Rule 224 was originally adopted as part of El Dorado County APCD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and has been revised in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for El Dorado County APCD Rule 224.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 2. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents which specify the minimum requirements that a rule must contain in order to be approved into the SIP. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to Cutback Asphalt Paving Material Rule 224 is entitled, "Control of Volatile Organic Compounds from Use of Cutback Asphalt", EPA document # EPA-450/2-77-037. Further interpretations of EPA policy are found in the Blue Book. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

El Dorado County APCD's submitted Rule 224, Cutback Asphalt Paving Material, includes the following revisions from the current SIP rule:

[1] The Lake Tahoe Air Basin portion of El Dorado County APCD is in attainment, but the Mountain Counties portion of the District is not.

[2] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[3] The Mountain Counties portion, which lies in the Sacramento Metro Area, retained its designation and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

[4] EPA adopted completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

1. The applicability statement now includes emulsified asphalt and the mixing and storage of asphalt.
2. Exemptions are only granted for asphalt manufactured for use in areas designated as attainment for ozone.
3. Definitions of terms are provided.
4. Medium cure cutback asphalt is prohibited.
5. Recordkeeping requirements have been included.

EPA has evaluated El Dorado County APCD's submitted Rule 224 for consistency with the CAA, EPA regulations, and EPA policy and has found that the revisions address and correct many deficiencies previously identified by EPA. These corrected deficiencies have resulted in a clearer, more enforceable rule. Furthermore, the addition of more stringent standards in submitted Rule 224 should lead to more emission reductions.

Although El Dorado County APCD's Rule 224 will strengthen the SIP, this rule still contains deficiencies which were required to be corrected pursuant to the section 182(a)(2)(A) requirement of part D of the CAA. The rule allows for director's discretion in approving test methods, and the definition of VOCs is incomplete. The provisions for recordkeeping may present enforcement difficulties. A detailed discussion of rule deficiencies can be found in the Technical Support Document for Rule 224 (July 7, 1993), which is available from the U.S. EPA, Region 9 office. Because of these deficiencies, the rule is not fully approvable pursuant to section 182(a)(2)(A) of the CAA because it is not consistent with the interpretation of section 172 of the 1977 CAA as found in the Blue Book and may lead to rule enforceability problems.

Because of the above deficiencies, EPA cannot grant full approval of this rule under section 110(k)(3) and part D. Also, because the submitted rule is not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rule under section 110(k)(3). However, EPA may grant a limited approval of the submitted rule under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is proposing a limited approval of El Dorado County APCD's submitted Rule 224 under sections 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also proposing a limited disapproval of this rule because it contains deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rule does not fully meet the requirements of part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and offsets. The 18 month period referred to in section 179(a) will begin at the time EPA publishes final notice of this disapproval. Moreover, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c). It should be noted that the rule covered by this NPR has been adopted by the El Dorado County APCD and is currently in effect in the El Dorado County APCD. EPA's limited disapproval action in this NPR does not prevent El Dorado County APCD or EPA from enforcing this rule.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

Limited approvals under sections 110 and 301 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410 (a) (2).

EPA's limited disapproval of the State request under sections 110 and 301 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state enforceability. Moreover, EPA's limited disapproval of the submittal does not impose any new Federal requirements. Therefore, EPA certifies that this limited disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it impose any new Federal requirements.

This action has been classified as a Table 2 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 (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 21, 1993.

David P. Howekamp,

Acting Regional Administrator.

[FR Doc. 93–23863 Filed 9–28–93; 8:45 am]

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40 CFR Part 180

[OPP–300243; FRL–4006–1]

RIN No. 2070–AC18

Pesticide Tolerances; Portion of Food Commodities to be Analyzed for Pesticide Residues

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to amend its pesticide tolerance regulations to clarify how raw agricultural commodities are defined for conducting residue data development and analysis used in establishing and enforcing a tolerance. Consistency must be maintained between commodity definitions used for developing residue data to support tolerances and definitions used for enforcing those tolerances. The Agency is proposing these clarifications to promote greater consistency in tolerance setting and enforcement among similar commodities. EPA believes that establishing uniform definitions and policies will assist the regulated community, laboratories which conduct residue analyses, and enforcing Agencies in determining compliance with tolerance regulations. Moreover, because these revisions are generally harmonious with international policies on commodity definition and analysis, food commodities will generally be subject to comparable requirements in foreign countries and within the U.S., promoting efficiency in enforcement and increased protection of the food supply.

DATES: Written comments, identified by the document control number, [OPP-300243], must be received on or before November 29, 1993.

ADDRESSES: By mail, submit comments to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 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, Melissa L. Chun, Registration Support Branch, Registration Division (H7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, Westfield Building, 2800 Crystal Drive, Arlington, VA, (703) 308-8318.

SUPPLEMENTARY INFORMATION: Under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346a), EPA is authorized to establish tolerances for acceptable levels of pesticide residues in raw agricultural commodities. To establish a tolerance, a petition for tolerance is submitted to the Agency, requesting the tolerance and furnishing information on the identity of the pesticide and its use pattern on the crop or raw agricultural commodity, as well as extensive data on the levels of residues resulting from the proposed use pattern. Once established, the tolerance levels are enforced by the Food and Drug Administration (FDA) of the Department of Health and Human Services (DHHS), which analyzes samples of food shipments (raw agricultural commodities and processed foods) to determine whether they comply with established tolerances. Food that contains residues that exceed a tolerance or for which there is no tolerance are considered "adulterated" under sec. 402 of the act and may be held in violation of the FFDCA and seized. The U.S. Department of Agriculture (USDA) enforces tolerances for meat, poultry, and egg products.

Regulations in 40 CFR part 180 describe the tolerance petition process. Data requirements in support of the tolerance are not described in the context of the tolerance-setting and petition process in part 180, but are set out in the context of registration of the pesticide product under FIFRA. Applicable data requirements under FIFRA are those required in support of a food-use registration and are found in 40 CFR part 158. Specifically, the toxicology information is described in § 158.340, and residue chemistry data are described in § 158.240.

One principal item of information on establishing residue levels is an analytical method capable of determining a residue level in the commodity or commodities. The magnitude of the residue must be determined in field trials using the pesticide in accordance with its proposed use pattern, at the maximum use rates and frequency of application as well as the minimum time intervals before harvest. The treated crop samples are then analyzed using the analytical method to determine the residue levels in the crop.

Because the generation of residue data to establish the tolerance and the enforcement of that tolerance depend on a common understanding for determining the residue levels, it is imperative that the raw agricultural commodity or commodities be adequately defined and consistently used by all persons conducting analyses for these purposes. One of the areas in which differences in interpretation or lack of definition can create particular problems is in identifying the portion of the raw agricultural commodity which must be analyzed for residues.

Current 40 CFR 180.1(j) provides that a raw agricultural commodity examined for compliance with a pesticide tolerance established under the FFDCA sec. 408 shall consist of the "whole raw agricultural commodity." That section provides specific instructions on what constitutes the "whole raw agricultural commodity" for only nine individual commodities (e.g., bananas and strawberries) and crop group commodities (e.g., root vegetables). For example, 40 CFR 180.1(j) specifies that "caps (hulls) shall be removed and discarded from strawberries before examination for pesticide residues."

Since tolerances are established on numerous commodities other than the nine crops or crop groups already covered by 40 CFR 180.1(j), and some of these cannot be analyzed as the "whole raw agricultural commodity," the current regulation is incomplete. For example, the stones of peaches must be removed before the peaches can be prepared for analysis of pesticide residues because sample preparation equipment in regulatory laboratories cannot, as a practical matter, grind the stones of peaches or other stone fruit. There are similar problems with other fresh fruits and vegetables and with other raw agricultural commodities. Therefore, EPA is proposing to expand the instructions on the portions of commodities to be examined for pesticide residues. Because the expanded list of commodities and instructions is lengthy, EPA proposes to locate it in a new § 180.45 of the Code of Federal Regulations, and to insert a reference statement in current § 180.34 directing readers to the new section.

The Agency notes that more complete information on the portions of commodities to be analyzed is available in FDA's Pesticide Analytical Manual, Vol. I (PAM), and this has served to fill the void created by the absence of more complete regulations. As the need arose over the years, the Agency has referred to the PAM for additional guidance on informally establishing definitions and interpretations for use by petitioners, researchers, and data developers and for enforcement purposes. In addition, EPA is proposing to amend the instructions

for preparing the portions of commodities to be analyzed in order to be more consistent with The Guide to Codex Recommendations Concerning Pesticide Residues, Parts 4 and 6, Codex Classification of Foods and Animal Feeds (CAC/PR 4-1989) (Codex) and Portion of Commodities to Which Maximum Residue Limits Apply and Which is Analyzed (CAC/PR 6-1984) (Codex). These guidelines were issued by the Codex Alimentarius Commission to promote consistency in the development and enforcement of international pesticide tolerances. For example, after revision the text for bulb vegetables in § 180.45(a)(3) now conveys that only a limited removal of the outer sheaths (husks or parchment skin) is permitted. However, for practical reasons in some cases EPA does not propose to achieve full consistency with Codex standards. For example, in the category of stone fruits and pitted fruits such as olives, Codex excludes the stones from the analysis of the commodity, but includes them in the calculation of the residue level. This disparity has the effect of lowering the numerical value of the tolerance level established on a weight/weight basis, although the residue amount is not changed on an absolute basis. FDA does not include the weight of stones in either the analysis or calculation of the residue level, and is proposing here that stones be excluded for all purposes. There is a possibility that a stone commodity analyzed and calculated as proposed herein (without the stone) could exceed the Codex residue level calculated with the stone.

In order to assure uniformity and consistency in the establishment and enforcement of pesticide tolerances and monitoring programs, EPA is proposing to include additional raw agricultural commodities, including sample preparation instructions for edible raw fish, shellfish, and rabbits. Although there are currently no pesticide tolerances for some of these specific foods, the Agency proposes to include them in the event tolerances may be necessary in the future and in recognition of the fact that Federal and State regulatory agencies may sample and analyze these foods for pesticide residues. The sample preparation instructions for these commodities are based on the edible portion of these foods and is consistent with the FDA practice of setting tolerances and action levels for nonpesticide chemical contaminants (e.g., PCBs and methyl mercury) on the edible portion of fish, shellfish, crustacea, frog legs, rabbits, and other game.

The revisions proposed in this document do not affect any exceptions that appear in specific tolerance regulations in 40 CFR part 180, 185, or 186. These exceptions to the rule that a tolerance applies to the whole agricultural commodity usually specify that the particular tolerance applies to the edible portion of a commodity. For example, the tolerance regulation in 40 CFR 180.157 for mevinphos in melons states that compliance with the tolerance is to be "determined on the edible portion with rind removed," even though the tolerances for most other pesticides in melons apply to the whole raw agricultural commodity including the rind. Tolerance regulations that specify a portion of a commodity to which the tolerance applies will for the time being remain as exceptions to the amended regulations. The Agency will revise individual tolerance regulations not in conformity with the uniform definitions during the reregistration process. Registrants are encouraged to submit additional residue data on edible portions of such commodities for risk assessment purposes.

This rule is not meant to provide an exhaustive listing of raw agricultural commodities. The Agency is planning to develop regulations to define the criteria for categorizing commodities as raw or processed foods. To the extent that these regulations change the foods classified, this rule will be amended.

EPA is also proposing to amend 180.1 to include several definitions for animal commodities that are referred to in the new amendments of 180.1(j). These definitions (§ 180.1(o)-(s)) will provide further clarification of this section. The proposed meat and meat byproduct definitions are those used by USDA and published in 9 CFR 301.2. A sentence listing specific examples (liver, kidney, etc.) is proposed to be added to the meat byproduct definition. USDA's definitions for poultry and poultry byproducts are published in 9 CFR 381.1. For the term "poultry," EPA is proposing a slight modification to the USDA definition in order to be consistent with Codex and ensure that residues in other domesticated birds such as quails and pheasants are covered by poultry tolerances. It is proposed that "poultry" means any domesticated bird (e.g., chickens, turkeys, ducks, geese, or guineas), whether live or dead. The slight modification of the USDA definition is that the term "e.g.," has been inserted prior to the parenthetical list of birds. Thus, quail, pheasant, and other nonlisted domesticated birds would be included as poultry. With regard to "poultry meats" and "poultry meat byproducts," USDA does not have published definitions for these terms. USDA's definitions for "poultry food products" and "poultry byproducts" that it uses for regulatory purposes are much broader than is desirable or practical for the purposes of residue analysis and data development in establishing a tolerance. Therefore, the poultry meat and poultry meat byproduct definitions that EPA is now proposing are based on Codex definitions and include the commodities USDA and pesticide petitioners examine (e.g., muscle and liver of poultry) when they conduct pesticide analyses.

With regard to the portion of commodity to be analyzed for meat and poultry meats, the Agency considered two alternatives:

1. Analyze whole commodity after removal of bones and overlying fat/skin. In this case, fat would be analyzed separately for residues.

2. Analyze whole commodity after removal of bones.

As noted above in the discussion on stones and stone fruit, bones cannot practically be ground by laboratory equipment. In addition, at least in the case of unprocessed meats, the bones are not consumed. Therefore, exclusion of the bones from the residue analysis is proposed. However, the decision to exclude fat and skin is not as straight forward. EPA is proposing the first option (i.e., exclusion of fat/skin) for the following reasons:

1. When USDA has included chicken fat and skin in meat analyses, USDA has encountered difficulties in obtaining homogeneous samples. Excess fat is also a serious interference in many residue methods.

2. It is consistent with how USDA has been enforcing tolerances. EPA also believes it is consistent with how most registrants have been generating residue data. EPA is seeking comment in this regard.

3. Separate analysis of meat, fat, and skin provides more information for dietary risk assessment purposes since separate data are generated on the muscle and the skin/fat. (Skin would be a "meat byproduct.") The residue level on the whole commodity can still be calculated if one weighs both the muscle and the skin/fat.

The major advantages of the second option (inclusion of overlying fat and skin) are the following:

1. It is consistent with the present Codex instructions, which specify analysis of the whole commodity without bones.

2. The typical commodity moving in commerce and that is often consumed

includes the fat and for poultry, the skin.

However, the Agency considered the analytical difficulties and the duplicate analyses (i.e., fat/skin could be analyzed twice as part of meat and as fat or a meat byproduct) associated with this option outweighed these advantages.

EPA is seeking public comment as to which of the above options should be adopted for the portion of commodity to be analyzed for meat and poultry meat. The Agency also requests input from those laboratories which conduct residue analyses and other interested parties as to how they have normally analyzed meat and poultry meat when generating residue data in livestock feeding studies.

Further, with regard to the portion of commodity to be analyzed for the fat of meat, USDA analyzes both the physically separable overlying fat and also the fat that can be heat-rendered from the meat. EPA thus requests public comment as to how fat should be analyzed and input from laboratories which conduct residue analyses as to how they have normally analyzed fat.

As noted in the proposed definition for meat byproducts, tolerances for the latter are intended to cover commodities such as liver, kidney, skin and brain. Normally, the Agency sets tolerances for meat byproducts based on data for liver and kidney. If there is a great disparity between residues in these two tissues, a separate tolerance may be set on just liver or kidney in addition to the meat byproduct tolerance. Thus, the Agency is proposing in its directions for meat byproducts that liver and kidney be analyzed separately (after removing external ducts and blood vessels). Skin analyses are required only for dermal applications of pesticides to hogs. Data are not required on other meat byproducts such as brain or stomach to establish a meat byproduct tolerance. If such commodities need to be analyzed for enforcement purposes, the Agency proposes they be analyzed as the whole commodity.

Data are normally required on only poultry liver to establish poultry meat byproduct tolerances. In some cases, registrants may also provide data on skin. Since the Agency is proposing that poultry meat be analyzed after removing fat and skin, residue data on the latter will not be provided as part of meat analyses. Therefore, the Agency is proposing that skin be analyzed in addition to liver for establishing tolerances on poultry meat byproducts. (As discussed above, the Agency is requesting public comment on whether overlying skin and fat should be included in analyses of meat and poultry meat.)

EPA consulted with FDA and with USDA's Food Safety and Inspection Service and relied extensively on the laboratory practices of these regulatory agencies, as well as on the Pesticide Analytical Manual and the guidelines on sample preparation for pesticide residues issued by the Codex Committee on Pesticide Residues. Therefore, these regulations are generally consistent with the Codex guidelines and the present regulatory practices of FDA and USDA.

Analysts are advised to consider these proposed directions in planning current and future sample analysis. In the final rule, EPA will explain how and when the new interpretations would apply to studies underway.

Once this rule is promulgated, it will provide petitioners and others additional guidance and information that can be used as they develop data to support a tolerance. Further, this rule will assist the regulated community, laboratories which conduct residue analyses, and enforcing agencies in determining compliance with tolerance regulations.

Executive Order 12291

Under Executive Order 12291, EPA must determine whether a rule is "major" and therefore subject to the requirement for a Regulatory Impact Analysis. EPA has determined that this proposal is not "major" as defined by E.O. 12291. As described above, this rule provides further clarification of the provisions contained in section 408 of the FFDCA. By providing this additional clarification, this rule revision will make it easier for petitioners to comply with the requirements. This proposed rule has been reviewed by OMB under section 3 of E.O. 12291.

Regulatory Flexibility Act

This regulatory action has been reviewed under the provisions of section 3(a) of the Regulatory Flexibility Act, and EPA has determined that it will not have a significant adverse economic impact on a substantial number of small businesses, small governments, or small organizations. In general, small entities do not conduct residue analyses or petition for tolerances under the FFDCA.

As this regulatory action is intended to restate, update, clarify, and simplify established policy, it is anticipated that no adverse economic impact will occur on any small entity. Codification of established policy should reduce the burden of understanding and complying with the regulations. Greater consistency in the portions of food to be analyzed should simplify the process of petitioning for tolerances and increase the efficiency and effectiveness of Federal and State regulatory laboratories.

Accordingly, EPA certifies that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

Paperwork Reduction Act

This rule contains no information collection requirements subject to the Paperwork Reduction Act.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Environmental protection, Pesticides and pests.

Dated: September 23, 1993.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

PART 180—[AMENDED]

Therefore, it is proposed that part 180 be amended as follows:

1. The authority citation for part 180 is revised to read as follows:

Authority: 21 U.S.C. 346a, 348 and 371.

2. In § 180.1, by removing paragraph (j) and designating it "reserved" and by adding new paragraphs (o), (p), (q), (r), and (s), to read as follows:

§ 180.1 Definitions and interpretations.

* * * * *

(j) [Reserved]

* * * * *

(o) "Meat" means the part of the muscle of any cattle, sheep, hogs, or goats which is skeletal or which is found in the tongue, in the diaphragm, in the heart, or in the esophagus, with or without the accompanying and overlying fat, and the portions of bone, skin, sinew, nerve, and blood vessels which normally accompany the muscle tissue and which are not separated from it in the process of dressing. It does not include the muscle found in the lips, snout, or ears. This term, as applied to products of equines, shall have meaning comparable to that provided in this paragraph with respect to cattle, sheep, hogs, and goats.

(p) "Meat byproduct" means any part capable of use as human food, other than meat or fat, which has been derived from cattle, sheep, hogs, or goats. This term, as applied to products of equines, shall have a meaning comparable to that provided in this paragraph with respect to cattle, sheep, hogs, and goats. Examples of meat

byproducts are liver, kidney, skin, stomach, sweetbread (thymus gland), and brain.

(q) "Poultry meats" means the muscular tissues including adhering fat and skin from poultry carcasses as prepared for wholesale or retail distribution. "Poultry" means any domesticated bird (e.g., chickens, turkeys, ducks, geese, or guineas) whether live or dead.

(r) "Poultry meat byproducts" means the edible tissues and organs, other than poultry meat and poultry fat, from slaughtered poultry as have been passed as fit for human consumption, such as liver, gizzard, and skin.

(s) "Fat" means the tissues other than bones, connective tissues, feathers, hair, meat and meat byproducts that consist chiefly of cells distended with greasy or oily matter and which may be physically removed as separate entities.

3. In § 180.34, by revising paragraph (a), to read as follows:

§ 180.34 Tests on the amount of residue remaining.

(a) Data in a petition on the amount of residue remaining in or on a raw agricultural commodity should establish the residue that may remain when the pesticide chemical is applied according to directions registered under the Federal Insecticide, Fungicide and Rodenticide Act, or according to directions contained in an application for registration. These data should establish the residues that may remain under conditions most likely to result in high residues on the commodity. The portion of a raw agricultural commodity that is to be analyzed is prescribed in § 180.45.

* * * * *

4. By adding new § 180.45 to subpart A, to read as follows:

§ 180.45 Portion of commodity to be analyzed.

Unless otherwise specified in this section or in tolerance regulations prescribed in this part for specific pesticide chemicals, the raw agricultural commodity to be examined for pesticide residues shall consist of the whole raw agricultural commodity.

(a) *Raw agricultural commodities.* References in this paragraph to crop groups refer to the groups established in § 180.34(f)(9). Other commodities are listed in this section.

(1) *Root and tuber vegetables group.* Where separate tolerances are established for tuber or root, analyze whole commodity (root or tuber) after removing adhering soil by lightly rinsing in running water. Where a tolerance is established on a root vegetable including tops and/or with tops, and the tops and roots are marketed together, they shall be analyzed separately and neither the pesticide residue on the roots nor the pesticide residue on the tops shall exceed the tolerance level. For carrots, parsnips, and rutabagas, the tops shall be removed and discarded.

(2) *Leaves of root and tuber vegetables (human food or animal feed) group.* Where separate tolerances are established for the leaves or tops, analyze the whole commodity (leaves or tops) after removing and discarding obviously decomposed or withered leaves. Where a tolerance is established on a root vegetable including tops and/or with tops, the pesticide residue on the tops shall not exceed the tolerance level for the whole commodity including the tops.

(3) *Bulb vegetables (green or dry) group.* Analyze the whole commodity after removing and discarding roots. Remove adhering soil by lightly rinsing in running water. In the case of dry bulb onions and garlic, remove and discard stems and outer sheaths (husk or parchment skin) which are easily removed.

(4) *Leafy vegetables (except Brassica vegetables) group.* Except as noted, analyze the whole commodity after removing and discarding obviously decomposed or withered leaves. In the case of rhubarb analyze only the stem (without leaves). Remove adhering soil from celery by lightly rinsing in running water.

(5) *Brassica (cole) leafy vegetable group.* Analyze the whole commodity after removing and discarding obviously decomposed or withered leaves, except remove and discard all leaves from cauliflower and headed broccoli and use sprouts only from brussels sprouts.

(6) *Legume vegetables (succulent or dried) group.* Analyze the whole commodity, including pods for succulent and without pods for dry.

(7) *Fruiting vegetables (except cucurbits) group.* Analyze the whole commodity after removing and discarding stems and husks.

(8) *Cucurbit vegetables group.* Analyze the whole commodity after removing and discarding stems.

(9) *Citrus fruits group.* Analyze the whole commodity.

(10) *Pome fruits group.* Analyze the whole commodity after removing and discarding stems.

(11) *Stone fruits group.* Analyze the whole commodity after removing and discarding stems and stones.

(12) *Small fruits and berries group.* Analyze the whole commodity after removing and discarding caps and stems, except for currants, where the stems are to be included.

(13) *Peanuts.* Analyze peanut meat (kernel).

(14) *Peanut hulls.* Analyze the whole commodity.

(15) *Dates and olives.* Analyze the whole commodity after removing and discarding stems and stones or pits.

(16) *Pineapples.* Analyze the whole commodity after removing and discarding crowns (leaves at top of fruit).

(17) *Avocados and mangoes.* Analyze the whole commodity after removing and discarding stones.

(18) *Bananas.* Analyze the whole commodity including peel after removing and discarding crown tissue and stalk.

(19) *Miscellaneous raw fruits and vegetables not previously included.* Analyze the whole commodity after removing and discarding obviously decomposed or withered leaves, stems, stones or pits, shells or husks, and if commodity normally contains substantial amounts of soil, remove adhering soil by lightly rinsing in running water.

(20) *Tree nuts group.* Analyze the whole commodity (kernel) after removing shell, husk, or hull.

(21) *Almond hulls.* Analyze the whole commodity.

(22) *Cereal grains group.* Analyze the whole commodity (grain) except for fresh corn (including sweet corn) include kernels plus cob after removing and discarding husk.

(23) *Eggs.* Analyze the whole commodity after removing and discarding shells.

(24) *Fish.* Analyze the edible portion of the commodity after removing and discarding heads, tails, scales, fins, viscera, inedible bones, and inedible skin.

(25) *Crab (hard shell).* Analyze the edible portion of commodity after removing and discarding shells, gills, and viscera.

(26) *Crab (soft shell).* Analyze the edible portion of commodity after removing and discarding gills.

(27) *Shrimp and crayfish.* Analyze the edible portion of commodity after removing and discarding heads, shells, and inedible tails of shrimp.

(28) *Lobster.* Analyze the edible portion of commodity including tomalley (liver) after removing and discarding shells and stomachs (hard sac near head).

(29) *Oyster, clam, and other shellfish.* Analyze the edible portion of commodity including the liquor, after removing and discarding shell.

(30) *Meat.* Analyze the whole commodity after removing bones and overlying fat and skin. See § 180.1(o) for definition of meat.

(31) *Meat byproduct.* Analyze separately:

(i) The liver after removing external ducts and blood vessels.

(ii) The kidney after removing external ducts and blood vessels.

(iii) Other meat byproducts. For hogs where the pesticide is applied directly to the skin, also analyze separately the skin. See § 180.1(p) for definition of meat byproduct.

(32) *Poultry meats.* Analyze the whole commodity after removing bones and overlying fat and skin. See § 180.1(q) for definition of poultry meats.

(33) *Poultry meat byproducts.* Analyze separately:

(i) The liver after removing external ducts and blood vessels.

(ii) The skin.

(iii) The remaining byproducts. See § 180.1(r) for definition of poultry meat byproducts.

(34) *Fat of cattle, goats, hogs, horses, poultry, and sheep.* Analyze the whole commodity that can be physically separated from the meat and meat byproducts. See § 180.1(s) for definition of this term.

(35) *Rabbits and other game.* Analyze the edible portion of the commodity after removing and discarding bones.

(b) [Reserved]

[FR Doc. 93-23868 Filed 9-28-93; 8:45 am]
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40 CFR Part 300

[FRL-4781-9]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to delete the Charlevoix Municipal Well site from the National Priorities List; request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region V announces its intent to delete the Charlevoix Municipal Well site from the National Priorities List (NPL) and requests public comment. The NPL is Appendix B to the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended. This action is being taken by EPA, because it has been determined that all Fund-financed response under CERCLA has been implemented and EPA, in consultation with the State of Michigan, has determined that no further cleanup is appropriate. Moreover, EPA and the State have determined that remedial activities conducted at the site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning the proposed deletion of the site from the NPL may be submitted until October 29, 1993.

ADDRESSES: Comments may be mailed to John Kuhns (HSRW-6J) Remedial Project Manager, Office of Superfund, U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604. The comprehensive information on the site is available at the local information repository located at: Charlevoix Public Library, 107 Clinton St., Charlevoix, MI 49720. Requests for comprehensive copies of documents should be directed formally to the appropriate Regional Docket Office. Address for the Regional Docket Office is Jan Pfundheller (H-7J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353-5821.

FOR FURTHER INFORMATION CONTACT: John Kuhns (HSRW-6J) Remedial Project Manager, Office of Superfund, U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353-6556; or Dave Novak (P-19J), Office of Public Affairs, U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886-9840.

SUPPLEMENTARY INFORMATION:

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I. Introduction

(1) The U.S. Environmental Protection Agency (EPA) Region V announces its intent to delete the Charlevoix Municipal Well site from the National Priorities List (NPL), Appendix B to the National Oil and Hazardous Substances Contingency Plan, 40 CFR part 300 (NCP), and requests comments on the deletion. (2) The EPA identifies sites which appear to present a significant risk to public health, welfare or the environment, and maintains the NPL as the list of those sites. (3) Sites on the NPL may be the subject of Superfund (Fund) Fund-Financed remedial actions. Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for additional Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action.

The EPA will accept comments on this proposal for 30 days after publication of this notice in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the history of this site and explains how the site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate;

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Before EPA can delete a site from the NPL, the state in which the site was located must concur on the proposed deletion. EPA shall provide the state 30 working days for review of the deletion notice prior to its publication in the **Federal Register**.

As noted above, deletion of a site from the NPL does not preclude eligibility for subsequent additional Fund-financed actions if future site conditions warrant such actions.

Deletion of sites from the NPL does not itself create, alter, revoke any individual's rights or obligations. Furthermore, deletion from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist in Agency management.

III. Deletion Procedures

Upon determination that at least one of the criteria described in § 300.425(e) has been met, EPA may formally begin deletion procedures. This **Federal Register** notice, and a concurrent notice in the local newspaper in the vicinity of the site, announce the initiation of a 30-day comment period. The public is asked to comment on EPA's intention to

delete the site from the NPL. All critical documents needed to evaluate EPA's decision are generally included in the information repository and the deletion docket.

Upon completion of the public comment period, the EPA Regional Office will prepare a Responsiveness Summary to evaluate and address concerns which were raised. The public is welcome to contact the EPA Regional Office to obtain a copy of this responsiveness summary, when available. If EPA still determined the deletion from the NPL is appropriate, final notice of deletion will be published in the **Federal Register**.

IV. Basis for Intended Site Deletion

The following summary provides the Agency's rationale for intending to delete the site from the NPL.

Charlevoix Municipal Well Superfund Site, Charlevoix Michigan

The City of Charlevoix is located in the northwest part of the lower peninsula of Michigan on the shore of Lake Michigan. The Charlevoix municipal well supplied potable water to a year-round population of 3,500 which increased to approximately 5,000 during the summer tourist season. In September 1981, the Michigan Department of Public Health detected trichloroethene (TCE) in tap water from the Charlevoix water supply system. A monitoring program was begun and continued to detect gradually rising levels of TCE at the well. An emergency diffused aeration system was installed by the City in an attempt to reduce TCE concentrations. In June and July 1982, EPA drilled 13 test wells in the vicinity of the municipal well without locating the source of the contamination. Sampling of the test wells found varying concentrations of TCE and perchloroethene (PCE). The PCE was detected in the monitoring wells only and was not found in the City's water supply. Charlevoix was proposed for the NPL in December 1982, and was finalized on the NPL in September 1983.

The Remedial Investigation (RI) of the Charlevoix site began in September 1983. The final Remedial Investigation report was issued on February 7, 1985. Although extensive soil borings and subsurface investigations were completed at the Charlevoix site, no discrete source of contamination was found. In addition, no contaminants were found in the soil zone in any of the soil borings.

Data collected during the RI in December 1983 indicated that concentrations of TCE and PCE in the groundwater moving toward the water supply well were much higher than previously measured. A Focused Feasibility Study (FFS) was initiated in early 1984 because of the potential health hazard to Charlevoix residents presented by the contaminated drinking water supply. The purpose of the FFS was to evaluate Initial Remedial Measure (IRMs) that could be implemented to provide a safe drinking water supply. The FFS recommended that a Lake Michigan water intake structure and filtration/flocculation plant be constructed to provide Charlevoix residents with a new water supply.

On June 12, 1984, a Record of Decision (ROD) was signed which approved an IRM for an alternate water supply to replace the contaminated municipal well. The selected IRM consisted of a Lake Michigan water intake structure located 1,400 feet off the shore of Lake Michigan and a 2.4 million gallons per day water treatment plant. The IRM concluded that upon completion of the construction, the City would have a clean water supply and that the existing municipal well should be abandoned.

All Feasibility Study alternatives which were evaluated concerned actions which managed the migration of contaminated groundwater. The alternatives evaluated consisted of no action, extraction of the contaminated groundwater by pumping, treatment of extracted groundwater, and the selected alternative, limited action, which included groundwater monitoring and restrictions on groundwater use after the construction of the water treatment plant was completed.

The limited action alternative will allow the contaminated groundwater plumes to naturally migrate and disperse into Lake Michigan. It is estimated that the contaminated groundwater will be purged in approximately 50 years. A semi-annual groundwater sampling and analysis program will monitor the plume throughout the purging process. During the purging process, institutional controls preventing the installation and use of private wells in the contaminated area will be required.

The EPA and the State of Michigan executed a State Superfund Contract (SSC) for the IRM on June 12, 1984. The SSC provided that the State pay 10% of the IRM costs and assume responsibility for all operation and maintenance requirements.

The water intake structure construction contract was awarded on September 10, 1984. All work was completed on time on November 11, 1985. The water treatment plant construction contract was awarded on August 15, 1985. The City of Charlevoix began operating the plant on March 31, 1987.

Soon after operation of the lake water intake and water treatment plant began, the City experienced a capacity diminishment problem. In 1990 the Michigan Department of Public Health declared the system to be an unreliable source of water for the City. Upon review, the Region concluded that some combination of unforeseen conditions, present during construction and/or routine operation, rendered the structure unable to perform as envisioned. The intake system could clearly not be considered a properly functioning remedy. Subsequently, EPA undertook an augmentation of the intake structure so that the original design capacity could be reliably achieved.

The contract for construction of the new intake was awarded on January 17, 1992. The contractors completed construction (demobilized) on June 3, 1992. The City subsequently began full scale operation of the new intake.

The Michigan Department of Natural Resources (MDNR) conducts semi-annual ground and surface water monitoring in accordance with the ROD. The first sampling round was taken in January 1988. Analysis showed a four-fold decrease in TCE concentrations since January 1987. The dilution and enhanced volatilization due to wave action result in non-detectable levels of TCE in Lake Michigan.

All completion requirements for this site have been met as specified in OSWER directive 9320.2-3A. Sampling has verified that the two plumes are assimilated into Lake Michigan at levels which are un-detectable. The City of Charlevoix now has a safe, clean, and reliable drinking water supply. The remaining O&M tasks are the continued operation of the water treatment facilities and the semi-annual sampling and monitoring of the 2 plumes and Lake Michigan. According to the December 29, 1989 amendment to OSWER Directive 9320.2-3A ("Procedures for Completion and Deletion of National Priorities List Sites (NPL)"), the final Charlevoix ROD, although technically a No Action ROD, is actually defined as a Limited Action ROD. As such, a five year review pursuant to OSWER Directive 9355.7-02 ("Structure and Components of Five Year Review") is required and will be completed in 1993.

EPA, with concurrence of the State of Michigan, has determined that all appropriate Fund-financed responses under CERCLA at the Charlevoix Municipal Well site have been

completed, and no further Superfund response is appropriate in order to provide protection of human health and the environment.

Dated: August 13, 1993.

Valdas V. Adamkus,

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

[FR Doc. 93-23878 Filed 9-28-93; 8:45 am]

BILLING CODE 6560-50-P

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40 CFR Part 721

[OPPTS-50583E; FRL-4570-3]

Phosphorylated Oxoheteromonocycle Polyoxyethylene Alkyl Ether; Phosphorylated Caprolactone, Alkyl Oxoheteromonocycle and Polyalkylene Polyol Alkyl Ether; Proposed Revocation of Significant New Use Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke two significant new use rules (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for chemical substances based on receipt of new data. The data indicate that the substances will not present an unreasonable risk to health.

DATES: Written comments must be received by EPA by October 29, 1993.

ADDRESSES: All comments must be sent in triplicate to: TSCA Document Receipt Office (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-G99, 401 M St., SW., Washington, DC 20460. Comments that are confidential must be clearly marked confidential business information (CBI). If CBI is claimed, three additional sanitized copies must also be submitted. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Comments should include the docket control number. The docket control number for the chemical substances in this SNUR is OPPTS-50583E. Unit III. of this preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-543A, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 9, 1990 (55 FR 32406), EPA issued two SNURs establishing significant new uses for phosphorylated oxoheteromonocycle polyoxyethylene alkyl ether (P-89-836) and phosphorylated caprolactone, alkyl oxoheteromonocycle and polyalkylene polyol alkyl ether (P-89-837). Because of additional data EPA has received for these substances, EPA is proposing to revoke these SNURs.

I. Proposed Revocation

EPA is proposing to revoke the significant new use and recordkeeping requirements for the following chemical substances under 40 CFR part 721 subpart E. In this unit, EPA provides a brief description for the substances, including PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned), basis for the revocation of the section 5(e) consent order for the substance, and the CFR citation removed in the regulatory text section of this proposed rule. Further background information for the substance is contained in the rulemaking record referenced below in Unit IV.

PMN Number P-89-836

Chemical name: (generic) Phosphorylated oxoheteromonocycle polyoxyethylene alkyl ether.
CAS number: Not available.
Effective date of revocation of section 5(e) consent order: October 29, 1992.
Basis for revocation of section 5(e) consent order: The order was revoked based on test data submitted under the terms of the consent order. Based on the Agency's analysis of the submitted data, EPA found for purposes of TSCA section 5 that the substance will not present an unreasonable risk of injury to human health and concludes that further regulation under section 5 is not warranted at this time.
Toxicity testing results: An Ames study and micronucleus test were both negative. A 28-day repeated dose oral study in rats showed a no-observed-adverse-effect-level of 20 mg/kg and the lowest-observed-effect-level is 200 mg/kg based on decreased activity and muscle tone.
CFR citation: 40 CFR 721.3540.

PMN Number P-89-837

Chemical name: (generic) Phosphorylated caprolactone, alkyl oxoheteromonocycle and polyalkylene polyol alkyl ether.
CAS number: Not available.
Effective date of revocation of section 5(e) consent order: October 29, 1992.
Basis for revocation of section 5(e) consent order: The order was revoked based on test data submitted under the terms of the consent order. Based on the Agency's analysis of the submitted data, EPA found for purposes of TSCA section 5 that the substance will not present an unreasonable risk of injury to human health and concludes that further regulation under section 5 is not warranted at this time.
Toxicity testing results: An Ames study and micronucleus test were both negative. A 28-day repeated dose oral study in rats showed a no-observed-adverse-effect-level of 20 mg/kg and the lowest-observed-effect-level is 200 mg/kg based on decreased activity and muscle tone.
CFR citation: 40 CFR 721.2000.

II. Background and Rationale for Proposed Revocation of the Rule

During review of the PMNs submitted for the chemical substances that are the subject of this proposed revocation, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health effects of the substances, and EPA identified the tests considered necessary to evaluate the risks of the substances. The basis for such findings was discussed in Unit III. of the final rule (55 FR 32406). Based on these findings, a section 5(e) consent order were negotiated with the PMN submitter and SNURs were promulgated. EPA reviewed testing conducted by the PMN submitter for the substances and determined that the information available was sufficient to make a reasoned evaluation of the health effects of the substances. EPA concluded that, for the purposes of TSCA section 5, the substances will not present an unreasonable risk and subsequently revoked the section 5(e) consent order. The proposed revocation of SNUR provisions for these substances designated herein is consistent with the revocation of the section 5(e) order. In light of the above EPA is proposing a revocation of SNUR provisions for these chemical substances. When this revocation becomes final, EPA will no longer require notice of any company's intent to manufacture, import, or process these substances.

III. Comments Containing Confidential Business Information

Any person who submits comments claimed as confidential business information must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40

CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a public version of the comments that EPA can place in the public file.

IV. Rulemaking Record

The record for the rules which EPA is proposing to revoke was established at OPPTS-50583 (P-89-836 and P-89-837). This record includes information considered by the Agency in developing these rules and includes the test data that formed the basis for this proposal.

V. Regulatory Assessment Requirements

EPA is proposing to revoke the requirements of § § 721.2000 and 721.3540. Any costs or burdens associated with the rules will be eliminated when the rules are revoked. Therefore, EPA finds that no costs or burdens must be assessed under Executive Order 12291, the Regulatory Flexibility Act (5 U.S.C. 605(b)), or the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: September 22, 1993.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 will continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.2000 [Removed]

2. By removing § 721.2000.

§ 721.3540 [Removed]

3. By removing § 721.3540.

[FR Doc. 93-23864 Filed 9-28-93; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 721

[OPPTS-50592D; FRL-4570-7]

Benzenepropanoic Acid, 3-(2*H*-Benzotriazol-2-yl)-5-(1,1-dimethylethyl)-4-hydroxy-, $C_{(7-9)}$-Branched and Linear Alkyl Esters; Proposed Revocation of a Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for a chemical substance based on receipt of new data. The data indicate that the substance will not present an unreasonable risk to health.

DATES: Written comments must be received by EPA by October 29, 1993.

ADDRESSES: All comments must be sent in triplicate to: TSCA Document Receipt Office (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-G99, 401 M St., SW., Washington, DC 20460. Comments that are confidential must be clearly marked confidential business information (CBI). If CBI is claimed, three additional sanitized copies must also be submitted. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Comments should include the docket control number. The docket control number for the chemical substance in this SNUR is OPPTS-50592D. Unit III. of this preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-543A, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 13, 1991 (56 FR 40204), EPA issued a SNUR establishing significant new uses for benzenepropanoic acid, 3-(2*H*-benzotriazol-2-yl)-5-(1,1-dimethylethyl)-4- hydroxy-, $C_{(7-9)}$-branched and linear alkyl esters. Because of additional data EPA has received for this substance, EPA is proposing to revoke this SNUR.

I. Proposed Revocation

EPA is proposing to revoke the significant new use and recordkeeping requirements for the following chemical substance under 40 CFR part 721 subpart E. In this unit, EPA provides a brief description for the substance, including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned), basis for the revocation of the section 5(e) consent order for the substance, and the CFR citation removed in the regulatory text section of this proposed rule. Further background information for the substance is contained in the rulemaking record referenced below in Unit IV.

PMN Number P-90-1635

Chemical name: Benzenepropanoic acid, 3-(2*H*-benzotriazol-2-yl)-5-(1,1-dimethylethyl)-4-hydroxy-, $C_{(7-9)}$-branched and linear alkyl esters.
CAS number: Not available.
Effective date of revocation of section 5(e) consent order: November 4, 1992.
Basis for revocation of section 5(e) consent order: The order was revoked based on test data submitted under the terms of the consent order. Based on the Agency's analysis of the submitted data, EPA found for purposes of TSCA section 5 that this substance will not present an unreasonable risk of injury to human health and concludes that further regulation under section 5 is not warranted at this time.
Toxicity testing results: An in vivo mouse micronucleus study showed that the chemical substance is not a chromosome mutagen by the intraperitoneal (IP) route. An Ames study showed that the chemical substance is negative with and without metabolic activation. A 28-day repeated dose oral study in rats showed a no-observable-adverse-effect level (NOAEL) of 2 mg/kg. An acute oral toxicity test showed that the LD50 is greater than 5 g/kg.
CFR citation: 40 CFR 721.1600.

II. Background and Rationale for Proposed Revocation of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this proposed revocation, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health effects of the substance, and EPA identified the tests considered necessary to evaluate the risks of the substance. The basis for such findings is referenced in Unit I. of this preamble. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated. EPA reviewed testing conducted by the PMN submitter for the substance and determined that the information available was sufficient to make a reasoned evaluation of the health effects of the substance. EPA concluded that, for the purposes of TSCA section 5, the substance will not present an unreasonable risk and subsequently revoked the section 5(e) consent order. The proposed revocation of SNUR provisions for the substance designated herein is consistent with the revocation of the section 5(e) order. In light of the above, EPA is proposing a

revocation of SNUR provisions for this chemical substance. When this revocation becomes final, EPA will no longer require notice of any company's intent to manufacture, import, or process this substance.

III. Comments Containing Confidential Business Information

Any person who submits comments claimed as confidential business information must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a public version of the comments that EPA can place in the public file.

IV. Rulemaking Record

The record for the rule which EPA is proposing to revoke was established at OPPTS-50592 (P-90-1635). This record includes information considered by the Agency in developing the rule and includes the test data that formed the basis for this proposal.

V. Regulatory Assessment Requirements

EPA is proposing to revoke the requirements of § 721.1600. Any costs or burdens associated with this rule will also be eliminated when the rule is revoked. Therefore, EPA finds that no costs or burdens must be assessed under Executive Order 12291, the Regulatory Flexibility Act (5 U.S.C. 605(b)), or the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: September 22, 1993.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 will continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.1600 [Removed]

2. By removing § 721.1600.

[FR Doc. 93-23866 Filed 9-28-93; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 65

RIN 0905-AD69

National Institute of Environmental Health Sciences Hazardous Waste Worker Training

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Institutes of Health (NIH) proposes to amend the existing regulations pertaining to National Institute of Environmental Health Sciences (NIEHS) Hazardous Waste Worker Training grants in order to make them applicable to the new Hazmat Employee Training Grants Program authorized by section 118 of the Hazardous Materials Transportation Act, 49 U.S.C. App. 1816, as amended by the Hazardous Materials Transportation Uniform Safety Act of 1990, Public Law 101-615.

DATES: Comments concerning the regulations must be received on or before November 29, 1993 in order to ensure that NIH will be able to consider the comments in preparing the final rule.

ADDRESSES: Comments should be sent to John J. Migliore, NIH Regulations Officer, National Institutes of Health, Building 31, room 3B-11, 9000 Rockville Pike, Bethesda, Maryland 20892.

FOR FURTHER INFORMATION CONTACT: John J. Migliore, NIH Regulations Officer, National Institutes of Health, Building 31, room 3B-11, 9000 Rockville Pike, Bethesda, Maryland 20892, telephone (301) 496-2832 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The Hazardous Materials Transportation Uniform Safety Act (HMTUSA) of 1990, Public Law 101-615, enacted on November 16, 1990, amends the Hazardous Materials Transportation Act (HMTA) to authorize the National Institute of Environmental Health Sciences (NIEHS) to administer a program of grants to qualified non-profit organizations for the purpose of providing training and education to hazardous materials employees regarding the safe unloading, loading, handling, storage and transportation of hazardous materials and emergency preparedness for responding to accidents or incidents involving the transportation of hazardous materials in order to meet the training requirements issued under section 106(b) of the HMTA. Section 118 of the HMTA directs NIEHS to administer the Hazmat Employee Training Grant Program in consultation with the Secretary of the U.S. Department of Transportation (DOT), the Administrator of the Environmental Protection Agency (EPA), and the Secretary of the U.S. Department of Labor (DOL). The grants are funded from the collection of fees, as specified in Subpart 117-A(h) of the HMTA, which will be collected from the transporters of hazardous materials on an annual basis. Funds to support the grant program will be transferred from the DOT to NIEHS on an annual basis through an Interagency Agreement. The NIH proposes to revise the existing regulations at 42 CFR part 65 pertaining to Hazardous Waste Worker Training grants to make them applicable to the new Hazmat Employee Training Grants Program. The authority citation would be revised by adding the authority for the new training grants (49 U.S.C. App. 1816); section 65.1 would be revised by specifying the applicability of part 65 to the Hazmat Employee Training Grant Program; and section 65.2 would be revised by deleting the current definition of "Act" and adding references to both the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499, and the Hazardous Materials Act (HMTA). References to "section 126 of the Act" found in §§ 65.1, 65.4, and 65.5 of the regulations would be revised to read "section 126 of the SARA or section 118 of the HMTA."

The purpose of this notice is to invite public comment on these proposed changes. The following statements are provided for the information of the public.

1. Regulatory Impact Statement

The regulations have been reviewed in accordance with the requirements of Executive Order No. 12291, Federal Regulation. Because these regulations would merely update legal references and internal procedures of the Federal Government, they will have no consequential effects on the economy. Therefore, the Secretary has determined that the proposed regulations do not constitute a major rule, as defined under the Order, and that a Regulatory Impact Analysis is not required.

2. Regulatory Flexibility Analysis

For the reasons set forth above, the Secretary certifies that compliance with the proposed regulations would not have a significant economic impact on a substantial number of small entities and, therefore, a Regulatory Flexibility Analysis, as defined under the Regulatory Flexibility Act of 1980 (5 U.S.C. chapter 6), is not required.

Catalog of Federal Domestic Assistance

The OMB Catalog of Federal Domestic Assistance numbered program affected by the subject regulations is: 93.142.

List of Subjects in 42 CFR Part 65

Education study programs, Grant programs—education, Grant programs—health, Hazardous materials transportation, Manpower training programs.

Accordingly, for the reasons set forth in the preamble, it is proposed to amend part 65 of title 42 of the Code of Federal Regulations as set forth below.

Dated: June 17, 1993.

Audrey F. Manley,

Acting Assistant Secretary for Health.

Approved: August 18, 1993.

Donna E. Shalala,

Secretary.

PART 65—NATIONAL INSTITUTE OF ENVIRONMENTAL HEALTH SCIENCES HAZARDOUS WASTE WORKER TRAINING

1. The authority citation for part 65 is revised to read as follows:

Authority: 42 U.S.C. 9660a; 49 U.S.C. App. 1816.

2. Section 65.1 is amended by revising paragraphs (a), (b) concluding text and (c) introductory text to read as follows:

§ 65.1 To what projects do these regulations apply?

(a) The regulations in this part apply to:

(1) The program of grants for the training and education of workers who are or are likely to be engaged in activities related to hazardous waste removal, or containment, or emergency response that is authorized under section 126(g) of the Superfund Amendments and Reauthorization Act (SARA) of 1986; and

(2) The program of grants to support qualified non-profit organizations for the purpose of providing training and education to hazardous materials employees regarding: The safe unloading, loading, handling, storage, and transportation of hazardous materials; and emergency preparedness for responding to accidents or incidents involving the transportation of hazardous materials that is authorized under section 118 of the Hazardous Materials Transportation Act (HMTA).

(b) * * *

(1) * * *

* * * * *

Target populations may also be regulated under standards promulgated by the Secretary of Labor, the Secretary of Transportation, the Administrator of the Environmental Protection Agency, and other agencies under section 126(g) of the SARA or section 106(b) of the HMTA.

(c) Two types of grants are available: Program grants covering the full range of activities, including program development, direct worker training and education, and program evaluation; and planning grants.

* * * * *

3. Section 65.2 is amended by removing the definition of "Act," and by adding definitions of the acronyms "SARA" and "HMTA" and by revising the definition of "Award or grant" to read as follows:

§ 65.2 Definitions.

As used in this part:

Award or *grant* means a grant or cooperative agreement made under section 126(g) of the SARA or section 118 of the HMTA.

* * * * *

HMTA means the Hazardous Materials Transportation Act, as amended, 49 U.S.C. App. 1801–1803.

* * * * *

SARA means the Superfund Amendments and Reauthorization Act (SARA) of 1986, Public Law 99–499, as amended.

* * * * *

4. Section 65.4 is amended by revising paragraph (b) to read as follows:

§ 65.4 Project requirements.

* * * * *

(a) * * *

(b) Each applicant must detail the nature, duration, and purpose of the training for which the application is filed. The proposed training program must meet the standards promulgated by the Secretary of Labor and Secretary of Transportation under section 126(g) of the SARA or section 106(b) of the HMTA, and such additional requirements as the Director may prescribe to ensure appropriate health and safety training.

(c) * * *

5. Section 65.5 is amended by revising paragraph (b) to read as follows:

§ 65.5 How will applications be evaluated?

(a) * * *

(b) Within the limits of funds available, the Director may approve training grants for award to carry out those projects which have satisfied the requirements of these regulations; are determined by the Director to be technically meritorious; and in the judgment of the director best promote the purposes of the grant programs authorized by section 126(g) of the SARA or section 118 of the HMTA, the regulations of this part, and program priorities.

* * * * *

[FR Doc. 93–23786 Filed 9–28–93; 8:45 am]

BILLING CODE 4140–01–M

Notices

Federal Register
Vol. 58, No. 187
Wednesday, September 29, 1993

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

Forest Service

Exemption of the Panguitch Lake Recovery Project, Dixie National Forest, UT

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal.

SUMMARY: This is notification that decisions to (1) salvage insect infested timber, (2) remove bait and trap trees, and (3) reforest denuded areas as parts of an effort to rehabilitate and recover natural resources from bark beetle attack in the Panguitch Lake area of the Cedar City Ranger District of the Dixie National Forest are exempted from appeal as per provisions of 36 CFR 217.4(a)(11).

DATES: Effective September 29, 1993.

FOR FURTHER INFORMATION CONTACT: Ronald S. Wilson, District Ranger, Dixie National Forest, P.O. Box 627, Cedar City, Utah 84721–0627, (801) 865–3200.

SUPPLEMENTARY INFORMATION: Several years of drought in southern Utah have reduced soil moisture and added to the weakened condition of large ponderosa pine and Douglas-fir on the Cedar City Ranger District of the Dixie National Forest. This factor, in combination with high stocking and generally continuous mature forest conditions surrounding Panguitch Lake, has made a situation conducive to bark beetle buildup.

As part of the effort to rehabilitate and recover resources damaged by the insect population buildup, the Cedar City Ranger District is proposing to: (1) Salvage dead, dying, and high risk bark beetle and mistletoe infected ponderosa pine, Douglas-fir, and white fir trees by helicopter harvest; (2) salvage additional bark beetle killed trees within 1–3 years following the initial entry; (3) remove bait and trap trees that have been infested by bark beetles; and (4) reforest up to 50 acres that have been heavily impacted by bark beetle mortality, as needed to meet resource objectives.

An Interdisciplinary Team has completed the NEPA process to identify issues, develop alternatives and to analyze the effects of implementing proposed recovery activities. This process has resulted in the completion of an environmental assessment documenting the analysis of the proposed action.

The project area is located approximately 40 road miles east of Cedar City, Utah, and 11 air miles east of Brian Head ski area. The project area is approximately 3,444 acres in size. The forest type is ponderosa pine, Douglas-fir, white fir, and quaking aspen. Utah State Highway 143 splits the project area into north and south sections. Included in the project area are all, or portions, of the following legal locations: T36S, R8W, Sections 1 and 2; T35S, R8W, Section 36; T36S, R7W, Sections 5, 6, 7, and 8; Salt Lake Meridian.

It is estimated that bark beetles and Douglas-fir mistletoe have killed 40–50% of the mature ponderosa pine and Douglas-fir on 1,000 acres within the project area. Within these acres, the proposed action would salvage dead, dying, and high risk trees. By removing bark beetle and mistletoe infested trees, bark beetle populations would be reduced, and their breeding cycles disrupted.

Tree mortality has increased substantially within the project area in the past year. Within the forested acres, enough large trees remain in the stands to support continued bark beetle population buildup. Any further losses of the large ponderosa pine and Douglas-fir component would result in substantial resource losses from the standpoint of visual quality, wildlife habitat, and forest health in this already heavily impacted bark beetle area.

Bait and trap trees would be used as necessary over the next 1–3 years within this project area to assist in further bark beetle population reduction and life cycle disruptions. It is expected that no more than 3 additional acres would be impacted by bait and trap tree work. The trap trees will be destroyed on site or removed as needed to destroy the trapped beetles.

To complete the timber salvage operations, approximately 3.5 miles of existing roads would require reconditioning. Approximately 1.9 miles of existing jeep trails would be closed following the project to reduce erosion and wildlife disturbance.

Management direction for the Panguitch Lake area is established in the Dixie National Forest Land and Resource Management Plan (Forest Plan). The Forest Plan provides for the removal of salvage timber from lands within the project areas, as well as the prevention of future tree losses to bark beetle infestations. In addition, the plan describes standards and guidelines which must be observed when harvesting timber to protect soil, water, wildlife, visual quality, and other resources. The proposed action for the Panguitch Lake Recovery Project is consistent with the standards and guidelines contained in the Forest Plan.

The Regional entomologist has analyzed the insect situation and has assisted in the design of the rehabilitation and recovery process defined in the proposed action. The rehabilitation and recovery activities would: (1) Reduce bark beetle populations and break up the insect life cycle; (2) reduce the risk of further deterioration of (a) visual quality along Utah State Highway 143 and adjacent to Panguitch Lake, (b) wildlife habitat, and (c) forest health by reducing forest susceptibility to future bark beetle attack; (3) rehabilitate affected areas to provide the most rapid progression toward desired future condition; (4) reduce wildfire hazards to National Forest System and private lands, and (5) recover the value of timber products in the project area that would otherwise be lost.

The District Ranger with concurrence of the Forest Supervisor has determined, through scoping and environmental analysis, that there is good cause to expedite this project.

The decision for the Panguitch Lake Recovery Project may be implemented after publication of this notice in the **Federal Register** and after the decision document has been signed by the responsible official. If the project is delayed because of appeals, it is likely that project objectives would be jeopardized. This could result in the loss of many additional large ponderosa pine and Douglas-fir trees within the area. In addition, harvest volume and value lost due to tree deterioration

could increase significantly in the next year if action is delayed.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt from appeal the decision relating to the rehabilitation and recovery of lands affected by bark beetle infestation in the Panguitch Lake project area of the Cedar City Ranger District, Dixie National Forest. The environmental assessment discloses the effects of the proposed action on the environment and addressed the issues resulting from the proposal.

Dated: September 22, 1993.

Robert C. Joslin,

Deputy Regional Forester, Intermountain Region, USDA, Forest Service.

[FR Doc. 93-23817 Filed 9-28-93; 8:45 am]

BILLING CODE 3410-11-M

Exemption of the Black Pine Timber Salvage Project, Sawtooth National Forest, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal.

SUMMARY: This is notification that timber salvage harvest and reforestation activities to recover and rehabilitate natural resources from bark beetle attack on the Black Pine Division, Burley Ranger District, Sawtooth National Forest, are exempt from appeal in accordance with 36 CFR 217.4(a)(11).

DATES: Effective September 29, 1993.

FOR FURTHER INFORMATION CONTACT: David Bassler, Forester, Twin Falls Ranger District, Sawtooth National Forest, 2647 Kimberly Road East, Twin Falls, ID 83301. Telephone: (208) 737-3200.

SUPPLEMENTARY INFORMATION: Several years of drought in southwest Idaho have reduced soil moisture and weakened conifer trees. Since 1989, a Douglas-fir beetle infestation has occurred on thousands of acres on the Black Pine Division of the Sawtooth National Forest. Many of these beetle infested trees have died and/or are dying from this infestation.

As part of the effort to recover and rehabilitate natural resources damaged by the insect epidemic, Sawtooth National Forest personnel have developed a proposal to harvest dead and dying timber, and reforest damaged areas. The Forest Service has completed the Black Pine Timber Salvage Environmental Assessment (EA), identified issues, and developed alternatives to analyze the effects of implementing timber salvage and other recovery activities.

The analysis area for the Black Pine Timber Salvage Project is located about 30 miles southeast of Burley, Idaho. The Forest would salvage trees dead or dying from the Douglas-fir beetle epidemic on 1,500 acres and recover approximately 10 million board feet (MMBF) of sawtimber and 0.2 MMBF of firewood products. Improvements would be needed on approximately 12 miles of existing road. The harvesting of Douglas-fir will result in openings ranging in size from 1 to 2 acres. Sufficient dead trees and green trees will be left to provide site protection for natural regeneration, soil productivity, and erosion control, wildlife habitat and diversity. Artificial regeneration will be used where necessary to reforest areas that are tractor harvested. The remaining acreage will be helicopter harvested.

Management direction for the General Forest and Scenic Travel Route management areas are established in the Sawtooth National Forest Land and Resource Management Plan (Forest Plan). The proposed project falls within the Black Pine Inventoried Roadless Area. The Forest Plan provides for the removal of timber from lands within the project area. In addition, the Forest Plan prescribes standards to project soil, water, wildlife, visual, and other on site resources.

The proposed action for the Black Pine Timber Salvage project is consistent with standards and guidelines, objectives, and direction contained in the Forest Plan.

Forest Pest Management Specialists have monitored the insect epidemic and have concluded that the current epidemic is massive and is expected to continue until the size of the Douglas-fir will no longer support the beetle infestation. Although salvage harvesting and reforestation would not affect insect population dynamics, these activities would: (1) Recover valuable timber that would otherwise deteriorate, (2) reforest those areas that have been left without tree cover as a result of the insect-caused mortality and (3) generate Knutson-Vandenburg (K-V) funds for use to restore forest resources that have been damaged by the insect epidemic.

The Forest Supervisor has determined through scoping and environmental analysis there is justification to expedite this project.

The decision for the Black Pine Timber Salvage Project may be implemented after publication of this notice in the **Federal Register**. If the project is delayed because of an appeal (delays of up to 150 days are possible), it is likely that much of the salvage harvest could not be implemented during the 1993 normal operating season. This would result in a loss of an estimated 6.0 MMBF sawtimber product due to deterioration. The total estimated value of the merchantable dead, dying and unhealthy timber is $1,500,000. Of this, approximately $375,000 would be returned to counties from 25 percent fund receipts. Delays resulting from appeals could cause the loss of up to half of this value and potentially make the salvage sale unattractive to timber purchasers. This would jeopardize the objectives of the recovery and rehabilitation project.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt the Black Pine Timber Salvage Project, Burley Ranger District, Sawtooth National Forest, from appeal. The environmental assessment discloses the effect of the proposed actions on the environment and addresses issues resulting from the proposal.

Dated: September 23, 1993.

Robert C. Joslin,

Deputy Regional Forester, Intermountain Region, USDA Forest Service.

[FR Doc. 93-23818 Filed 9-28-93; 8:45 am]

BILLING CODE 3410-11-M

Exemption of the Spooner Timber Salvage Project, Toiyabe National Forest, NV

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal.

SUMMARY: This is notification that timber salvage harvest to recover dead and dying timber from recent insect epidemics on the Spooner project area, Carson Ranger District, Toiyabe National Forest, are exempt from appeal in accordance with 36 CFR 217.4(a)(11).

DATES: Effective September 29, 1993.

FOR FURTHER INFORMATION CONTACT: Ed DeCarlo, Salvage Project Coordinator, Carson Ranger District, Toiyabe National Forest, 1536 S. Carson St., Carson City, NV 89701, Telephone: 702-882-2766.

SUPPLEMENTARY INFORMATION: The Carson Range, located on the eastern slopes of the Sierra Nevada, has experienced six consecutive years of drought. Dense forest stands within this range have been weakened and are susceptible to insect attacks in this condition. These conditions have caused natural populations of the fir engraver beetle, mountain pine beetle, and Jeffrey pine beetle to increase dramatically. It is estimated that 41% of the trees on the project area are dead or will be dead by the end of 1995, most of this mortality resulting from the current insect epidemic.

As part of the effort to recover forest resources damaged by the insect epidemic, Carson Ranger District personnel have developed a proposal to harvest dead and dying timber. The Forest Service has completed the Spooner Timber Salvage Project Environmental Assessment (EA), identified issues, developed alternatives, and analyzed effects of implementing timber salvage and other associated activities including road construction and reconstruction, and reforestation.

The analysis area for the Spooner Timber Salvage Project EA is located 10 miles west of Carson City, Nevada. The Forest would salvage dead and dying trees killed by bark beetles on 1909 acres and recover approximately 7.2 MMBF, using helicopter logging systems. The removal of dead and dying trees will create openings with few remaining healthy live trees. A total of 90 acres would be reforested by preparation of the seed bed for natural regeneration, and hand planting if needed.

The project calls for construction of 0.2 miles of temporary road construction, reconstruction of 4.6 miles, and obliteration of 0.8 miles following use. All road construction and reconstruction will adhere to the mitigation measures specified by the Tahoe Regional Planning Agency (TRPA).

Management direction for the Spooner project area is established in the Toiyabe National Forest Land and Resource Management Plan (Forest Plan). The project is not in a Forest Plan inventoried roadless area. The Forest Plan, Chapter IV and Appendix C, provides for removal of salvage timber from lands within the project area. In addition, the Forest Plan prescribes standards to protect soil, water, wildlife, visual, and other onsite resources. The selected alternative is consistent with objectives and direction contained in the Forest Plan, and is consistent with all Forest standards and guidelines except one where existing natural fuel conditions exceed the standard established in the Forest Plan.

Forest Pest Management Specialists and District Silviculturists analyzed the insect situation and found no economical or practical means to control the current insect epidemic. Although salvage harvesting would not control the epidemic, this activity would: (1) Recover valuable timber that would otherwise deteriorate, and (2) rehabilitate over 400 acres of fuel loading to acceptable standards. It is extremely important to remove dead and dying timber prior to deterioration and subsequent value losses. An estimated 64 percent of the proposed harvest volume is fir, which under normal conditions, deteriorates rapidly when dead. Through timber salvage operations, breeding insects (principally bark beetles) can be removed in logs and Knutson-Vandenburg (K–V) funds can be generated for use to restore forest resources damaged by the insect epidemic.

The Forest Supervisor has determined through preliminary scoping and environmental analysis there is justification to expedite this project.

The decision for the Spooner Timber Salvage project may be implemented after publication of this notice in the **Federal Register** and after the decision document has been signed by the responsible official. If the project is delayed because of an appeal (delays of up to 150 days are possible), it is likely that much of the salvage harvest could not be implemented during 1993. This would result in a loss of an estimated 1.2 MMBF with an associated value of $300,000. The total estimated value of merchantable dead and dying timber is $1,580,000. Delays resulting from appeals could cause the loss of up to 25% of this value and potentially make the salvage sale unattractive to timber purchasers. This would jeopardize the objectives of the recovery project.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt the Spooner Timber Salvage Project, Carson Ranger District, Toiyabe National Forest, from appeal. The environmental assessment discloses effects of the proposed actions on the environment and addresses issues resulting from the proposal.

Dated: September 23, 1993.

Robert C. Joslin,

Deputy Regional Forester, Intermountain Region, USDA Forest Service.

[FR Doc. 93–23819 Filed 9–28–93; 8:45 am]

BILLING CODE 3410–11–M

Intent To Prepare an Environmental Impact Statement for the Reissuance of a Special Use Permit to Occupy National Forest System Lands; Roosevelt National Forest, Larimer County, CO

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The Arapaho and Roosevelt National Forests and Pawnee National Grassland is proposing to reissue a 20-year Special Use Permit to the City of Fort Collins, Colorado for the Joe Wright Reservoir and Dam which occupy National Forest System lands. The permit would allow for maintaining and operating the 190 acre reservoir and dam. This is a storage and release facility which is part of the municipal water supply system for the City of Fort Collins.

DATES: Comments concerning the scope of the analysis (issues, preliminary alternatives, etc.) should be received in writing by October 15, 1993.

ADDRESSES: Submit written comments, suggestions and questions to M.M. Underwood, Jr., Forest Supervisor, Arapaho and Roosevelt National Forest, 240 West Prospect Road, Fort Collins, Colorado 80526.

FOR FURTHER INFORMATION CONTACT: Jean Thomas, Project Coordinator, (303) 498–1267.

SUPPLEMENTARY INFORMATION: The reservoir was built in the early 1900's and was acquired and enlarged by the City of Fort Collins in the early 1970's. The facility was authorized by a special use permit in May 1977. This permit expired December 31, 1989 and was granted an extension until January 31, 1994.

For the Federal action, the Forest Service proposes to reauthorize special use occupancy which allow the City of Fort Collins to operate their facility as they have historically while trying to accommodate Forest resource goals to the extent possible. The permittee's long term historic use of the facility has not included instream flow conditions. It is anticipated that instream flows are needed to reduce environmental impacts. The permittee is concerned that instream flow requirements may not allow use of the volume of water decreed under State water rights.

Forest Service concerns about aquatic habitat and instream flows are evident in new direction and policy addressing terms and conditions for permit renewal which was mandated after this permit was first issued. That direction includes Final Rules for implementing the Federal Land Policy and Management Act of 1976 (FLPMA) which states that special use authorization shall contain terms and conditions which minimize damage to scenic and esthetic values and fish and wildlife habitat.

The proposed action does not meet direction in the Land and Resource Management Plan for the Arapaho and Roosevelt National Forests and Pawnee National Grassland approved May, 1984. The proposed action does not meet general direction statements to authorize permits with conditions to maintain instream flows necessary to fulfill National Forest uses and purposes, and to maintain instream

flows and protect public property and resources.

The corresponding standard that will not be met is "Habitat for each species on the forest will be maintained at least at 40 percent or more of potential." The guideline not being met for coldwater streams is "[maintain] * * * a base flow greater than 25 percent of average annual daily flow * * *."

Major environmental issues: Issuing a permit that does not require a minimum level of stream flow downstream of the facility may have detrimental effects on aquatic habitat, fish populations and aquatic ecology. Impacts may also occur to associated riparian vegetation and wildlife species that inhabit riparian habitats.

Several threatened, endangered, and sensitive species may be impacted by the permit action. These include three bird species, the Least Tern, Piping Plover, and Whooping Crane; two fish species, the Pallid Sturgeon and Greenback cutthroat trout; and two plant species, the Western Prairie White Fringed Orchid and the Ute Ladies' Tresses Orchid.

Alternatives include reissuing a permit with terms and conditions consistent with those of the previous permit; reissuing the permit to accommodate Forest Plan resource goals to the extent possible; reissuing the permit with terms and conditions that meet or exceed Forest Plan direction; and, not reissuing a new permit.

Additional issues, concerns and comments were gathered during a public comment period ending September 3, 1993.

The Deciding Official will be the Forest Supervisor, Arapaho and Roosevelt National Forests and Pawnee National Grassland, 240 West Prospect Road, Fort Collins, CO 80526–2098.

It is anticipated that the Draft Environmental Impact Statement will be published in October, 1993. The Final Environmental Impact Statement will be completed in January, 1994.

The comment period on the Draft Environmental Impact Statement will be 45 days from the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp* v. *NRDC* 435 US 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel* (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated an discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: September 21, 1993.

Austin Condon,

Acting Forest Supervisor.

[FR Doc. 93–23879 Filed 9–28–93; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Stephen A. Holmquist; Order Denying Permission To Apply for or Use Export Licenses

In the Matter of: Stephen A. Holmquist, 2 Marietta Avenue, Shrewsbury, Massachusetts and currently incarcerated at Federal Medical Center, 2110 East Center Street, Rochester, Minnesota 55903–4600.

On March 9, 1993, following a jury trial, Stephen A. Holmquist (hereinafter referred to as Holmquist) was convicted in the U.S. District Court for the District of Massachusetts of, among other crimes, three counts of violating the Arms Export Control Act (22 U.S.C.A. 2778 (1990, Supp. 1993)) (AECA), for exporting firearms designated as defense articles on the U.S. Munitions List to the People's Republic of China without obtaining the required licenses or written approval from the U.S. Department of State. Section 11(h) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401–2420 (1991, Supp. 1993, and Pub. L. 103–10, March 27, 1993)) (EAA), provides that, at the discretion of the Secretary of Commerce,[1] no person convicted of a violation of the AECA, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the EAA or the Export Administration Regulations (currently codified at 15 CFR parts 768–799 (1993)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any export license issued pursuant to the EAA in which such a person had any interest at the time of his conviction may be revoked.

Pursuant to §§ 770.15 and 772.1(g) of the Regulations, upon notification that a person has been convicted of violating the AECA, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any export license issued pursuant to, or provided by, the EAA and the Regulations and shall also determine whether to revoke any export license previously issued to such a person. Having received notice of Holmquist's conviction for violating the AECA, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Holmquist permission to apply for or use any export license, including any general license, issued pursuant to, or provided by, the EAA and the Regulations, for a period of 10 years from the date of his conviction. The 10-year period ends on March 9, 2003. I have also decided to revoke all export licenses issued pursuant to the EAA in which Holmquist had an interest at the time of his conviction.

Accordingly, it is hereby ordered:

I. All outstanding individual validated licenses in which Holmquist 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 Holmquist's privileges of participating, in any manner or

[1] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the EAA.

capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Until March 9, 2003, Stephen A. Holmquist, 2 Marietta Avenue, Shrewsbury, Massachusetts 01545, and currently incarcerated at Federal Medical Center, 2110 East Center Street, Rochester, Minnesota 55903-4600, hereby is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (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, reexport authorization 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, in whole or in part, any commodities or technical data 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.

III. After notice and opportunity for comment as provided in § 770.15(h) of the Regulations, any person, firm, corporation, or business organization related to Holmquist by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

IV. As provided in § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

V. This Order is effective immediately and shall remain in effect until March 9, 2003.

VI. A copy of this Order shall be delivered to Holmquist. This Order shall be published in the Federal Register.

Dated: September 21, 1993.

Eileen M. Albanese,

Acting Director, Office of Export Licensing.

[FR Doc. 93-23769 Filed 9-28-93; 8:45 am]

BILLING CODE 3510-DT-M

National Institute of Standards and Technology

Technology Administration; Public Meeting on the Advanced Technology Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of public meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) announces a public meeting to discuss the methods that it will use to identify specific technology program areas that the Advanced Technology Program (ATP) will focus on in future competitions for funding. All interested parties are invited to attend.

DATE AND TIME: The meeting will be held on Tuesday, October 19 from 9 a.m. to noon.

ADDRESSES: The meeting will be held in the Auditorium at NIST's main facility in Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Any of the staff at 1-800-ATP-FUND (or 1-800-287-3863). Written directions to the meeting and a list of nearby hotels will be provided upon request. Those who distributed at the meeting by requesting such information from the above after October 19, 1993.

SUPPLEMENTARY INFORMATION: In order to reap the greatest possible benefits for the nation's economy from its investments through the Advanced Technology Program, the Commerce Department's National Institute of Standards and Technology plans to focus the bulk of ATP funds to competitions in well-defined program areas.

To select these program areas, NIST will rely on its established policy of drawing on industry's ideas. The agency will hold a public meeting on Tuesday, October 19, to discuss procedures for getting industry ideas, and the selection criteria for establishing major program areas for the ATP.

The Advanced Technology Program provides funding to industry through agreements to help support the development of promising but high-risk technologies with substantial potential for enhancing the nation's economic growth or the competitiveness of its industries. Awards are made to individual companies or to consortia on a cost-sharing basis.

Since 1990, the ATP has selected industrial projects for support through announced competitions open to proposals from any and all areas of technology. Projects to be funded are selected on the basis of a rigorous competition evaluating both the technical and business merit of the proposal.

While the ATP will continue to use these "general" competitions to solicit project proposals, NIST intends to devote the bulk of ATP funds to focused competitions centered around specific programs. These program areas will have well-defined technology and economic goals, and will generally require development of an ensemble of complementary technologies. The shift in emphasis to programs will allow the ATP to achieve greater benefits for the nation by concentrating support on suites of interrelated technologies, and reaping the benefits of scale and synergism.

Program areas will be selected based on ideas from industry with an eye toward greeting the largest possible beneficial impact on the economy. Other key issues will be the quality of the technical ideas, the breadth and depth of industry interest, and opportunities for ATP funding to make the greatest possible difference. Program suggestions will be accepted at any time; a specific solicitation will not be required.

Dated: September 22, 1993.

Arati Prabhakar,

Director.

[FR Doc. 93-23763 Filed 9-28-93; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Climate and Global Change Program; Meeting

AGENCY: National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of intent.

SUMMARY: Pursuant to Public Law 92–463, the Federal Advisory Committee Act, the Committee on Earth and Environmental Sciences, Private Sector-Government Interactions Working Group, announces a conference to be held November 3–4, 1993, at the Key Bridge Marriott Hotel in Arlington, Virginia.

The purpose of the conference is to bring together a representative cross-section of the Federal earth and environmental sciences community with representatives from the private sector to establish direct lines of communication, especially focusing on potential collaborative research projects involving environmental technologies. Sessions will be held addressing "Environmental Degradation of Terrestrial Systems", "Climate Change Responses", "Reducing Costs of Natural Disasters", and "Energy Sources and Production".

The Chief Executive Officers, Vice-Presidents and managers for research and development for private sector alliances, consortia, coalitions, or other groups representing sections of the private sector are invited to attend.

DATES: Registration for the conference is due by October 15, 1993.

ADDRESSES: Ms. Linda Greczy, USDA Global Change Program Office, 1621 N. Kent St., room 60LL, Arlington, VA 22209.

Further information and registration forms may be obtained from Ms. Linda Greczy, USDA Global Change Program Office, 1621 N. Kent St., room 60LL, Arlington, VA 22209, Phone: 703–235–9018; Fax: 703–235–9046.

Dated: 24 September 1993.

William S. Busch,

Director, Emerging Technologies.

[FR Doc. 93–23888 Filed 9–28–93; 8:45 am]

BILLING CODE 3510–12–M

[I.D. 092393B]

North Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of public meeting.

SUMMARY: The North Pacific Fishery Management Council's Pacific Northwest Crab Industry Advisory Committee (Committee), will meet on October 5, 1993, beginning at 8:30 a.m., at the Leif Erikson Lodge Hall, 2245 NW. 57th, Seattle, WA.

The Committee will meet to discuss the following agenda topics:

(1) A report on the status of stocks, guideline harvest levels, management strategies for the Northern portion of the Western District opilio fishery;

(2) Future management strategies for crab fisheries;

(3) The observer program;

(4) Pot limits;

(5) Tanner board rigidity; and

(6) Scallop fishery bycatch management.

Other topics of interest to the industry may be added to the agenda.

This meeting is physically accesible to people with disabilities. Requests for sign language interpretation or other auxillary aids should be directed to Judy Willoughby, on (907) 271–2809, at least 5 working days prior to the meeting date.

FOR FURTHER INFORMATION CONTACT: Arni Thomson, Alaska Crab Coalition, telephone (206) 547–7560.

Dated: September 24, 1993.

David S. Crestin,

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

[FR Doc. 93–23845 Filed 9–28–93; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., chapter 35).

Title, Applicable Form, and OMB Control Number: Report of DoD and Defense Related Employment; DD Form 1787; OMB Control Number 0704–0047

Type of Request: Reinstatement

Number of Respondents: 11,000

Responses Per Respondent: 1

Annual Responses: 11,000

Average Burden Per Response: 1 hour

Annual Burden Hours: 11,000

Needs and Uses: Title 10, United States Code, Section 2397, requires certain former DoD officers and employees who subsequently become employees of defense contractors to submit information as collected by DD Form 1787, "Report of DoD and Defense Related Employment. This information is used to determine if there are violations of post—Government service employment statutes.

Affected Public: Individuals or households

Frequency: On occasion

Respondent's Obligation: Mandatory

OMB Desk Officer: Mr. Edward C. Springer Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503

DoD Clearance Officer: Mr. William P. Pearce Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302

Dated: September 23, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–23780 Filed 9–28–93; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

DoD Advisory Group on Electron Devices; Meeting

ACTION: Notice.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Thursday, October 28, 1993.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, suite 307, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Becky Terry, AGED Secretariat, 2011 Crystal Drive, One Crystal Park, suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development

programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law No. 92–463, as amended, (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: September 23, 1993.

Patricia L. Toppings,

Alternate, OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–23781 Filed 9–28–93; 8:45 am]

BILLING CODE 5000–04–M

DoD Advisory Group on Electron Devices

ACTION: Notice.

SUMMARY: Working Group C (Mainly Opto-Electronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday and Wednesday, 19–20 October 1993.

ADDRESSES: The meetings will be held at the National Institute of Standards and Technology on Tuesday at Bldg. 220, (Metrology) rm. B–365 and on Wednesday Bldg. 221 (Physics) rm. B–165.

FOR FURTHER INFORMATION CONTACT: Gerald Weiss, AGED Secretariat, 2011 Crystal Drive, One Crystal Park, suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law No. 92–463, as amended, (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: September 23, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–23782 Filed 9–28–93; 8:45 am]

BILLING CODE 5000–04–M

DoD Advisory Group on Electron Devices

ACTION: Notice.

SUMMARY: Working Group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday, 19 October 1993.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc. 2011 Crystal Drive, suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Walter Gelnovatch, AGED Secretariat, 2011 Crystal Drive, suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law No. 92–463, as amended, (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: September 23, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–23783 Filed 9–28–93; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Corps of Engineers

Coastal Engineering Research Board; Meeting

AGENCY: Corps of Engineers.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, (Pub. L. 92–463) announcement is made of the following committee meeting:

Name of Committee: Coastal Engineering Research Board (CERB).

Date of Meeting: November 16–18, 1993.

Place: Marriott's Grand Hotel, Point Clear, Alabama.

Time: 8 a.m. to 5:30 p.m. on November 16; 8:15 a.m. to 5 p.m. on November 17; 8 a.m. to 12 p.m. on November 18.

Theme: Coastal Wetlands.

PROPOSED AGENDA: The morning session on November 16 will consist of a report of Chief's Charge; review of CERB business; and panel presentations pertaining to coastal wetlands issues and problems including a General Overview; Shoreline Erosion Losses; Subsidence; Development/Mitigation Requirements; and Problems, Challenges, and Experiences in Coastal Restoration, Protection and Creation. The afternoon session on November 16 will consist of discussions dealing with the Wetlands Research Program. Presentations include an Overview of the Program; Wetlands Coastal Processes; Wetlands Engineering; Bio-Engineering Practices in Coastal Wetlands; Breakwaters for Wetland Restoration and Protection; and Numerical Modeling of Wetland Processes for Restoration and Protection. There will also be presentations dealing with specific wetlands projects in the Gulf of Mexico area, specifically Coastal Wetlands Planning, Protection, and Restoration Act; Atlantic coast sites; the west coast, specifically the restoration of Batiquitos Lagoon; and the south Atlantic coast, as well as a wrap-up to include future research needs and opportunities. November 17 will be devoted to an overview of the field trip prior to departing on the field trip. The following projects will be visited: The Naval Station Mobile; North American

Gulf Terminals, Inc., in Mobile County; and Dolphin Island Wetland.

On November 18, there will be presentations entitled ACES 2.0, Gulf of Mexico Study, Coastal Inlets Research Program, Dredging Operations and Environmental Research Program, and Flood of 1993 Activities. This meeting is open to the public; participation by the public is scheduled for 10:15 a.m. on November 18.

The entire meeting is open to the public subject to the following:

1. Since seating capacity of the meeting room is limited, advance notice of intent to attend, although not required, is requested in order to assure adequate arrangements.

2. Oral participation by public attendees is encouraged during the time scheduled on the agenda; written statements may be submitted prior to the meeting or up to 30 days after the meeting.

FOR FURTHER INFORMATION CONTACT: Colonel Bruce K. Howard, Executive Secretary, Coastal Engineering Research Board, U.S. Army Engineer Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, Mississippi 39180-6199, (601) 634-2513.

Dated: September 23, 1993.

Gregory D. Showalter,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 93-23821 Filed 9-28-93; 8:45 am]

BILLING CODE 5000-03-M

Inland Waterways Users Board

AGENCY: Corps of Engineers, Army.

ACTION: Notice of open meeting.

SUMMARY: In accordance with 10(a)(2) of the Federal Advisory Committee Act, Public Law (92-463) announcement is made of the following committee meeting:

Name of Committee: Inland Waterways Users Board.

Date of Meeting: October 20, 1993.

Place: Missouri Athletic Club, 405 Washington Avenue, St. Louis, Missouri 63102 (Tel. 314-231-7220).

Time: 8:30 to 5:00 PM.

Proposed Agenda

AM Session

8:30 Registration
9:05 Welcoming Remarks and Introductions
9:15 Business Session
Administrative Announcements
Chairman's Call to Order
Executive Director's Comments
Approval of Prior Meeting Minutes
9:30 Status of Inland Waterways Trust Fund
10:00 Innovative Construction Techniques and Potential for Cost Savings
10:45 Break
11:45 Focused Discussion: Status of Studies and Cost-Shared Projects
12:00 Lunch

PM Session

1:30 Upper Mississippi Navigation Program
2:00 Project Updates
2:30 Board's Annual Report
3:00 Break
3:30 Board's Annual Report (Continued)
4:00 Public Comment Period
5:00 Instructions to Board Staff/Adjourn

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

FOR FURTHER INFORMATION CONTACT: Mr. David B. Sanford, Jr., Headquarters, U.S. Army Corps of Engineers, CECW-P, Washington, DC 20314-1000, (202) 272-0146.

Dated: 23 September 1993.

Gregory D. Showalter,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 93-23820 Filed 9-28-93; 8:45 am]

BILLING CODE 3710-92-M

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. F-060]

Energy Conservation Program for Consumer Products: Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of DOE Furnace Test Procedures From Amana Refrigeration, Inc.

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

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to Amana Refrigeration, Inc. (Amana) from the existing Department of Energy (DOE) test procedure regarding blower time delay for the company's GBI line of induced draft furnaces.

Today's notice also publishes a "Petition for Waiver" from Amana. Amana's Petition for Waiver requests DOE to grant relief from the DOE furnace test procedure relating to the blower time delay specification. Amana seeks to test using a blower delay time of 30 seconds for its GBI line of induced draft furnaces instead of the specified 1.5-minute delay between burner on-time and blower on-time. DOE is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than October 29, 1993.

ADDRESS: Written comments and statements shall be sent to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Case No. F-060, Mail Stop EE-90, room 6B-025, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-0561.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE-431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 586-9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 586-9507

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100-357, and the Energy Policy Act of 1992 (EPAct), Public Law 102-486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces.

The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter, DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On July 9, 1993, Amana filed an Application for Interim Waiver regarding blower time delay. Amana's application seeks an Interim Waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Amana requests the allowance to test using a 30-second blower time delay when testing its GBI line of induced draft furnaces. Amana states that the 30-second delay is indicative of how these furnaces actually operate. Such a delay results in an energy savings of approximately 0.8 percent. Since current DOE test procedures do not address this variable blower time delay, Amana asks that the Interim Waiver be granted.

Previous waivers for this type of time blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, and 57 FR 22222, May 27, 1992; Lennox Industries, 55 FR 50224, December 5, 1990, and 57 FR 49700, November 3, 1992; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, and 57 FR 38830, August 27, 1992; Amana Refrigeration, Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, and 57 FR 23392, June 3, 1992; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, and 57 FR 10163, March 24, 1992; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, and 57 FR 54230, November 17, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992; and Bard Manufacturing Company, 57 FR 53733, November 12, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Amana an Interim Waiver for its GBI line of induced draft furnaces. Pursuant to paragraph (e) of § 430.27 of the Code of Federal Regulations part 430, the following letter granting the Application for Interim Waiver to Amana was issued.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

Issued in Washington, DC, September 17, 1993.

Frank M. Stewart, Jr.,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

September 17, 1993.

Mr. C. Milton Hutchinson,

Chief Engineer, Heating and Air Conditioning, Amana Refrigeration, Inc., Amana, IA 52204.

Dear Mr. Hutchinson: This is in response to your July 9, 1993, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedure regarding blower time delay for Amana Refrigeration, Inc. (Amana) GBI line of induced draft furnaces.

Previous waivers for this type of time blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, and 57 FR 22222, May 27, 1992; Lennox Industries, 55 FR 50224, December 5, 1990, and 57 FR 49700, November 3, 1992; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, and 57 FR 38830, August 27, 1992; Amana Refrigeration, Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, and 57 FR 23392, June 3, 1992; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, and 57 FR 10163, March 24, 1992; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, and 57 FR 54230, November 17, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992; and Bard Manufacturing Company, 57 FR 53733, November 12, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

Amana's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage Amana will likely experience absent favorable determination on its application. However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, Amana's Application for an Interim Waiver from the DOE test procedure for its GBI line of induced draft furnaces regarding blower time delay is granted.

Amana shall be permitted to test its GBI line of induced draft furnaces on the basis of the test procedures specified in 10 CFR part 430, subpart B, Appendix N, with the modification set forth below:

(i) Section 3.0 in Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in Section 9 in ANSI/ASHRAE 103–82 with the exception of Sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and

the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t−) unless: (1) the furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay (t−) using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be removed or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Sincerely,

Frank M. Stewart, Jr.,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

July 9, 1993.

Assistant Secretary, Conservation & Renewable Energy,

United States Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Subject: Petition for Waiver and Application for Interim Waiver

Gentleman: This is a Petition for Waiver and Application for Interim Waiver submitted pursuant to title 10 CFR 430.27, as amended 14 November 1986. Waiver is requested from the test procedures for measuring the Energy Consumption of Furnaces found in Appendix N of subpart B to part 430, specifically the section requiring a 1.5 minute delay between burner ignition and start-up of the circulating air blower.

Amana Refrigeration, Inc. requests a waiver from the specified 1.5 minute delay, and seeks authorization in its furnace efficiency test procedures and calculations to utilize a fixed timing control that will energize the circulating air blower 30 seconds after gas valve opens. A control of this type with a fixed 30 second blower on-time will be utilized in our GBI line of induced draft furnaces.

The current test procedure does not credit Amana for additional energy savings that occur when a shorter blower on-time is utilized. Test data for these furnaces with a 30 second delay indicate that the overall furnace AFUE will increase approximately 0.8 percent compared to the same furnace when tested with the 1.5 minute delay. Copies of the confidential test data confirming these energy savings will be forwarded to you upon request.

Amana Refrigeration is confident that this waiver will be granted, as similar waivers have been granted in the past, to Coleman Company, Magic Chef Company, Rheem Manufacturing, the Trane Company and others. Similar waiver requests for the Amana GUD, GUX, GCC, GUI, GCI and GSI series furnaces have been already been approved by the Department of Energy.

Manufacturers that domestically market similar products are being sent a copy of this Petition for Waiver and Application for Interim Waiver.

Sincerely,

C. Milton Hutchinson,

Chief Engineer, Heating and Air Conditioning, Amana Refrigeration, Inc.

[FR Doc. 93–23899 Filed 9–28–93; 8:45 am]

BILLING CODE 6450–01–P

[Case No. F–061]

Energy Conservation Program for Consumer Products: Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of DOE Furnace Test Procedures From Carrier Corp.

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

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to Carrier Corporation (Carrier) from the existing Department of Energy (DOE) test procedure regarding blower time delay for the company's 58TUA/330AAV and 58TMA/331AAV lines of induced draft furnaces.

Today's notice also publishes a "Petition for Waiver" from Carrier. Carrier's Petition for Waiver requests DOE to grant relief from the DOE furnace test procedure relating to the blower time delay specification. Carrier seeks to test using a blower delay time of 45 seconds for its 58TUA/330AAV and 58TMA/331AAV lines of induced draft furnaces instead of the specified 1.5-minute delay between burner on-time and blower on-time. DOE is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than October 29, 1993.

ADDRESS: Written comments and statements shall be sent to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Case No. F–061, Mail Stop CE–90, Room 6B–025, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0561.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9127,

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPAct), Public Law 102–486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, Subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter, DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate

comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On August 3, 1993, Carrier filed an Application for Interim Waiver regarding blower time delay. Carrier's Application seeks an Interim Waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Carrier requests the allowance to test using a 45-second blower time delay when testing its 58TUA/330AAV and 58TMA/331AAV lines of induced draft furnaces. Carrier states that the 45-second delay is indicative of how these furnaces actually operate. Such a delay results in an energy savings of approximately 0.6 percent. Since current DOE test procedures do not address this variable blower time delay, Carrier asks that the Interim Waiver be granted.

Previous waivers for this type of time blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, and 57 FR 22222, May 27, 1992; Lennox Industries, 55 FR 50224, December 5, 1990, and 57 FR 49700, November 3, 1992; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, and 57 FR 38830, August 27, 1992; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, and 57 FR 23392, June 3, 1992; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, and 57 FR 27970, June 23, 1992; Ducane Company, 56 FR 63943, December 6, 1991, and 57 FR 10163, March 24, 1992; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, and 57 FR 54230, November 17, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992; and Bard Manufacturing Company, 57 FR 53733, November 12, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Carrier an Interim Waiver for its 58TUA/330AAV and 58TMA/331AAV lines of induced draft furnaces. Pursuant to paragraph (e) of § 430.27 of the Code of Federal Regulations part 430, the following letter granting the Application for Interim Waiver to Carrier was issued.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

Issued in Washington, DC, September 17, 1993.

Frank M. Stewart, Jr.,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

September 17, 1993.

Mr. Edward A. Baily,

Vice-President, Government and Industry Relations, Carrier Corporation, P.O. Box 4808, Syracuse, NY 13221.

Dear Mr. Baily: This is in response to your August 3, 1993, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedure regarding blower time delay for Carrier Corporation (Carrier) 58TUA/330AAV and 58TMA/331AAV lines of induced draft furnaces.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, and 57 FR 22222, May 27, 1992; Lennox Industries, 55 FR 50224, December 5, 1990, and 57 FR 49700, November 3, 1992; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, and 57 FR 38830, August 27, 1992; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, and 57 FR 23392, June 3, 1992; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, and 57 FR 27970, June 23, 1992; Ducane Company, 56 FR 63943, December 6, 1991, and 57 FR 10163, March 24, 1992; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, and 57 FR 54230, November 17, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992; and Bard Manufacturing Company, 57 FR 53733, November 12, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

Carrier's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage Carrier will likely experience absent a favorable determination on its application. However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, Carrier's Application for an Interim Waiver from the DOE test procedure for its 58TUA/330AAV and 58TMA/331AAV lines of induced draft furnaces regarding blower time delay is granted.

Carrier shall be permitted to test its 58TUA/330AAV and 58TMA/331AAV lines of induced draft furnaces on the basis of the test procedures specified in 10 CFR part 430, subpart B, Appendix N, with the modification set forth below:

(i) Section 3.0 in Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in Section 9 in ANSI/ASHRAE 103–82 with the exception of Sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn

on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-) unless: (1) the furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay (t-) using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ± 0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be removed or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Sincerely,

Frank M. Stewart, Jr.,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

August 3, 1993.

The Assistant Secretary for Conservation and Renewable Energy,

United States Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Gentlmen:

Subject: *Application for Interim Waiver of Furnace Test Procedures*

Carrier has this day mailed a copy of its Petition for Waiver and Application for Interim Waiver of Test Procedures for its 58TUA/330AAV and 58TMA/331AAV lines of induced draft furnaces to all known manufacturers of domestically marketed units of the same product type as required by title 10 CFC 430.27 as amended.

A copy of the letter of Application and Petition and a list of those to whom it was sent are attached.

Respectfully,

Edward A. Baily,

Vice President, Government & Industry Relations.

Enclosures.

August 3, 1993.

The Assistant Secretary for Conservation and Renewable Energy,

United States Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Gentlemen:

Subject: *Petition for Waiver and Application for Interim Waiver*

This is a petition for Waiver and Application for Interim Waiver which are submitted pursuant to title 10 CFR 430.27 as amended November 14, 1986. Waiver is requested from Test Procedures for Measuring the Energy Consumption of Furnaces found in Appendix N to subpart B of part 430.

Under the existing Test Procedure, a 1.5 minute time delay between burner and blower startup is required. Carrier requests a waiver from the specified 1.5 minute delay. In its place, we request the use of a 45-second delay on Carrier's line of 58TUA/330AAV and 58TMA/331AAV induced draft furnaces.

The time delay in all lines of equipment is fixed within the furnace control, and cannot be adjusted by the installer or servicer.

The current test procedures do not credit Carrier for the energy savings associated with the shorter blower time delays. Test data on our mid-efficiency furnaces show a decrease in the heat-up cycle energy losses when using the 45-second delay, resulting in an increase in AFUE of approximately 0.6 AFUE points. Confidential supporting test data is available upon request.

Carrier is confident that a waiver will be granted for public policy reasons in the light of previous rulings in which DOE granted waivers of this type to Lennox Industries, Inter-City Products, Amana, Rheem Manufacturing, and the Trane Company.

Respectfully,

Edward A. Baily,

Vice President, Government & Industry Relations.

[FR Doc. 93-23898 Filed 9-28-93; 8:45 am]

BILLING CODE 6450-01-P

[Case No. F-062]

Energy Conservation Program for Consumer Products: Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of DOE Furnace Test Procedures From Carrier Corporation

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

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to Carrier Corporation (Carrier) from the existing Department of Energy (DOE) test procedure regarding blower time delay for the company's 58MXA/350MAV, 58MCA/340MAV, and 490AAV lines of induced draft furnaces.

Today's notice also publishes a "Petition for Waiver" from Carrier. Carrier's Petition for Waiver requests DOE to grant relief from the DOE furnace test procedure relating to the blower time delay specification. Carrier seeks to test using a blower delay time of 60 seconds for its 58MXA/350MAV, 58MCA/340MAV, and 490AAV lines of induced draft furnaces instead of the specified 1.5-minute delay between burner on-time and blower on-time. DOE is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than October 29, 1993.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Case No. F-062, Mail Stop EE-90, room 6B-025, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-0561.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE-431, Forrestal Building, 1000 Independence Avenue, SW. Washington, DC 20585, (202) 586-9127,

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100-357, and the Energy Policy Act of 1992 (EPAct), Public Law 102-486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, Subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter, DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test

procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On August 3, 1993, Carrier filed an Application for Interim Waiver regarding blower time delay. Carrier's Application seeks an Interim Waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Carrier requests the allowance to test using a 60-second blower time delay when testing its 58MXA/350MAV, 58MCA/340MAV, and 490AAV lines of induced draft furnaces. Carrier states that the 60-second delay is indicative of how these furnaces actually operate. Such a delay results in an energy savings of approximately 1.0 percent. Since current DOE test procedures do not address this variable blower time delay, Carrier asks that the Interim Waiver be granted.

Previous waivers for this type of time blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, and 57 FR 22222, May 27, 1992; Lennox Industries, 55 FR 50224, December 5, 1990, and 57 FR 49700, November 3, 1992; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, and 57 FR 38830, August 27, 1992; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, and 57 FR 23392, June 3, 1992; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, and 57 FR 27970, June 23, 1992; Ducane Company, 56 FR 63943, December 6, 1991, and 57 FR 10163, March 24, 1992; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, and 57 FR 54230, November 17, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992; and Bard Manufacturing Company, 57 FR 53733, November 12, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Carrier an Interim Waiver for its 58MXA/350MAV, 58MCA/340MAV, and 490AAV lines of induced draft furnaces. Pursuant to paragraph (e) of § 430.27 of the Code of Federal Regulations part 430, the following letter granting the Application for Interim Waiver to Carrier was issued.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

Issued in Washington, DC, September 17, 1993.

Frank M. Stewart, Jr.,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

September 17, 1993.

Mr. Edward A. Baily,

Vice-President, Government and Industry Relations, Carrier Corporation, P.O. Box 4808, Syracuse, NY 13221.

Dear Mr. Baily: This is in response to your August 3, 1993, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedure regarding blower time delay for Carrier Corporation (Carrier) 58MXA/350MAV, 58MCA/340MAV, and 490AAV lines of induced draft furnaces.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, and 57 FR 22222, May 27, 1992; Lennox Industries, 55 FR 50224, December 5, 1990, and 57 FR 49700, November 3, 1992; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, and 57 FR 38830, August 27, 1992; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, and 57 FR 23392, June 3, 1992; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, and 57 FR 27970, June 23, 1992; Ducane Company, 56 FR 63943, December 6, 1991, and 57 FR 10163, March 24, 1992; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, and 57 FR 54230, November 17, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992; and Bard Manufacturing Company, 57 FR 53733, November 12, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

Carrier's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage Carrier will likely experience absent a favorable determination on its application. However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, Carrier's Application for an Interim Waiver from the DOE test procedure

for its 58MXA/350MAV, 58MCA/340MAV, and 490AAV lines of induced draft furnaces regarding blower time delay is granted.

Carrier shall be permitted to test its 58MXA/350MAV, 58MCA/340MAV, and 490AAV lines of induced draft furnaces on the basis of the test procedures specified in 10 CFR Part 430, Subpart B, Appendix N, with the modification set forth below:

(i) Section 3.0 in Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in Section 9 in ANSI/ASHRAE 103–82 with the exception of Sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-) unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay (t-) using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ± 0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be removed or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Sincerely,

Frank M. Stewart, Jr.,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

August 3, 1993.

The Assistant Secretary for Conservation and Renewable Energy,

United States Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Gentleman:

Subject: *Application for Interim Waiver of Furnace Test Procedures*

Carrier has this day mailed a copy of its Petition for Waiver and Application for Interim Waiver of Test Procedures for its 58MXA/350MAV, 58MCA/340MAV, and 490AAV lines of induced draft furnaces to all know manufacturers of domestically marketed units of the same product type as required by Title 10 CFC 430.27 as amended.

A copy of the letter of Application and Petition and a list of those to whom it was sent are attached.

Respectfully,

Edward A. Baily,

Vice President, Government & Industry Relations.

Enclosures.

August 3, 1993.

The Assistant Secretary for Conservation and Renewable Energy,

United States Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Gentleman:

Subject: *Petition for Waiver and Application for Interim Waiver*

This is a petition for Waiver and Application for Interim Waiver which are submitted pursuant to Title 10 CFR 430.27 as amended November 14, 1986. Waiver is requested from Test Procedures for Measuring the Energy Consumption of Furnaces found in appendix N to subpart B of part 430.

Under the existing Test Procedure, a 1.5 minute delay between burner and blower startup is required. Carrier requests a waiver from the specified 1.5 minute delay. In its place, we request the use of a 60-second delay on Carrier's line of 58MXA/350MAV, 58MCA/340MAV, and 490AAV condensing furnaces.

The time delay in all lines of equipment is fixed within the furnace control, and cannot be adjusted by the installer or servicer.

The current test procedures do not credit Carrier for the energy savings associated with the shorter blower time delays. Test data on our condensing furnaces show a decrease in the heat-up cycle energy losses when using the 60-second delay, resulting in an increase in AFUE of appromxinately 1.0 AFUE points. Confidential supporting test data is available upon request.

Carrier is confident that a waiver will be granted for public policy reasons in the light of previous rulings in which DOE granted waivers of this type of Lennox Industries, Inter-City Products, Amana, Rheem Manufacturing, and the Trane Company.

Respectfully,

Edward A. Baily,

Vice President, Government & Industry Relations.

[FR Doc. 93–23900 Filed 9–28–93; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket Nos. ER93–962–000, et al.]

Montana-Dakota Utilities Company, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

September 23, 1993.

Take notice that the following filings have been made with the Commission:

1. Montana-Dakota Utilities Company

[Docket No. ER93–962–000]

Take notice that on September 20, 1993, Montana-Dakota Utilities Company (Montana-Dakota), a Division of MDU Resources Group, Inc., tendered for filing a request for authority to amend its current contract with the United States Department of Energy, Western Area Power Administration (Western) to provide for the receipt of payments directly from third parties utilizing such power rather than from Western itself during the 1993–1994 winter season.

Montana-Dakota requests waiver of the notice requirement of § 35.3 of the Commission's Regulations and that the amended contract be made effective as of October 1, 1993.

Comment date: October 6, 1993, in accordance with Standard Paragraph E at the end of this notice.

Pennsylvania Power Company

[Docket No. ER93–964–000]

Take notice that on September 20, 1993, Pennsylvania Power Company (Penn Power) pursuant to 18 CFR 35.13 tendered for filing eight proposed changes in its FPC Electric Service Tariffs Nos. 30, 31, 32, 33 and 34 to the Pennsylvania boroughs (Boroughs) of New Wilmington, Wampum, Zelienople, Ellwood City and Grove City, respectively. The filing proposes a decrease in the State Tax Adjustment Surcharge (STAS or Rider I) from 1.99% to 1.70% effective April 1, 1993. The second change is an increase in the Energy Cost Rate (ECR or Rider II) from $.002358/kWh to $.002689/kWh effective April 1, 1993. The third change is a revision to the language in Rider II to include recovery of annual payments to the uranium enrichment decontamination and decommissioning fund pursuant to Section 1101 of the Energy Policy Act of 1992. The fourth change is the cancellation of Rider V, PEPCO Credit Rider, and the incorporation of the rider's credits into base rates effective August 24, 1993. The fifth change is the reduction of the STAS (Rider 1) to 0.0% effective August

24, 1993, by incorporating the existing STAS into base rates. Three other miscellaneous changes are proposed in the filing to extend the effective dates of two tariff riders (Demand Ratchet Waiver and Economic Development) and cancel a third (Economic Development II). These three changes have no effect on the level of rates charged these customers. The overall revenue effect of these changes is to increase annual revenues from the municipal resale class by approximately $26,600 or 0.34%.

The five municipal resale customers served by Penn Power entered into settlement agreements effective as of September 1, 1984. These agreements provide that these customers will be charged applicable retail rates as may be in effect during the terms of the agreements. Changes in rates were agreed to become effective as to these resale customers simultaneously with changes approved by the Pennsylvania Public Utility Commission (Pa.PUC). The proposed changes have been implemented as to Penn Power's retail customers pursuant to Pa.PUC orders and regulations. These settlement agreements were approved by the Federal Energy Regulatory Commission through a Secretarial letter dated December 14, 1984 in Docket Nos. ER77-277-007 and ER81-779-000. Waivers of certain filing requirements have been requested to implement the rate changes in accordance with the settlement agreements.

Copies of the filing were served upon Penn Power's jurisdictional customers and the Pa.PUC.

Comment date: October 6, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. MDU Resources Group, Inc.

[Docket No. ES93-51-000]

Take notice that on September 15, 1993, MDU Resources Group, Inc. filed an application under section 204 of the Federal Power Act seeking authorization to issue not more than $30 million of promissory notes pursuant to a revolving credit agreement on or before December 31, 1995, with a final maturity date no later than December 31, 1996.

Comment date: October 14, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Rockland Electric Company

[Docket No. ES93-53-000]

Take notice that on September 17, 1993, Rockland Electric Company filed an application under section 204 of the Federal Power Act seeking authorization to issue not more than $10 million of unsecured obligations with a final maturity date no later than December 31, 1996.

Comment date: October 15, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Orange and Rockland Utilities Inc.

[Docket No. ES93-52-000]

Take notice that on September 17, 1993, Orange and Rockland Utilities, Inc. filed an application under section 204 of the Federal Power Act seeking authorization to issue not more than $100 million of unsecured obligations with a final maturity date no later than December 31, 1996.

Comment date: October 15, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. PSI Energy, Inc.

[Docket No. ES93-963-000]

Take notice that PSI Energy, Inc. (PSI), formerly named Public Service Company of Indiana, Inc. on September 20, 1993, tendered for filing executed contracts and related information in order to provide certain Economic Development incentives under Section 16 of FERC Electric Tariff Original Volume No. 1 of PSI Energy, Inc.

Such Economic Development incentives are for a new Master Guard Corporation manufacturing plant in Veedersburg, Indiana. The Economic Development incentives are limited to 1½ megawatts, the expected initial load of the manufacturing project.

PSI has requested waiver of the Commission's applicable requirements of part 35 of its regulations not compiled with, including any notice requirements of § 35.3. The requested effective date for such Economic Development incentives applicable to Master Guard Corporation is June 1, 1993.

Copies of the filing were served on the Town of Veedersburg and the Indiana Utility Regulatory Commission.

Comment date: October 6, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93-23809 Filed 9-28-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER93-806-000, et al.]

PSI Energy, Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

September 22, 1993.

Take notice that the following filings have been made with the Commission:

1. PSI Energy, Inc.

[Docket No. ER93-806-000]

Take notice that on September 16, 1993, PSI Energy, Inc. (PSI) and The City of Piqua, Ohio, tendered for filing amended Service Schedules to the FERC Filing in Docket No. ER93-806-000 to comply with a FERC Staff request.

Copies of the filing were served on The City of Piqua, Ohio, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: October 6, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Commonwealth Edison Company and Wisconsin Public Service Corporation

[Docket No. ER93-724-001]

Take notice that on September 13, 1993, Commonwealth Edison Company (Edison) submitted its compliance filing in the above docket.

Copies of this filing were served on all parties listed on the Commission's service list compiled in this proceeding.

Comment date: October 6, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. PacificCorp

[Docket No. ER93-956-000]

Take notice that on September 17, 1993, PacifiCorp tendered for filing, in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a Power Purchase Agreement plus two amendments and an Interconnection Agreement between the Confederated Tribes of the Warm Springs Reservation of Oregon in conjunction with their enterprise and operating division, Warm Springs Power Enterprises (WSPE) and PacifiCorp.

PacifiCorp has requested that the Commission disclaim jurisdiction over these agreements or, in the alternative, accept them for filing effective December 1, 1993.

Copies of this filing have been supplied to WSPE, the Public Utility Commission of Oregon and the Utah Public Service Commission.

Comment date: October 6, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Pennsylvania Electric Company Jersey Central Power & Light Company Metropolitan Edison Company General Public Utilities Corporation

[Docket No. ER93-952-000]

Take notice that on September 15, 1993, General Public Utilities Corporation (GPU), a public utility holding company registered under the Public Utility Holding Company Act of 1935, and its three public utility subsidiaries, filed with the Commission's Settlement Agreement, dated September 10, 1993, between them and Allegheny Electric Cooperative, Inc. (Allegheny Cooperative), a generation and transmission cooperative which is not a public utility subject to the Federal Power Act.

Such Settlement Agreement relates to (a) the resolution of three open items that were in dispute under predecessor agreements that have been superseded and (b) the basis upon which sales by Allegheny Cooperative of its excess energy to the CPU public utilities will be measured and priced.

Copies of this filing have been served on the Pennsylvania Public Utility Commission.

Comment date: October 6, 1993, in accordance with Standard Paragraph E end of this notice.

5. New York Power Pool

[Docket No. ER93-961-000]

Take notice that on September 17, 1993, the member systems of the New York Power Pool (NYPP) submitted for filing with the Commission a proposed amendment to the NYPP Agreement, on file with the Commission as NYPP FERC Rate Schedule No. 1. The proposed amendment is an increase to the T-Fund percentage of savings rate; this charge is part of the compensation mechanism for the members' provision of transmission services in conjunction with economy energy transactions. The NYPP member systems propose that the change be effective on December 1, 1993. The member systems state that copies of the filing have been served on the New York Public Service Commission and all members of NYPP.

Comment date: October 6, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Wisconsin Electric Power Company

[Docket No. ER93-958-000]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on September 17, 1993, tendered for filing a revised Exhibit C between itself and Alger Delta Cooperative Electric Association (Alger Delta). The Exhibit C updates the listing of the delivery points between the parties, deleting the Holmes delivery point and adding the new Nathan delivery point.

Wisconsin Electric respectfully requests an effective date coincident with the in-service date of the Nathan substation, now expected to be declared commercial in mid-September. Since the higher voltage service will result in reduced revenues under Rate W, Wisconsin Electric seeks waiver of the Commission's notice requirements. Wisconsin Electric states that it will promptly advise the Commission of such date. Wisconsin Electric is authorized to state that Alger Delta joins in the requested effective date.

Copies of the filing have been served on Alger Delta, and the Michigan Public Service Commission.

Comment date: October 6, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Southern California Edison Company

[Docket No. ER93-576-000]

Take notice that on September 17, 1993, Southern California Edison Company (SCE) submitted supplemental information regarding its filing in the above-captioned docket.

Comment date: October 6, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Atlantic City Electric Company

[Docket No. ER93-954-000]

Take notice that on September 16, 1993, Atlantic City Electric Company (ACE) tendered for filing on behalf of itself and Baltimore Gas and Electric Company (BG&E) an Agreement governing the sale and exchange of Pennsylvania-New Jersey-Maryland (PJM) Interconnection Installed Capacity Credits. Under this Agreement, ACE and BG&E would sell or exchange PJM Installed Capacity Credits at a rate not to exceed the rate for purchasing capacity provided in the applicable schedule of the PJM Interconnection Agreement.

ACE states that copies of the filing have been served on the New Jersey Board of Regulatory Commissioners and the Maryland Public Service Commission.

Comment date: October 6, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. New England Power Company

[Docket No. ER93-904-000]

Take notice that on September 16, 1993, New England Power Company (NEP), tendered for filing material inadvertently omitted from its original submittal in this docket.

Comment date: October 6, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93-23810 Filed 9-28-93; 8:45 am]

BILLING CODE 6717-01-M

[FERC Project No. 11213 New York]

Thomas Hohman; Availability of Draft Environmental Assessment

September 23, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the proposed Barberville Project, located on the Poestenkill Creek near the Town of Poestenkill, in Rensselaer County, New York, and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the environmental impacts of the proposed project and has recommended the no

action alternative, which would result in license denial.

Copies of the DEA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street NE., Washington, DC 20426.

Please submit any comments within 30 days from the date of this notice. Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Please affix Project No. 11213 to all comments. For further information, please contact Brian Romanek, Environmental Coordinator, at (202) 219–3076.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–23807 Filed 9–28–93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EC93–6–001]

Cincinnati Gas & Electric Co. and PSI Energy, Inc.; Filing

September 22, 1993.

Take notice that on September 15, 1993, PSI Energy, Inc., Cincinnati Gas & Electric Co., Union Light, Heat & Power Co., and Miami Power Corporation (Applicants) filed a letter informing the Commission that they do not believe that approval of state commissions is required before they may consummate their proposed merger. In the Commission's order conditionally approving the merger, 64 FERC ¶61,237 (1993), the Commission had stated that the Applicants had represented that the Indiana, Kentucky, and Ohio Commissions have jurisdiction over aspects of the transaction.

Any person desiring to comment on the September 15, 1993 filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. All such comments should be filed on or before October 7, 1993. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–23806 Filed 9–28–93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93–141–002]

Iroquois Gas Transmission System, L.P.; Amendment

September 23, 1993.

Take notice that on September 15, 1993, Iroquois Gas Transmission System, L.P. (Iroquois), One Corporate Drive, suite 600, Shelton, Connecticut 06484, filed in Docket No. CP93–141–002, a second amendment to its application for a certificate of public convenience and necessity authorizing Iroquois to construct and operate a compressor station to be located in the town of Croghan, New York. Iroquois states that the amendment is occasioned principally by the substitution of the Solar-DeLaval PV31 compressor for the Solar Taurus compressor unit previously proposed to be installed and other minor modifications to the construction and site plans.

Iroquois estimates a total cost of approximately $17.8 million for the proposed facilities, 25% of which would be financed through Iroquois Partners, with the remainder coming from non-recourse debt held by commercial banks.

Any person desiring to be heard or to make any protest with reference to said petition should, on or before October 14, 1993, file the Federal Energy Regulatory Commission (Commission), 825 North Capitol Street, NE., Washington, DC 20426, a petition to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Any person who has heretofore filed need not file again.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–23808 Filed 9–28–93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER93–955–000]

Southern Company Services, Inc.; Filing

September 22, 1993.

Take notice that on September 16, 1993, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company (collectively referred to as "Southern Companies"), tendered for filing the Service Schedule EP (Economic Energy Participation) to the Interchange Contract between the City of Tallahassee, Florida and Southern Companies. Schedule EP provides a means by which Southern Companies provide transmission service for economic energy transactions between the City of Tallahassee, Florida and third party utilities with which Southern Companies have direct interconnections. Southern Companies request waiver of the sixty day prior notice requirement and an immediate effective date.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 6, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–23841 Filed 9–28–93; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

High Energy Physics Advisory Panel; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: High Energy Physics Advisory Panel (HEPAP)

Date and Time: Monday, November 8, 1993, 9 a.m.—5 p.m.; Tuesday, November 9, 1993, 9 a.m.—12 noon.

Place: U.S. Department of Energy, room 1E–245, 1000 Independence Avenue, SW., Washington, DC 20585.

Contact: Dr. Enloe T. Ritter, Executive Secretary, High Energy Physics Advisory Panel, U.S. Department of Energy, ER–221, GTN, Washington, DC 20585, Telephone: (301) 903–4829

Purpose of Panel: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda:

Monday, November 8, 1993 and Tuesday, November 9, 1993

—Discussion of National Science Foundation (NSF) Elementary Particle Physics Programs and Budgets

—Discussion of Department of Energy (DOE) High Energy Physics Programs and Budgets
—Discussion of Department of Energy Superconducting Super Collider (SSC) Project Activities and Budgets
—Reports on and Discussions of Topics of General Interest in High Energy Physics
—Public Comment

Public Participation: The meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Secretary at the address or telephone number listed above. Request must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes: Available for public review and copying at the Public Reading Room, room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on September 23 1993.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 93-23893 Filed 9-28-93; 8:45 am]

BILLING CODE 6450-01-M

Southeastern Power Administration

Georgia-Alabama-South Carolina System of Projects; Collection

AGENCY: Southeastern Power Administration (Southeastern), DOE.

ACTION: Correction notice.

SUMMARY: On July 30, 1993, in 58 FR 40807, Southeastern published notice of interim approval of rates for the Georgia-Alabama-South Carolina System of Projects. This notice included a table that contained errors. This notice is to correct those errors.

SUPPLEMENTARY INFORMATION: The table that appears on page 40809 should appear as follows:

GEORGIA-ALABAMA-SOUTH CAROLINA SYSTEM RATES

Rate schedule	Present	Proposed Oct. 1, 1993–Sept. 30, 1998
GA-1-D:		
Capacity ($/KW/MO)	2.67	2.67
Energy (Mills/KWH)	7.21	7.21
Transmission ($/KW/MO)	(0.10)	0.00
Tandem Transmission ($/KW/MO)	0.20	0.17
GA-2-D:		
Capacity ($/KW/MO)	2.67	2.67
Energy (Mills/KWH)	7.21	7.21
Transmission ($/KW/MO)	(0.10)	0.00
Tandem Transmission ($/KW/MO)	0.20	0.17
GA-3-C:		
Capacity ($/KW/MO)	2.67	2.67
Energy (Mills/KWH)	7.21	7.21
Transmission ($/KW/MO)	3.19	3.29
Tandem Transmission ($/KW/MO)	0.20	0.17
ALA-3-D:		
Capacity ($/KW/MO)	2.67	2.67
Energy (Mills/KWH)	7.21	7.21
Transmission ($/KW/MO)	1.63	1.73
Tandem Transmission ($/KW/MO)	0.20	0.17
MISS-2-D:		
Capacity ($/KW/MO)	2.67	2.67
Energy (Mills/KWH)	7.21	7.21
Transmission ($/KW/MO)	1.22	1.32
Tandem Transmission ($/KW/MO)	0.20	0.17
GU-1-D:		
Capacity ($/KW/MO)	2.67	2.67
Energy (Mills/KWH)	7.21	7.21
Transmission ($/KW/MO)	1.62	1.72
Tandem Transmission ($/KW/MO)	0.20	0.17
ALA-1-H:		
Capacity ($/KW/MO)	2.26	2.26
Energy (Mills/KWH)	7.21	7.21
Transmission ($/KW/MO)	(0.10)	0.00
Tandem Transmission ($/KW/MO)	0.20	0.17
MISS-1-H:		
Capacity ($/KW/MO)	2.26	2.26
Energy (Mills/KWH)	7.21	7.21
Transmission ($/KW/MO)	0.87	0.97
Tandem Transmission ($/KW/MO)	0.20	0.17
SC-4-B:		
Capacity ($/KW/MO)	2.26	2.26
Energy (Mills/KWH)	9.17	7.21
Transmission ($/KW/MO)	0.00	0.00
Tandem Transmission ($/KW/MO)	0.20	0.17
SC-3-C:		
Capacity ($/KW/MO)	2.35	2.35
Energy (Mills/KWH)	(1)	7.21
Transmission ($/KW/MO)	1.48	1.48
Tandem Transmission ($/KW/MO)	0.20	0.17
CAR-3-C:		
Capacity ($/KW/MO)	2.77	2.77
Energy (Mills/KWH)	(1)	7.21
Transmission ($/KW/MO)	1.21	1.21
Tandem Transmission ($/KW/MO)	0.20	0.17
SCE-2-C:		
Capacity ($/KW/MO)	2.78	2.78
Energy (Mills/KWH)	(1)	7.21
Transmission ($/KW/MO)	1.85	1.85
Tandem Transmission ($/KW/MO)	0.20	0.17
Pumping schedule Gamf-3-B	.....	Cost

[1] 17.21 or 9.19.

Issued at Elberton, Georgia; September 14, 1993.

John A. McAllister, Jr.,

Administrator.

[FR Doc. 93-23891 Filed 9-28-93; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Boulder Canyon Project Proposed Power Rate Adjustment

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice extending the comment and consultation period for the Boulder Canyon Project proposed annual rate review process.

SUMMARY: Western Area Power Administration (Western) is announcing an extension to the comment and consultation period for the Boulder Canyon Project (BCP) proposed annual rate review process. The original schedule for the comment and consultation period was announced in the **Federal Register** Notice on August 17, 1993, at 58 FR 43631. The comment and consultation period was to end on September 17, 1993.

Western is extending the comment and consultation period 30 days to allow the customers to comment further, and also to prepare Western responses to some of the questions asked by the BCP customers in the August 31, 1993, public information forum. The comment and consultation period will now end October 18, 1993. The proposed BCP rates will become effective January 1, 1994.

Following the close of the comment and consultation period, Western will prepare another power repayment spreadsheet study for the BCP which will include any changes due to the consideration of public comments. Western will recommend the results of those studies as the final proposed rates to the Acting Assistant Secretary for Energy Efficiency and Renewable Energy, or his successor, to be placed in effect on an interim basis as provisional rates and submitted to the Federal Energy Regulatory Commission (FERC) for approval on a final basis.

DATES: The comment and consultation period for the BCP proposed annual rate review will end on October 18, 1993. Written comments should be received by the end of the comment and consultation period to be assured consideration. Comments may be sent to: Mr. Thomas A. Hine, Area Manager, Phoenix Area Office, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457.

SUPPLEMENTARY INFORMATION: Power rates for the BCP are established pursuant to the various laws cited in the initial **Federal Register** notice at 58 FR 43631.

The procedures for public participation in rate adjustments for power and transmission service marketed by Western, which are found at 10 CFR part 903, were published in the **Federal Register** at 50 FR 37837 on September 18, 1985.

Issued at Golden, Colorado, September 15, 1993.

William H. Clagett,

Administrator.

[FR Doc. 93–23892 Filed 9–28–93; 8:45 am]

BILLING CODE 6450-01-M

[Rate Order No. WAPA–64]

Order Confirming and Approving an Extension of the Parker-Davis Project Rates for Firm Power and Firm and Nonfirm Transmission Service

September 20, 1993.

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice is given for Rate Order No. WAPA–64 extending the existing Parker-Davis Project (P-DP) rate schedules for firm power PD-F3, firm transmission PD-FT3, nonfirm transmission PD-NFT3, and transmission service for Salt Lake City Area Integrated Projects (SLCA/IP) PD-FCT3 through March 31, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas A. Hine, Area Manager, Phoenix Area Office, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457. (602) 352–2453

SUPPLEMENTARY INFORMATION: Power and transmission rates for the P-DP are established pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*) and the Reclamation Act of 1902 (43 U.S.C. 372 *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) and the Act of May 28, 1954 (ch. 241, 68 Stat. 143).

By Amendment No. 2 to Delegation Order No. 0204–108, published August 23, 1991 (56 FR 41835), the Secretary of the Department of Energy delegated

(1) The authority on a nonexclusive basis to develop long-term power and transmission rates to the Administrator of the Western Area Power Administration (Western),

(2) The authority to confirm, approve, and place such rates into effect on an interim basis to the Assistant Secretary for Energy Efficiency and Renewable Energy (formally the Assistant Secretary for Conservation and Renewable Energy), of the Department of Energy, and

(3) The authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC).

The procedures for public participation in rate adjustments for power and transmission service marketed by Western, which are found at 10 CFR part 903, were published in the **Federal Register** at 50 FR 37835 on September 18, 1985.

Pursuant to Delegation Order No. 0204–108, FERC, in the order issued November 15, 1990, in Docket No. EF90–5041–000, confirmed and approved Rate Schedules PD-F3 for firm power service, PD-FT3 for firm transmission service, PD-NFT3 for nonfirm transmission service and PD-FCT3 for transmission service of SLCA/IP power. The rate schedules were approved for the 2-year period October 1, 1990, through September 30, 1992. This original schedule for the comment and consultation period was announced in the **Federal Register** notice on May 8, 1992, at 57 FR 19904. The comment and consultation period was to end August 6, 1992. Western issued another notice in the **Federal Register** on August 6, 1992, at 57 FR 34776, announcing the rescheduling of public forums and extending the comment and consultation period to September 28, 1992. On July 13, 1993, Western issued a third **Federal Register** notice reopening the comment and consultation period on the proposed P-DP rate adjustments, as announced earlier through letters to all P-DP interested parties. The comment and consultation period was to end August 2, 1993. In response to significant increases in purchase power costs, Western informed the P-DP customers by letter June 29, 1993, that the comment and consultation period was reopened and that the public information and public comment forums would be held on July 14, 1993.

On July 14, 1993, Western held another public information forum and public comment forum for the P-DP rate adjustments. Due to the high level of customer concerns, Western has once again extended the comment and consultation period to end on September 4, 1993.

Western proposes to extend the existing rates for P-DP firm power and firm and nonfirm transmission service until such time as adjusted P-DP rate schedules supersede the existing P-DP rate schedules. This proposal is a result of Western's purchase power expense for fiscal year (FY) 1993 increasing significantly from that originally projected. Western felt the P-DP customers should have another opportunity to comment prior to this adjusted rate becoming effective. The anticipated effective date for the proposed P-DP rates is in the first half of FY 1994.

The purpose of Rate Order No. WAPA–64 is to extend the P-DP rate schedules PD-F3, PD-FT3, PD-NFT3, and PD-FCT3 through March 31, 1994.

Issued in Washington, D.C., September 29, 1993.

Frank M. Stewart,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

Order Confirming and Approving an Extension of Rates for the Parker-Davis Project Firm Power and Firm and Nonfirm Transmission Service

Pursuant to section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7101 *et seq.*, the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation) under the

Reclamation Act of 1902, ch. 1093, 372 Stat. 388, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Act of 1939, 43 U.S.C. 485h(c), and other acts specifically applicable to the project involved, were transferred to and vested in the Secretary of Energy (Secretary).

By Amendment No. 2 to Delegation Order No. 0204–108, published August 23, 1991 (56 FR 41835), the Secretary delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Assistant Secretary for Energy Efficiency and Renewable Energy (formally Assistant Secretary for Conservation and Energy); and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove those rates to the Federal Energy Regulatory Commission (FERC). Existing DOE procedures for public participation in power rate adjustment (10 CFR Part 903) became effective on September 18, 1985 (50 FR 37835).

Background

Pursuant to Delegation Order No. 0204–108, FERC, in the order issued November 15, 1990, in Docket No. EF90–5041–000, confirmed and approved Parker-Davis Project (P-DP) rate schedules PD-F3 for firm power service, PD-FT3 for firm transmission service, PD-NFT3 for nonfirm transmission service, and PD-FCT3 for transmission service of Salt Lake City Area Integrated Projects (SLCA/IP) power, administered by Western's Phoenix Area Office. The rates were approved for the period from October 1, 1990, through September 30, 1992. The **Federal Register** notice (57 FR 39400) extending the existing P-DP rates for firm power, nonfirm power, and transmission service for SLCA/IP until September 30, 1993, was published August 19, 1992.

Discussion

On May 8, 1992, Western's Phoenix Area Office published its proposal in the **Federal Register** to adjust the P-DP rates for firm power and firm and nonfirm transmission service. The comment and consultation period was to end on August 6, 1992. In response to public comments, it was determined by Western that additional time is needed for customers to comment on unresolved issues related to the forthcoming P-DP rate adjustments. Western issued another notice in the **Federal Register** on August 6, 1992, at 57 FR 34776 announcing the rescheduling of the public forums and extending the comment and consultation period to September 28, 1992. The anticipated effective date of the proposed rates was to be the first half of fiscal year (FY) 1993. In response to significant increases in purchase power costs, Western informed the P-DP customers by letter June 29, 1993, that the comment and consultation period was reopened and that the public information and public comment forums would be held on July 14, 1993.

On July 14, 1993, Western held another public information forum and public comment forum for the P-DP rate adjustments. Due to the high level of customer concerns, Western has once again extended the comment and consultation period to end on September 4, 1993.

Therefore, Western proposes to extend the existing rate for firm power and nonfirm transmission service until such time as the new PD-P rate schedules supersede the existing PD-P rate schedules. This proposal is a result of Western's purchase power expense for FY 1993 increasing significantly from that originally projected. Western felt the P-DP customers should have another opportunity to comment prior to this adjusted rate becoming effective. On July 13, 1993, Western issued a third **Federal Register** notice that addressed the reopening of the comment and consultation period on the proposed P-DP rate adjustments. This comment and consultation period was to end August 2, 1993; however, customers requested an extension of the comment period. The comment period will end September 4, 1993.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm the extension of the P-DP rate schedules for firm power PD-F3, firm transmission PD-FT3, nonfirm transmission PD-NFT3, and transmission service for Salt Lake City Area Integrated Projects PD-FCT3 for a period effective October 1, 1993, through March 31, 1994.

Issued in Washington, D.C., September 20, 1993.

Frank M. Stewart,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 93–23894 Filed 9–28–93; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4737–6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before October 29, 1993.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of this ICR contact Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: 1992 Waste Treatment Industry Phase II: Questionnaires for Landfills and Incinerators (EPA ICR No. 1661.01).

Abstract: This is a new data collection effort to support the development of technology-based effluent limitations guidelines for landfills and incinerators that produce waste streams. The development of effluent guidelines is part of a program established under the authority of the Clean Water Act, and specific effluent limitations for this industry are required by court order to be proposed by 12/31/95. Responses to this survey will be mandatory pursuant to section 308 of the Clean Water Act.

The survey population will be drawn from a statistically valid sample population of each industry, using the information obtained from the "Phase II: Landfills and Incinerators Screener Survey (OMB Control No. 2040–0162)." The EPA will then distribute two separate sets of mail questionnaires, each set tailored to the unique characteristics of landfills or incinerators. Owners/operators of landfills or incinerators that receive a set of questionnaires are required to provide information that includes: (1) The type of landfill or incinerator; (2) the wastewater treatment used at the landfill or incinerator; (3) summary wastewater monitoring data for the landfill or incinerator; and (4) detailed economic information for the landfill or incinerator. There are no recordkeeping requirements associated with this ICR.

The EPA will use the information collected to establish effluent limitations, guidelines and standards for this industry.

Burden Statement: Public reporting burden for this collection of information is estimated to average 141 hours per response including time for reviewing instructions, planning activities, gathering and compiling the data needed, and completing and reviewing the questionnaires.

Respondents: A sample of landfill and incinerator operators/owners identified through the 1992 Waste Treatment Industry Phase II: Landfills and Incinerators Screener Survey.

Estimated No. of Respondents: 500 owners/operators.

Estimated Responses per Respondent: 1.

Frequency of Collection: One-time.

Estimated Total Annual Burden on Respondents: 70,500 hours.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden to:

Sandy Farmer, U.S.Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW., Washington, DC 20460.

and

Matt Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: September 23, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93-23860 Filed 9-28-93; 8:45 am]

BILLING CODE 6560-50-F

[OPP-180902; FRL-4644-7]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the 11 States as listed below and one to the United States Department of Agriculture. There were also 12 crisis exemptions initiated by various States. These exemptions, issued during the months of March through May 1993, except for the one in December 1992, and one in February 1993, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. EPA has denied and revoked specific exemption requests from various States. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific and crisis exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (H7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, CS #1, 2800 Jefferson Davis Highway, Arlington, VA, (703-308-8417).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Colorado Department of Agriculture for the use of sethoxydim on canola /rapeseed to control volunteer grains and grasses; May 18, 1993, to July 15, 1993. (Susan Stanton)

2. Louisiana Department of Agriculture and Forestry for the use of paraquat on rice to control weeds; May 27, 1993, to June 15, 1993. Louisiana had initiated a crisis exemption for this use. (Susan Stanton)

3. Michigan Department of Agriculture for the use of triadimefon on asparagus to control asparagus rust; May 28, 1993, to November 1, 1993. (Susan Stanton)

4. Michigan Department of Agriculture for the use of chlorothalonil on asparagus to control purple spot; May 28, 1993, to November 1, 1993. (Susan Stanton)

5. Montana Department of Agriculture for the use of permethrin on small grains (wheat, oats, and barley) to control cutworms; May 20, 1993, to July 1, 1993. Montana had initiated a crisis exemption for this use. (Andrea Beard)

6. North Carolina Department of Agriculture for the use of iprodione on apples to control alternaria blotch; May 15, 1993, to September 1, 1993. (Susan Stanton)

7. North Dakota Department of Agriculture for the use of sethoxydim on canola/rapeseed to control volunteer grains and grasses; May 7, 1993, to July 31, 1993. (Susan Stanton)

8. Oregon Department of Agriculture for the use of cyfluthrin on pears to control pear psylla; March 30, 1993, to May 14, 1993. (Andrea Beard)

9. Oregon Department of Agriculture for the use of sethoxydim on canola/ rapeseed to control volunteer grains and grasses; May 7, 1993, to December 31, 1993. (Susan Stanton)

10. Oregon Department of Agriculture for the use of quizalofop-p-ethyl on peppermint and spearmint to control quackgrass, barnyardgrass, and green foxtail; May 7, 1993, to July 15, 1993. (Susan Stanton)

11. Texas Department of Agriculture for the use of propiconazole on field corn to control northern leaf blight and southern rust; May 27, 1993, to August 31, 1993. (Andrea Beard)

12. Virginia Department of Agriculture and Consumer Services for the use of clomazone on cucumbers, watermelons, and snap beans to control annual broadleaf weeds and grasses; May 27, 1993, to September 15, 1993. (Libby Pemberton)

13. Washington Department of Agriculture for the use of cyfluthrin on pears to control pear psylla; March 10, 1993, to May 1, 1993. (Andrea Beard)

14. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of mancozeb on ginseng to control leaf and stem blight; May 27, 1993, to September 30, 1993. This chemical has been the subject of a Special Review. A Final Determination issued February 13, 1992, cancelled 10 uses and retained 45 uses. A notice of solicitation of public comment published in the **Federal Register** of May 5, 1993 (58 FR 26782), and no comments were received. (Libby Pemberton)

15. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of sethoxydim on mint to control grassy weeds; May 18, 1993, to July 15, 1993. (Susan Stanton)

16. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of Pro-Gro (carboxin/thiram) on onion seed to control onion smut; May 4, 1993, to July 1, 1993. (Susan Stanton)

17. Wisconsin Department of Agriculture for the use of clomazone on cabbage to control velvetleaf; May 7, 1993, to October 31, 1993. (Libby Pemberton)

18. United States Department of Agriculture for the use of methyl bromide on oak logs to control oak wilt throughout the United States in remote areas or on docks; May 22, 1993, to May 21, 1994. (Libby Pemberton)

Crisis exemptions were initiated by the:

1. Arkansas State Plant Board on May 8, 1993, for the use of paraquat on rice to control weeds. This program has ended. (Susan Stanton)

2. Arkansas State Plant Board on May 14, 1993, for the use of esfenvalerate on wheat to control armyworms. This program has ended. (Andrea Beard)

3. California Environmental Protection Agency, Department of Pesticide Regulation, on May 14, 1993, for the use of myclobutanil on tomatoes to control powdery mildew. The need

for this program is expected to last for a 1-year period. (Susan Stanton)

4. Colorado Department of Agriculture on May 8, 1993, for the use of permethrin on wheat, oats, and barley to control cutworms. This program has ended. (Andrea Beard)

5. Florida Department of Agriculture and Consumer Services on December 3, 1992, for the use of propiconazole on celery to control early blight. This program has ended. (Andrea Beard)

6. Florida Department of Agriculture and Consumer Services on February 12, 1993, for the use of imazethapyr on lettuce, escarole, and endive to control pigweeds. This program is expected to last until May 31, 1994. (Andrea Beard)

7. Mississippi Department of Agriculture and Commerce on May 15, 1993, for the use of paraquat on rice to control weeds. This program has ended. (Susan Stanton)

8. New Mexico Department of Agriculture on March 29, 1993, for the use of chlorpyrifos on wheat to control the Russian wheat aphid. This program has ended. (Andrea Beard)

9. Texas Department of Agriculture on April 23, 1993, for the use of metolachlor on leucaen leucocephala to control weeds. This program is expected to last until April 22, 1994. (Larry Fried)

10. Texas Department of Agriculture on May 28, 1993, for the use of avermectin on melons (cantaloupes, honeydews, and watermelons) to control leafminers. This program has ended. (Larry Fried)

11. Texas Department of Agriculture on April 23, 1993, for the use of oxyfluorfen on leucaen leucocephala to control weeds. This program is expected to last until April 22, 1994. (Larry Fried)

12. Texas Department of Agriculture on March 17, 1993, for the use of chlorpyrifos on wheat to control the Russian wheat aphid. This program has ended. (Andrea Beard)

EPA has denied specific exemption requests from the:

1. California Environmental Protection Agency, Department of Pesticide Regulation, for the use of benomyl on artichokes to control *Ramularia* leaf spot. Benomyl was formerly the subject of an EPA Special Review. A notice published the **Federal Register** of February 24, 1993 (58 FR 11232); no comments were received. (Susan Stanton)

2. New York Department of Environmental Conservation for the use of fosetyl-aluminum (Aliette) on grapes to control downy mildew. (Susan Stanton)

3. The subject section 18 emergency exemptions were denied or revoked based on the determination that these emergency exemption requests were affected by the Environmenal Protection Agency (EPA) and the Food and Drug Administration (FDA) policy on the Delaney Clause and section 18 emergency exemptions under FIFRA, which became effective May 7, 1993. This policy states that EPA will not grant an emergency exemption, will overturn any crisis exemptions granted by States and other Federal agencies, and will revoke any emergency exemption currently in force for a pesticide if: (1) The pesticide is likely to meet the Delaney Clause's induce cancer in animals standard (e.g., the pesticide is classified in Group A, B, or C under EPA's Cancer Assessment Guidelines, or has been treated as if it falls under one of those classifications); and (2) EPA is unable to conclude that under existing EPA policy the particular use of the pesticide would not need a food additive regulation. For each of the denied or revoked exemptions, EPA determined that the above two criteria were met and that no extraordinary circumstances existed which justified departure from this policy. On May 7, 1992, EPA denied or revoked the following section 18 specific exemptions:

a. Arkansas for the use of bromoxynil on rice.

b. California for the use of bifenthrin on tomatoes.

c. California for the use of triadimefon on tomatoes (revoked).

d. Florida for the use of cyromazine on potatoes and tomatoes (revoked).

e. Idaho for the use of bifenthrin and fosetyl-al on hops.

f. Michigan for the use of cyromazine on potatoes.

g. Michigan for the use of fosetyl-al on grapes.

h. Mississippi for the use bromoxynil on rice.

i. Montana for the use of pendimethalin on mint.

j. North Carolina for the use iprodione on apples (revoked).

k. Oregon for the use of fosetyl-al on hops (revoked).

l. Oregon for the use of pendimethalin on mint.

m. Pennsylvania for the use of fosetyl-al on grapes.

n. South Carolina for the use acephate on tomatoes.

o. South Dakota for the use of pendimethalin on mint.

p. Tennessee for the use of iprodione on apples.

q. Texas for the use permerthrin on rice.

r. Washington for the use of bifenthrin on hops. (Susan Stanton)

EPA has granted a public health exemption to the Arkansas State Plant Board for the use of formaldehyde in poultry houses, hatcheries, and immobile equipment to control *salmonella* bacteria; May 28, 1993, to May 27, 1994. (Susan Stanton)

Authority: 7 U.S.C. 136.

Dated: September 16, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 93–23867 Filed 9–28–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4731–1]

Final Decision to Grant BP Chemicals, Inc. an Exemption From the Land Disposal Restrictions of the Hazardous and Solid Waste Amendments of 1984 Regarding Injection of Hazardous Waste Into Waste Disposal Well No. 4

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of final decision on exemption petition.

SUMMARY: Notice is hereby given by the USEPA that an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments (HSWA) to the Resource Conservation and Recovery Act (RCRA) has been granted to BP Chemicals, Inc. (BPCI) of Lima, Ohio, for the operation of waste disposal well (WDW) No. 4. As required by 40 CFR part 148, BPCI has demonstrated to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous and was granted an exemption from the restrictions on the land disposal of hazardous wastes for WDWs No. 1, 2, and 3 on May 7, 1992. Since that time, BPCI completed the construction of WDW No. 4. On October 26, 1992, BPCI successfully performed testing required of WDW No. 4 and, therefore, BPCI may henceforth use WDW No. 4 for disposal through injection of the RCRA regulated hazardous wastes, codes K011, K013, K014, F039, and various D, U, and P listed materials. This action constitutes a final USEPA action for which there is no administrative appeal.

FOR FURTHER INFORMATION CONTACT: Harlan Garrish at (312) 886–2939.

SUPPLEMENTARY INFORMATION:

Background

BPCI submitted a petition to the USEPA under 40 CFR part 148, which allows any person to petition the Administrator to determine whether its continued injection of hazardous wastes is protective of human health and the

environment. After a comprehensive review of all material submitted, the USEPA determined that there is a reasonable degree of certainty that BPCI's injected wastes will not migrate out of the injection zone within the next 10,000 years as required by 40 CFR part 148. The injection zone at this site includes the uppermost part of the Middle Run and all of the Mt. Simon and Eau Claire Formations, lying between the depths of 2,430 and 3,223 feet in WDW No. 4. The immediately overlying confining zone is a portion of the Knox Dolomite between 2,100 and 2,430 feet. The confining zone is separated from the lowermost source of underground drinking water, located at a depth of 400 feet, by sequences of permeable and less permeable sedimentary rocks which provide additional protection from fluid migration into underground sources of drinking water. A fact sheet containing a summary of the demonstration of no migration for the decision now being finalized was published in the **Federal Register** on March 12, 1992, at 57 FR 8753; a fact sheet describing the tests of WDW No. 4 was published on May 27, 1993, at 58 FR 30926.

A public notice of the proposed decision was issued on May 20, 1993, pursuant to 40 CFR 124.10; however, due to a lack of interest expressed by the public, USEPA participation in the public hearing scheduled for June 23, 1993 was canceled. The public comment period expired on July 6, 1993. Comments reflected concerns about the capacity of the reservoir and the potential for migration through earthquake-induced fissures. Computer simulations indicate that the injection zone capacity is more than adequate and present information reveals no faults within the area of predicted migration. Accordingly, USEPA has determined that it is safe to grant this exemption. The five conditions appended to the proposed decision were not challenged and are made conditions of this final approval.

The wastes for which this exemption is granted are principally process waste waters defined under 40 CFR part 261 as bottom stream from the wastewater stripper, (K011), bottom stream from the acetonitrile column, (K013), and bottoms from the acetonitrile purification column, (K014), all in the production of acrylonitrile. At the point of generation, one waste stream is sometimes hazardous due to corrosivity, (D002), and chromium content, (D007). The waste stream sometimes contains de minimus amounts of ammonia blowdown, scrubber water, slopwater, contaminated storm water, pump seal water, water from the loading/unloading sump, contaminated groundwater (F039), equipment washwater, solutions that are compatible with the waste stream, contaminated product, and laboratory wastes. Waste codes for the hazardous wastes which BPCI may continue to dispose through its deep-well disposal system are listed in a table included in the **Federal Register** notice of May 27, 1993.

General conditions of this exemption are found at 40 CFR part 148. In addition, as a condition of granting this exemption to the ban on injection of certain hazardous wastes, the USEPA requires that the following conditions be met:

1. The permitted injection zone must be comprised of the Middle Run, Mt. Simon, and Eau Claire Formations;
2. Injection shall occur only into the Middle Run and Mt. Simon Sandstones in WDW No. 4;
3. This exemption is issued in conjunction with the exemption issued for the BPCI Lima, Ohio, site on May 7, 1992; the combined monthly injection volume for all four wells at the BPCI Lima, Ohio, site must not exceed 24 million gallons;
4. The petitioner shall fully comply with all requirements set forth in the Underground Injection Control Permit-To-Operate for BPCI WDW No. 4 issued by the Ohio EPA; and
5. The injection pressure at the wellhead shall be no greater than 844 psi, the pressure at which the no-migration demonstration was made.

Dated: August 19, 1993.

Edward P. Watters,

Acting Director, Water Division, Region 5, U.S. Environmental Protection Agency.

[FR Doc. 93-23876 Filed 9-28-93; 8:45 am]

BILLING CODE 6560-50-P

[OPP-30341A; FRL-4187-4]

Abbott Laboratories; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by Abbott Laboratories, to conditionally register the pesticide products Xentari Water Dispersible Granule and Xenatri Technical Powder containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Phil Hutton, Product Manager (PM) 18, Registration Division (H7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703-305-7690).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of July 31, 1992 (57 FR 33958), which announced that Abbott Laboratories, Chemical and Agricultural Products Division, 1401 North Sheridan Road, North Chicago, IL 60064, had submitted applications to register the pesticide products Xentari Water Dispersible Granule and Xentari Technical Powder (EPA File Symbols 275-IL and 275-IA) containing *Bacillus thuringiensis* subsp. *aizawai* lepidopteran active toxin(s) at 10.3 and 19 percent respectively; an active ingredient not included in any currently registered products.

These applications were approved on August 20, 1992, as Xentari Water Dispersible Granule (EPA Registration Number 275-85) for terrestrial, greenhouses, and aquatic food crop uses and Xentari Technical Powder (EPA Registration Number 275-86) for manufacturing use only.

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest.

The Agency has considered the available data on the risks associated with the proposed use of *Bacillus thuringiensis* subsp. *aizawai* lepidopteran active toxin(s), and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of *Bacillus thuringiensis* subsp. *aizawai* lepidopteran active toxin(s) during the period of conditional registration is not expected to cause any unreasonable adverse effect on the environment, and

that use of the pesticide is in the public interest.

These conditionally registrations will expire on January 15, 1994. The data are listed below:

1. A 30-day Freshwater Fish Toxicity/Pathogenicity Testing (EPA Reference Guidelines 154A–19).

2. Nontarget Arthropod Testing for Toxicity/Pathogenicity to Arthropod Predators/Parasites for *Trichogramma pretiosum* (154A–233).

3. Freshwater Aquatic Invertebrate Toxicity/Pathogenicity Testing (154A–20).

4. Determination of Source of Unexpected Activity Against Nontarget Invertebrates.

Consistent with section 3(c)(7)(C), the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

More detailed information on these conditional registrations is contained in a Chemical Fact Sheet on *Bacillus thuringiensis* subsp. *aizawai* lepidopteran active toxin(s).

A copy of the fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1128, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 401 M St., SW., Washington, DC 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

Dated: September 16, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 93–23744 Filed 9–28–93; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30336A]; FRL–4186–6]

Ciba-Geigy Corp; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by Ciba-Geigy Corp., to register the pesticide products Agree Biological Insecticide and Technical CGA-237218 containing an active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Phil Hutton, Product Manager (PM) 18, Registration Division (H7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703-305–7690).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of May 29, 1992 (57 FR 22749), which announced that Ciba-Geigy Corporation, Agricultural Division, PO Box 18300, Greensboro, NC 27419, had submitted applications to register the pesticide products Agree Biological Insecticide and Technical CGA-237218 (EPA File Symbols 100–TGG and 100–TGU), containing the active ingredient *Bacillus thuringiensis* var. *aizawai* Strain GC-91 protein toxin at 0.6 and 0.12 percent respectively; an active ingredient not included in any previously registered products.

The application for Agree Biological Insecticide was approved on September 8, 1992, for control of lepidopterous insect pests of certain terrestrial fruits, vegetables, ornamentals, and flowers, as well as tobacco, corn and cotton (EPA Registration Number 100–733). Technical CGA-237218 was approved on September 8, 1992, for manufacturing use only (EPA Registration Number 100–734). Both products were approved containing the same active ingredient as listed above at 3.8 and 7.5 percent respectively.

The Agency has considered all required data on risks associated with the proposed use of *Bacillus thuringiensis* var. *aizawai* Strain GC-91 protein toxin, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health safety determinations which show that use of *Bacillus thuringiensis* var. *aizawai* Strain GC-91 protein toxin when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

More detailed information on these registrations is contained in a Chemical Fact Sheet on *Bacillus thuringiensis* var. *aizawai* Strain GC-91 protein toxin.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1128, CM #2, Arlington, VA 22202 (703-305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

Dated: September 16, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 93–23745 Filed 9–28–93; 8:45 am]

BILLING CODE 6560–50–F

[OPP-30353; FRL-4648-3]

Plato Industries, Inc.; Application To Register a Pesticide Product

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register the pesticide product Boll Weevil Attract and Control Tube, containing the new active ingredient grandlure and the registered insecticide malathion, ingredients not included in any previously registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by October 29, 1993.

ADDRESSES: By mail submit comments identified by the document control number [OPP-30353] and the file symbol (65458-R) to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Attention PM 18, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: PM 18, Phillip O. Hutton, rm. 213, CM #2, (703-305-7690).

SUPPLEMENTARY INFORMATION: EPA received an application from Plato Industries, Inc., 9601 Katy Freeway, suite 350, Houston, Texas, 77024, to register the insecticide product, Boll Weevil Attract and Control Tube (File Symbol 65458-R), containing the new active ingredient, grandlure and the registered insecticide, malathion. Grandlure, an aggregation pheromone which attracts the boll weevil has four components which are used in the following percentages in this product: (*IR-Z*)-1-methyl-2-(1-methylethenyl) cyclobutane ethanol 0.10%, (*Z*)-2-(3,3-dimethylcyclohexylidene) ethanol 0.13%, (*Z*)-(3,3-dimethylcyclohexylidene) acetaldehyde 0.05%, and (*E*)-(3,3-dimethylcyclohexylidene) acetaldehyde 0.05%. The percentage of malathion, *O, O*-dimethyl phosphorodithioate of diethyl mercaptosuccinate in this product is 28.40%. These active ingredients are not included in any previously registered product pursuant to the provisions of section 3(c)(4) of FIFRA. The product is for control of cotton boll weevils. Notice of receipt of the application does not imply a decision by the Agency on the application.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division (FOD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the FOD office (703-305-5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

Dated: September 17, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93-23746 Filed 9-28-93; 8:45 am]

BILLING CODE 6560-50-F

[OPP-30324A; FRL-4574-8]

R. C. G., Inc.; Approval of a Pesticide Product Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application submitted by R. C. G., Inc., to register the pesticide product Roach-Repel an insecticide containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Phil Hutton, Product Manager (PM) 18, Registration Division (H7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703-305-7690).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of September 5, 1991 (56 FR 43923), which announced that R. C. G., Inc., 6020 Sweetbriar Cove, Memphis, TN 38120, had submitted an application to register the pesticide product Roach Repel an insecticide containing a new active ingredient C. *cassia* at 90 percent, an active ingredient not included in any previously registered product.

The application was approved on February 10, 1993, as Roach-Repel, which contains 95 percent of the active ingredient *Cinnamonum cassia*. This product can be used indoors for all domestic food handling and, food storage areas, as well as both domestic and commercial nonfood areas (EPA Registration Number 64714-1).

The Agency has considered the risks associated with the proposed use of *Cinnamonum cassia*, and social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of *Cinnamonum cassia* when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects on the environment.

More detailed information on this registration is contained in a Chemical Fact Sheet on *Cinnamonum cassia*.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1128, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, DC 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

Dated: September 16, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 93–23748 Filed 9–28–93; 8:45 am]

BILLING CODE 6560–50–F

[OPP–00365; FRL–4647–3]

Pesticide Reregistration Eligibility Document; Availability for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of final reregistration eligibility document; opening of public comment period.

SUMMARY: This Notice announces the availability of the final Reregistration Eligibility Document (RED) for dichloro-s-triazinetrione, potassium dichloro-s-triazinetrione, sodium dichloro-s-triazinetrione, trichloro-s-triazinetrione and sodium dichloro-s-triazinetrione dihydrate, hereafter referred to as the chlorinated isocyanurates, and opens a public comment period. The RED is the Agency's formal regulatory assessment of the health and environmental data base for the chlorinated isocyanurates and presents the Agency's determination regarding which uses of the chlorinated isocyanurates are eligible for reregistration.

DATES: Written comments on the Chlorinated Isocyanurates RED must be submitted by November 29, 1993.

ADDRESSES: Three copies of comments identified with the docket number (OPP–00365) should be submitted by mail to: Public Response and Program Resources Branch Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment in response to this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket and docket index will be available for public inspection in rm. 1128 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT Barbara Pringle for questions concerning product-specific data requirements and labeling at (703) 305–6484. Questions on the generic database should be directed to Karen Samek at (703) 308–8051. To request a copy of the RED or a RED Fact Sheet for the Chlorinated Isocyanurates, contact the Public Response and Program Resources Branch in rm. 1128, CM #2 at the address given above (703) 305–5805.

SUPPLEMENTARY INFORMATION: The Agency has issued a final Reregistration Eligibility Document for the Chlorinated Isocyanurates. Under the provisions of the Federal Insecticide, Fungicide and Rodenticide Act, as amended in 1988, EPA is conducting an accelerated reregistration program to reevaluate most existing pesticides to make sure they meet current scientific and regulatory standards. The Agency has determined that the registered uses do not cause unreasonable adverse effects to people or the environment. EPA has determined that all products containing the chlorinated isocyanurates as an active ingredient are eligible for reregistration. However, the Agency is requiring certain generic data to be submitted to confirm the reregistration eligibility decision put forth in the RED. These data include product chemistry on the technical formulation. All registrants of the chlorinated isocyanurates have been sent the RED and must respond to the labeling requirements and the product specific data requirements (if applicable) within 8 months of receipt.

EPA is issuing the Chlorinated Isocyanurates RED as a final document with a 60–day comment period. The reregistration program is being conducted under Congressionally mandated timeframes, and EPA is mindful of the need to make both timely reregistration decisions and involve the public. Although it does not affect the registrants' response due date, the 60–day public comment period provides an opportunity for public input and a mechanism for initiating any necessary amendments to the RED.

Dated: September 20, 1993.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 93–23747 Filed 9–28–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4781–5]

Proposed Administrative Penalty Assessments and Opportunity To Comment

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed assessments of Clean Water Act Class I administrative penalties and opportunity to comment.

SUMMARY: EPA is providing notice of proposed administrative penalties for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed penalties.

EPA is authorized under section 309(g) of the Act, 33 U.S.C. 1319(g), to assess a civil penalty after providing the person subject to the penalty notice of the proposed penalty and the opportunity for a hearing, and after providing interested persons public notice of the proposed penalty and a reasonable opportunity to comment on its issuance. Under section 309(g), any person who without authorization discharges a pollutant to a navigable water, as those terms are defined in section 502 of the Act, 33 U.S.C. 1362, may be assessed a penalty of up to $25,000 by EPA. Class I proceedings under section 309(g) are conducted in accordance with the proposed "Consolidated Rules of Practice Governing the Administrative Assessment of Class I Civil Penalties Under the Clean Water Act" ("part 28"), which has been published in the **Federal Register** at 56 FR 29996 (July 1, 1991).

EPA is providing public notice of the following proposed Class I penalty

proceedings initiated by the Water Management Division, U.S. EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105:

In the Matter of Town of Miami, Arizona; Docket No. IX-FY93-42, filed September 20, 1993; proposed penalty, $25,000, for unpermitted discharges into Bloody Tanks Wash in March 1993 from the sewage collection system operated by Town of Miami, Town Hall, 500 Sullivan St., Miami, AZ 85539; and

In the Matter of Surprise Sewage Treatment Plant, Inc., Surprise, Arizona; Docket No. IX-FY93-43, filed September 20, 1993; proposed penalty, $20,000, for unpermitted discharges in September and December 1992 and January 1993 into the Aqua Fria River from the Surprise Wastewater Treatment Facility, 16501 North El Mirage Road, Surprise, AZ 85374.

The procedures by which the public may comment on a proposed Class I penalty or participate in a Class I penalty proceeding are set forth in part 28. The deadline for submitting public comment on a proposed Class I penalty is thirty days after issuance of public notice. The Regional Administrator of EPA, Region 9 may issue an order upon default if the respondent in the proceeding fails to file a response within the time period specified in part 28.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of Part 28, review the complaint or other documents filed in these proceedings, comment upon the proposed penalties, or participate in any hearing that may be held, should contact Steven Armsey, Regional Hearing Clerk, U.S. EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105, (415) 744-1389. Documents filed as part of the public record in these proceedings are available for inspection during business hours at the office of the Regional Hearing Clerk.

In order to provide opportunity for public comment, EPA will not take final action in these proceedings prior to thirty days after issuance of this notice.

Dated: September 21, 1993.

Alexis Strauss,

Acting Director, Water Management Division.

[FR Doc. 93-23861 Filed 9-28-93; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

September 24, 1993.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857-3800. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632-0276. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0120
Title: Broadcast Equal Employment Opportunity Model Program Report
Form Number: FCC Form 396-A
Action: Extension of a currently approved collection
Respondents: Businesses or other for-profit (including small businesses)
Frequency of Response: On occasion reporting requirement
Estimated Annual Burden: 2,068 responses; 1 hour average burden per response; 2,068 hours total annual burden
Needs and Uses: FCC Form 396-A is filed in conjunction with applicants seeking authority to construct a new broadcast station, to obtain assignment of construction or license and/or seeking authority to acquire control of an entity holding construction permit or license. This program is designed to assist the applicant in establishing an effective EEO program for its station. The data is reviewed by FCC analysts to determine if stations will provide equal employment opportunity to all qualified persons without regard to race, color, religion, sex or national origin.

OMB Number: 3060-0390
Title: Broadcast Station Annual Employment Report
Form Number: FCC Form 395-B
Action: Extension of a currently approved collection
Respondents: Businesses or other for-profit (including small businesses)
Frequency of Response: Annual reporting requirement
Estimated Annual Burden: 13,550 responses; 0.88 hours average burden per response; 11,924 hours total annual burden
Needs and Uses: The Annual Employment Report (FCC Form 395-B) is required to be filed by all licensees and permittees of AM, FM, TV, international and low power TV broadcast stations. It is a data collection device used to assess and enforce the Commission's EEO requirements. The report identifies each staff by gender, race, color and/or national origin in each of the nine major job categories. The data is used by FCC staff to monitor a broadcast station's efforts to afford equal employment opportunity. The data is also used to assess industry trends.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 93-23872 Filed 9-28-93; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

September 23, 1993.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857-3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-0276. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0090
Title: Part I—Registration of Canadian Radio Station Licensee and Application for Permit to Operate, Part II—Certificate of Registration of Canadian Radio Station Licensee and Permit for Operation in the United States
Form Number: FCC Form 410
Action: Extension of a currently approved collection
Respondents: Individuals or households, non-profit institutions, and businesses or other for-profit (including small businesses)
Frequency of Response: On occasion reporting requirement

Estimated Annual Burden: 158 responses; .084 hours average burden per response; 13 hours total annual burden

Needs and Uses: The data supplied on this form by Canadian licensees is used by the FCC to register and grant approval for a Canadian radio station to operate mobile units in the United States. If a Canadian radio station is not registered with the FCC, they do not have permission to operate in the United States. The data is necessary to establish eligibility for the permit, and for legal and enforcement purposes.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 93-23886 Filed 9-28-93; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1969]

Petition for Reconsideration of Action in Rulemaking Proceeding

September 23, 1993.

Petition for reconsideration has been filed in the Commission rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857-3800. Opposition to this petition must be filed October 14, 1993. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4 (b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Rule 73.202(b), FM Table of Allotments, to Delete Channel 251C1 from Andalusia, Alabama and to Add Channel 251C1 at Wright, Florida.

Number of Petitions Filed: 1.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93-23848 Filed 9-28-93; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement Number 364]

Fiscal Year 1993 Hantavirus Surveillance and Prevention

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1993 funds for cooperative agreements for Hantavirus Surveillance and Prevention. These agreements are intended to strengthen surveillance programs, epidemiologic and laboratory investigations, prevention and control activities, and public and professional education at the state and local level.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Immunization and Infectious Diseases. (To order a copy of Healthy People 2000, see the Section Where to Obtain Additional Information.)

Authority

This program is authorized under sections 301(a) [42 U.S.C. 241(a)], 311 [42 U.S.C. 243], 317(k)(3) [42 U.S.C. 247b(k)(3)], and 319 [42 U.S.C. 247d] of the Public Health Service Act.

Application program regulations are found in 42 CFR Part 52—Grants for Research Projects.

Eligible Applicants

Assistance will be limited to the official state public health departments geographically connected to the Four Corners area of the Navajo Indian Reservation (i.e., Arizona, Colorado, New Mexico, and Utah) that have had confirmed cases (i.e., cases meeting the CDC surveillance case definition) or suspected cases of hantavirus infection that are being investigated.

Availability of Funds

Approximately $1 million is available in FY 1993 to fund approximately 4 awards. Awards will be based upon extent of the problem and are expected to range from approximately $50,000 to $500,000. It is expected that the awards will be made on or about September 30, 1993, for a 12-month budget period, within a project period of up to 3 years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds. At the request of the applicant, Federal personnel may be assigned to a project in lieu of a portion of the financial assistance.

Purpose

The purpose of the Hantavirus Surveillance and Prevention Cooperative Agreement is to assist state/local public health departments with: (1) Surveillance activities; (2) epidemiologic studies; (3) laboratory investigations; (4) prevention and control activities; (5) public and professional education; and (6) assessment of rodent populations.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below, and CDC shall be responsible for conducting activities under B., below:

A. Recipient Activities

The following activities should be planned and conducted in collaboration and coordination with CDC by state/local health departments, and, where appropriate, in consultation with:

—The Indian Health Service and the tribal government of the tribal community(ies) involved, such as the Navajo Nation;

—Appropriate state and local professional associations;

—Health care providers and institutions serving, diagnosing, or providing treatment and care for persons with hantavirus infection, including laboratories conducting testing;

—Community groups and organizations, especially those with a racial and ethnic minority membership and focus.

Specific surveillance and prevention activities should include:

1. Design and conduct active surveillance activities that promote: (a) Identification and reporting of all cases of hantavirus infection; (b) a confidential registry of cases that includes relevant demographic data; (c) promptly sharing case reports, without personal identifiers, with CDC; (d) analysis and dissemination of data in collaboration with CDC, and (e) availability of diagnostic tests to local users (when available).

2. Conduct investigations of all cases of hantavirus infection meeting the CDC surveillance case definition to determine risk factors for infection and to provide clinical materials for laboratory confirmation.

3. Develop panels of control sera for evaluation of tests at CDC and in the field.

4. Develop and implement locally appropriate prevention strategies and public awareness campaigns based on jointly developed guidelines for hantavirus prevention and rodent control.

5. Develop and conduct rodent surveillance activities to determine size of rodent populations, their infection status, and their relationships to human habitation and other human activities, as well as providing samples to CDC for additional laboratory analysis.

6. Conduct evaluations to determine the optimum way to exclude rodents from a variety of local household structures, recreational areas, and other locales that may be determined to be critical rodent contact zones.

7. Assess clinical data on persons with hantavirus infection to assist in guiding the development of treatment strategies. Provide and assess ribavirin treatment, provide medical consultation, collect clinical materials for testing of ribavirin levels, and provide clinical description and final analysis of cases.

B. Centers for Disease Control and Prevention (CDC) Activities

1. Provide consultation, scientific and technical assistance and training, in planning, operating, analyzing, and evaluating surveillance and prevention activities.

2. Provide a national performance evaluation system for laboratory procedures related to hantaviruses and other appropriate testing procedures, and laboratory training that includes current scientific and technical information about the sensitivity and specificity of serologic tests.

3. Develop, refine, and disseminate hantavirus infection surveillance program information which describes effective methods to carry out program activities and monitor progress.

4. Provide criteria for the surveillance definition of hantavirus infection, case report forms, and assistance in establishing and maintaining the reporting system.

5. Participate in the analysis of information and data gathered from program activities and facilitate the transfer of information and technology among all states and communities.

6. Participate with states to finalize mutually agreed upon standardized study protocols and, where appropriate, data collection instruments for the one-time projects/studies.

7. Assist in the evaluation of the overall effectiveness of program operations, including the impact of surveillance data on the development of public policy and on targeting and evaluating prevention activities.

8. Assist in preparing standard data collection forms, questionnaires, etc., as needed in surveillance activities and special epidemiologic investigations.

9. Coordinate clinical evaluations and studies to assure comparability of data and therapeutic protocols.

Evaluation Criteria

Each application will be reviewed and evaluated individually according to the following criteria:

A. Extent to which the applicant understands the purpose and requirements of the cooperative agreement program announcement. This includes the extent of the applicant's identification and description of the problem, the realistic presentation of objectives to establish an effective surveillance system and prevention/education programs, and evaluation criteria established to assess surveillance and prevention activities. (25 points)

B. Ability to carry out the project. Degree to which the applicant provides evidence of ability to carry out the proposed project and the extent to which the applicant documents demonstrated capability to achieve objectives of this project. This may include plans, approaches, and methods to be used in conducting and evaluating surveillance and prevention programs. (25 points)

C. Technical approach. Degree to which proposed objectives are clearly stated, realistic, measurable, time-phased, and related to the purpose of this project. (20 points)

D. Personnel. Extent to which professional personnel involved in this project are qualified, including evidence of past achievements appropriate to the purpose of this project. (20 points)

E. Plans for administration. Adequacy of plans for administering the project. (10 points)

F. Funding requirements. Itemized budget for conducting the project, along with justification, is provided and is reasonable. (Not Weighted)

Executive Order 12372

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants should contact their state Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC for each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E-18, Atlanta, GA 30305, no later than September 30, 1993. The granting agency does not guarantee to "accommodate or explain" for state process recommendations it receives after that date. (The appropriation for this financial assistance award was received late in the fiscal year and would not allow for an application receipt date which would accommodate the 60 day state recommendation process within FY 1993.)

Although E.O. 12372 does not require tribal review of proposed Federal assistance applications, all applicants are strongly encouraged to request tribal government review of the proposed application. If tribal governments have any tribal process recommendations on applications submitted to CDC, they should forward them to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E-18, Atlanta, GA 30305, no later than September 30, 1993. The granting agency does not guarantee to "accommodate or explain" for tribal process recommendations it receives after that date. (The appropriation for this financial assistance award was received late in the fiscal year and would not allow for an application receipt date which would accommodate the 60 day tribal recommendation process within FY 1993.)

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.283.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement

will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR part 46) regarding the protection of human subjects. Assurance must be provided that the project will be subject to initial and continuing review by an appropriate institutional review committee. The potential applicant should be aware that the proposed project(s) which involve a Native community should have the project reviewed by the Indian Health Service (IHS) institutional review board if any component of the IHS is involved or will support the project, and by the local tribal government for which that part of the project is applicable.

Application Submission and Deadline

The program announcement and application kit were sent to all eligible applicants on July 20, 1993.

Where To Obtain Additional Information

A complete program description and information on application procedures are contained in the application package. Business management technical assistance may be obtained from Gordon R. Clapp, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mail-stop E-18, Atlanta, GA 30305, (404) 842-6801.

Programmatic technical assistance may be obtained from David F. Collie, Assistant Director for Management and Operations, Division of Bacterial and Mycotic Diseases, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), Mailstop C-09, Atlanta, GA 30333, (404) 639-3052.

Please refer to Announcement Number 364 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report: Stock No. 017-001-00473-1), referenced in the Introduction, through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, telephone (202) 783-3238.

Dated: September 23, 1993.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93-23824 Filed 9-28-93; 8:45 am]

BILLING CODE 4160-18-P

[CDC-363]

Cooperative Agreement To Reduce Excessive Newborn Mortality

SUMMARY: The Centers for Disease Control and Prevention (CDC) announces the availability of funds for fiscal year (FY) 1993 for a cooperative agreement with the World Health Organization (WHO) to further develop safe motherhood and healthy newborn strategies. Approximately $80,000 is available in FY 1993 to fund this program. It is expected that the award will begin on or about September 30, 1993, for a 12-month budget period within a project period of up to 3 years. This funding estimate may vary and is subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

The purpose of this program is to stimulate high-quality operational and applied research to improve delivery care and to improve diagnosis, surveillance, and prevention of newborn diseases—specifically, neonatal tetanus. Findings in this project will be useful in further reducing the excessive burden of infant mortality in the United States and in improving the provision of care through more simple and less expensive forms of technology; as well as contributing immeasurably to reduce the excessive burden of infant mortality throughout the world.

The CDC will collaborate in the design of research protocols, assist in the analysis and interpretation of data generated from each project, and as needed, provide other programmatic consultation and guidance in support of the program.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and to improve the quality of life. This announcement focuses on the priority area of Maternal and Infant Health. (For ordering a copy of Healthy People 2000, see the section Where To Obtain Additional Information.)

Authority

This program is authorized under sections 301(a), 307, and 317(k)(3) of the Public Health Service Act, as amended [42 U.S.C. 241(a), 242*l*, and 247b(k)(3)].

Eligible Applicant

Assistance will only be provided to WHO for this project. No other applications are solicited. The Program Announcement and application kit have been sent to WHO.

WHO is the most appropriate and qualified agency to conduct the activities under this cooperative agreement because it has:

A. A unique position among the world's health agencies as the technical agency for health within the United Nations.

B. Access to all national Safe Motherhood and Healthy Newborn programs and potential research sites through its six regional offices located in Washington, DC; Copenhagen, Denmark; Alexandria, Egypt; Brazzaville, Congo; Delhi, India; and Manila, Philippines.

C. Convened expert committees to advise the WHO Safe Motherhood and Healthy Newborn programs, on the most important areas of operational and applied research in support of safe motherhood and newborn health.

D. Worked to accomplish its mission by disseminating information on maternal and child health needs and services, and recommending and advocating improved policies and programs to all member states of the United Nations. WHO also fosters the exchange of ideas and assists national programs in assuring coordinated, primary health care and in advancing the global goal of health for all.

Executive Order 12372 Review

This application is not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.283.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and forms provided in the application kit.

Where To Obtain Additional Information

If you are interested in obtaining additional information on this program, please refer to Announcement Number 363 and contact G. Locke Thompson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E-18, Atlanta, Georgia 30305, telephone (404) 842-6595.

A copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report, Stock No. 017-001-00473-1) referenced in the Summary may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, telephone (202) 783-3238.

Dated: September 22, 1993.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93-23822 Filed 9-28-93; 8:45 am]

BILLING CODE 4160-18-P

Epidemiologic Study of Workers at the Idaho National Engineering Laboratory; Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Epidemiologic Study of Workers at the Idaho National Engineering Laboratory.

Time and Date: 9 a.m.-4 p.m., October 13, 1993.

Place: Alice Hamilton Laboratory, Conference Room C, 5555 Ridge Avenue, Cincinnati, Ohio 45213.

Status: Open to the public, limited only by the space available.

Purpose: The purpose of the meeting is to obtain individual advice and guidance regarding the technical and scientific merits of a proposed Epidemiologic Study of Workers at the Idaho National Engineering Laboratory being conducted by NIOSH. The individual participants will review the proposed study protocol, recommend changes of scientific merit, and provide advice on the conduct of the study. Viewpoints and suggestions from industry, labor, academia, other government agencies, and the public are invited.

Contact Person for Additional Information: Paul K. Mills, Ph.D., NIOSH, CDC, 4676 Columbia Parkway, Mailstop R-44, Cincinnati, Ohio 45226, telephone 513/841-4400.

Dated: September 23, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93-23823 Filed 9-28-93; 8:45 am]

BILLING CODE 4160-19-M

Hanford Thyroid Morbidity Study Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Hanford Thyroid Morbidity Study Advisory Committee.

Times and Dates: 9 a.m.-5 p.m., October 14, 1993. 9 a.m.-11:30 a.m., October 15, 1993.

Place: Days Hotel At Lenox/Buckhead, 3377 Peachtree Road, NE., Atlanta, Georgia 30326.

Status: Open to the public, limited only by the space available.

Purpose: This committee is charged with providing advice and guidance to the Director, CDC, regarding the scientific merit and direction of the Hanford Thyroid Morbidity Study. The committee will review development of the study protocol and recommend changes of scientific merit to CDC, advise on the conduct of the pilot study using the approved protocol, and assist in determining the feasibility of a full-scale epidemiologic study. If the full-scale epidemiologic study is carried out, the committee will advise CDC on the design and conduct of the study and analysis of the results.

Matters To Be Discussed: The committee will comment on the status of various components of the Hanford Thyroid Morbidity Study. Specifically, the discussions will focus on scientific rationale, clinical updates, tribal activities and plans, public involvement, confidentiality assurance, and status reports on the conduct of the pilot study.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Nadine Dickerson, Program Analyst, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, CDC, 4770 Buford Highway, NE., (F-35), Atlanta, Georgia 30341-3724, telephone 404/488-7040.

Dated: September 24, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93-23970 Filed 9-28-93; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 85N-0083]

Deprol®; Final Decision Following Formal Evidentiary Public Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Commissioner of Food and Drugs (the Commissioner) is issuing his final decision on the proposal to withdraw approval of the new drug application (NDA) for the combination drug Deprol® (meprobamate, benactyzine) (NDA 11-226). This drug is labeled for use in the management of depression, both acute (reactive) and chronic. The Commissioner has determined that Deprol® has not been shown to be effective for such uses, and the Commissioner hereby withdraws approval for this drug. The Commissioner's decision sustains the Initial Decision of the Administrative Law Judge (ALJ), who found that the combination drug had not been shown by adequate and well-controlled studies to be effective for its intended uses.

EFFECTIVE DATE: October 29, 1993.

ADDRESSES: The transcript of the hearing, evidence submitted, and all other documents cited in this decision may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Nancy E. Pirt, Office of Health Affairs (HFY-1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The purpose of this proceeding has been to determine whether FDA should withdraw approval of the NDA for the combination drug, Deprol® (meprobamate, benactyzine). This drug has been marketed as useful "in the management of depression, both acute (reactive) and chronic." The labeled indication originally read:

"Deprol" is useful in the management of depression, both acute (reactive) and chronic. It is particularly useful in the less severe depressions and where the depression is accompanied by anxiety, insomnia, agitation, or rumination. It is also useful for management of depression and associated anxiety accompanying or related to organic illnesses. (G–2 at 2)[1]

Carter-Wallace submitted proposed label changes, which read as follows:

"Deprol" is recommended for the treatment of non-psychotic patients with mild to moderate depression. It is useful in the management of patients with a diagnosis of neurotic depressive reaction exhibiting symptoms of depressed mood, depressed appearance, psychomotor retardation, appetite and sleep disturbance, guilt, obsessive thinking, and anxiety; these symptoms may be associated with overconcern with organic illness. (G–20.1 at 1; also quoted in G–6.1 at 63–64)

The effect of this decision is that this combination may no longer be marketed in the United States.

Pursuant to 21 CFR 12.130, the Commissioner issues the following decision adjudicating the significant issues raised by the parties following the administrative hearing.

I. The Commissioner's Final Decision

A. Background

Deprol®, is a combination drug consisting of 400 milligrams (mg) of meprobamate and 1 mg of benactyzine hydrochloride per tablet (G–2 at 1). The NDA for Deprol® (NDA 11–226) was approved at a time when the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) (the act) required only proof of safety. In 1962, the act was amended by the Drug Amendments Act of 1962 (Pub. L. 87–781) to provide that drugs could no longer be approved unless both safety and efficacy had been proved.

The act, as amended, also required FDA to evaluate drugs approved before 1962 to determine whether such drugs were effective and to withdraw approval for any NDA where "substantial evidence" of the drug's effectiveness was lacking (section 505(e)(3) of the act [21 U.S.C. 355(e)(3)]). FDA's review of these pre-1962 drugs for effectiveness is known as the Drug Efficacy Study Implementation (DESI) program. The act placed the burden of coming forward with evidence of effectiveness on the manufacturer of the drug (*Weinberger v. Hynson, Westcott and Dunning*, 412 U.S. 609, 617 (1973) [hereinafter cited as *Hynson*], citing 21 U.S.C. 355(e)(3).)

The Commissioner announced in a notice published in the **Federal Register** of May 13, 1970 (35 FR 7462), that he had evaluated a report received from the National Academy of Sciences/National Research Council (NAS/NRC), Drug Efficacy Study Group pertaining to Deprol®, and pursuant to this report, the Commissioner classified the combination as possibly effective for its labeled indications.

Following publication of the May 13, 1970, notice, the manufacturer of Deprol®, Carter-Wallace, Inc., submitted to FDA's Bureau of Drugs (currently the Center for Drug Evaluation and Research [the Center]), three studies which the firm believed to support a finding of effectiveness for Deprol®. These studies were reviewed by the Center and found not to be adequate and well-controlled studies which could provide substantial evidence of the effectiveness of Deprol® for its labeled indications; also the studies were found not to satisfy the regulations for fixed-combination prescription drugs for humans, commonly referred to as the combination drug policy (§ 300.50 (21 CFR 300.50)). In a subsequent notice published in the **Federal Register** of June 27, 1974 (39 FR 23291), FDA proposed to withdraw approval for Deprol's® NDA and offered an opportunity for hearing on the proposed withdrawal.

In response to that notice, Carter-Wallace requested a hearing, and the Commissioner granted this request. (See 51 FR 20551, June 5, 1986.) Pursuant to 21 CFR 12.45, both the Center and Carter-Wallace filed notices of participation. Prehearing conferences were held on September 24, 1986, and April 1, 1987. Following the submission of written testimony and documentary evidence, a hearing was held, beginning on August 6, 1987, and ending on August 15, 1987, before ALJ Daniel J. Davidson.

Subsequently, on January 18, 1989, Judge Davidson issued his decision, in which he found that the efficacy of Deprol® tablets had not been proved by substantial evidence of adequate and well-controlled clinical trials, and the ALJ concluded that the approval of NDA 11–226 should be withdrawn. Both Carter-Wallace and the Center filed exceptions to various points in Judge Davidson's decision and appealed to the Commissioner pursuant to 21 CFR 12.125.

B. The Substantial Evidence Requirement

Carter-Wallace first argues that the ALJ erred by allegedly applying an incorrect legal standard in determining whether the clinical trials were adequate and well-controlled (Brief for Appeal of Initial Decision (I.D.) by Carter-Wallace, Inc., at 6 [hereinafter cited as CW Exceptions]). Carter-Wallace asserts that the ALJ was incorrect in reaching his own conclusion as to whether, based on the evidence, the studies demonstrated that Deprol's® effectiveness was shown through adequate and well-controlled clinical trials (CW Exceptions at 4). Carter-Wallace asserts that the standard of proof that should have been applied by the ALJ is whether the record showed that a responsible body of qualified experts could fairly and responsibly find effectiveness (CW Exceptions at 4; CW Post-Hearing Brief at 67).

Carter-Wallace also argues that under *Warner-Lambert* v. *Heckler* [hereinafter cited as *Warner-Lambert*], 787 F.2d 147 (3d Cir. 1986), the Commissioner must uphold the conclusions of these experts, even if the Commissioner would have reached a different result "if he were independently drawing his own conclusions" (CW Exceptions at 6). Implicitly, Carter-Wallace is arguing that the conclusions of its own expert witnesses must be preferred over those of the experts testifying for the Center. Carter-Wallace further asserts that the legislative history of the Drug Amendments of 1962 requires approval of a drug if there is expert opinion finding the studies to be adequate and well-controlled (CW Exceptions at 6–12; CW Post-Hearing Brief at 66–77). I reject all of these arguments as being contrary to the holding of *Warner-Lambert*.

In *Warner-Lambert*, certain drug manufacturers argued that statutory language of the act, as amended, obligated the Commissioner to base his decision regarding a clinical trial solely on the conclusions of qualified experts, i.e., those experts relied upon by the manufacturers. The manufacturers argued that this interpretation of the statute was compelled by the statutory definitions of "substantial evidence," which refers to conclusions reached "by * * * experts" (21 U.S.C. 355(d)). The court rejected this argument. After considering the legislative history of the statute, the court ruled, among other things, that, while the substantial evidence standard was relevant to the issue of the quantity of evidence, it did not bear upon the allocation of decisionmaking responsibility. The court held that "it is the Commissioner who must determine, after giving full consideration to all of the evidence that has been submitted, including expert opinions, if the studies meet the regulatory criteria and show effectiveness." (*Warner-Lambert*, 787 F.2d at 154.)

[1] The Dockets Management Branch used the letter "G" to refer to the Government exhibits by the participants.

In view of the clear statement of the law on each of the petitioner's arguments on the substantial evidence standard by the court in *Warner-Lambert*, I find no error in the ALJ's rulings on this matter in the present case.

C. The Clinical Trials

1. The Rickels Study

The Rickels study was a four-arm, parallel group trial that was intended to compare the effectiveness of Deprol® with meprobamate alone, benactyzine alone, and a placebo in depressed outpatients. The study protocol described the intended population as consisting of

> * * * mildly to moderately depressed neurotic patients from private general practice, but also from the Philadelphia General Hospital Outpatient Clinics; possibly best diagnosed as either "reactive neurotic depressions" with or without secondary anxiety, or as "mixed anxiety depressive reactions."
> (G–6.6 at 13)

At the start of the study, a total of 233 subjects were selected. Of these, 121 subjects were drawn from a private general practice population, 24 subjects were drawn from a private psychiatric practice population, and 88 subjects were drawn from the Philadelphia General Hospital's Psychopharmacology Clinic outpatient population (G–6.6 at 30). The private psychiatric practice group and the Psychopharmacology Clinic outpatient group were combined at the time of data analysis to form a population of 112 subjects, referred to in the Rickels study as the psychiatric practice group (G–6.6 at 30–31).

Subjects were to be in the clinical trial for 4 weeks. However, the study protocol permitted the physician to "discontinue therapy after 2 weeks if the patient himself indicate[d] not only ineffectiveness of the drug but also unwillingness to continue in the study" (G–6.6 at 16). By the second week, 94 patients, or approximately 40 percent of the initial group, dropped out of the study. According to the testimony of Dr. Robert F. Prien, a witness for the Center, 29 subjects (12 percent) failed to return after the first week, i.e., after the pretreatment visit. A total of 65 subjects (28 percent) dropped out after 2 weeks (Prien, G–98 at 14). The attrition rates in the treatment groups ranged from 32 percent to 47 percent (Id. at 16). However, it should be noted while the average dropout rate for the entire study group was 40 percent, the dropout rate for the four treatment arms was not uniform (Leung, G–95 at 3). Approximately one-third of the patients dropped out of the Deprol® and meprobamate arms, whereas dropout rates for the benactyzine and placebo arms were about 50 percent (Leung, G–95 at 3–4).

The statistical analysis of this study was stratified into separate groups consisting of one group for the private general practice population and one group for the psychiatric practice population. A treatment-by-population interaction was reported, with the psychiatric practice group said to improve more on Deprol® than on meprobamate (G–6.6 at 50). By contrast, the general practice group was reported to improve more on meprobamate (G–6.6 at 49–50; Prien, G–98 at 14).

a. *Patient selection criteria.* Carter-Wallace argues that the ALJ erred in finding that the conduct of the Rickels study violated the study protocol by including patients who did not have the proper diagnosis of "primarily depressed" at the beginning of the study, and that this violation could be weighed in deciding whether the Rickels study can be considered adequate and well-controlled (CW Exceptions at 20, citing ALJ's I.D. at 14).

The study protocol described the patient population as follows:

> The population shall consist of mildly to moderately depressed neurotic patients from private general practice, but also from the Philadelphia General Hospital Outpatient Clinics; possibly best diagnosed as either "reactive neurotic depressions" with or without secondary anxiety, or as "mixed anxiety depressive reaction." * * * Any patient with strong sociopathic trends, strong character disorders, organic brain syndrome, or evidence of schizophrenia will be excluded. Besides being depressed, a patient may also suffer from anxiety or somatization, as long as depression is considered to be at least equal and possibly more severe than the accompanying anxiety.
> (G–6.6 at 13–14)

During the administrative hearing before the ALJ, testimony focused on the interpretation of the protocol's criterion that depression in a patient be "considered equal and possibly more severe than [any] accompanying anxiety" (G–6.6 at 14). Testimony on this issue came from Dr. J. Hillary Lee, a witness for the Center. Dr. Lee testified that she reviewed the case reports for the 233 subjects in the Rickels study. Dr. Lee testified that in her review, she found 25 subjects who had diagnoses that were not identified as acceptable under the protocol (Lee, G–94 at 12). Dr. Lee also testified that she reviewed the anxiety and depression scores in the physician's questionnaire section of the case report forms. Dr. Lee stated that she found 44 subjects with higher anxiety scores than depression scores, which Dr. Lee concluded was a violation of the protocol (Id. at 12). By combining these two groups of subjects, Dr. Lee concluded that 49 of the 233 subjects were not appropriate for the trial (Id. at 13). Dr. Lee then explained the effect of these protocol violations on the Rickels study as follows:

> In this evaluation of Deprol, it is particularly important to include only patients who meet rigorous criteria for depression, particularly in relationship to anxiety, because Deprol contains a marketed anxiolytic drug, namely meprobamate. If the study includes both anxious and depressed patients, then the outcome will be confounded by the effect on anxiety of the meprobamate. To evaluate a true antidepressant effect, patients who are primarily depressed must be chosen.
> (Lee, G–94 at 13)

To counter the conclusions of Dr. Lee, Carter-Wallace cites the deposition testimony of Dr. Donald F. Klein, a witness for Carter-Wallace. Dr. Klein testified that he did not believe that the anxiety rating invalidated the subjects for a study of depressed patients (Klein, CW–158 at 7). Additionally, Dr. Klein stated that, even if the patients were "more anxious than is appropriate," the effectiveness of meprobamate against anxiety would have made it more difficult to show a difference between Deprol® and meprobamate (Id. at 7). However, Dr. Klein's deposition testimony notwithstanding, it should be noted that when Dr. Klein was asked during his testimony at the hearing whether, in the test of effectiveness of a combination drug with one component being an anxiolytic, it was necessary to rule out the possibility that the combination was having an anxiolytic effect rather than an antidepressive effect, Dr. Klein agreed that this was necessary (Klein, Hearing Transcript [Tr.] Vol. I at 25).

A review of the case report forms for the Rickels study leads me to conclude that Dr. Lee's evaluation of the Rickels study was correct and her conclusions were valid. Despite the fact that the protocol required that "depression [be] considered to be at least equal and possibly more severe than the accompanying anxiety" (G–6.6 at 14), 15 patients with a primary diagnosis of anxiety, as indicated in their case report forms, were included in the study (G–20.2 at 201, 231, 264, 306, 369, 419; G–20.3 at 368; G–20.4 at 31; G–20.6 at 2, 189, 238, 258, 336; G–20.8 at 216, 273). Other subjects with primary diagnoses at variance with the protocol included subjects with the following diagnoses: Phobia obsessive compulsive (three subjects) (G–20.3 at 70; G–20.6 at 267; G–20.8 at 256); hypochondriacal neurosis (one subject) (G–20.7 at 75); psycho-physiological reaction (one

subject) (G–20.6 at 353); conversion reaction (one subject) (G–20.5 at 95); schizophrenic reaction (one subject) (G–20.4 at 305); and menopausal state (one subject) (G–20.2 at 357). Two additional subjects were described in the case reports as having "unspecified" diagnoses (G–20.4 at 204; G–20.7 at 206) for a total of 25 patients not meeting the selection criteria designated in the protocol.

FDA regulations at § 314.126(b)(3) (21 CFR 314.126(b)(3)) require that the method of selection of subjects provides adequate assurance that the subjects have the disease or condition being studied. Similarly, the Commissioner's decision on Lutrexin (41 FR 14406 at 14419, April 5, 1976) held that it is necessary to use the most accurate diagnostic techniques available to assure that patients without the condition under study are identified and excluded from the study; failure to do so undermines the validity of the results. In the Rickels study, the inclusion of patients who did not have proper diagnoses was a violation of the protocol.

As for the testimony of Dr. Klein, in which he suggested that, even if the patients were "more anxious than is appropriate," the effectiveness of meprobamate against anxiety would have made it more difficult to show a difference between Deprol® and meprobamate (Klein, CW–158 at 7), I find this unpersuasive. Unequal distribution of anxious patients among the various arms could skew the results.

In reviewing these protocol violations, I note that even violations which by themselves may not warrant rejection of a study can be considered in the aggregate in determining whether a study is adequate and well-controlled. (See Commissioner's Decision on Benylin, 44 FR 51512 at 51531, August 31, 1979.) Therefore, I find that these protocol violations can be weighed in the determination of whether the Rickels study was adequate and well-controlled.

b. *Analysis of separate patient populations.* Carter-Wallace also objects to the ALJ's finding that the subgroup analysis was a post hoc decision, and that as a post hoc decision, while it does not invalidate the study, it nevertheless is a factor which "weighs against the results being considered substantial evidence of efficacy" (CW Exceptions at 24, citing I.D. at 17).

Before addressing this issue, the protocol's description of the study population first needs to be examined. On this point, the protocol reads:

Introduction:

* * * * *

In order to have available a wide range of neurotic depressed patients in regard to initial symptomatology, symptom focus, social class, and other demographic and predictor variables, it is suggested to carry out this study with 2 different patient populations, namely, depressed patients from the Philadelphia General Hospital Outpatient Clinics and from the offices of private general practitioners.

Population:

The population shall consist of mildly to moderately depressed neurotic patients from private general practice, but also from the Philadelphia General Hospital Outpatients Clinics; possibly best diagnosed as either "reactive neurotic depressions" with or without secondary anxiety, or as "mixed anxiety depressive reaction."
(G-6.6 at 13)

After the study was completed, Dr. Karl Rickels' written summary of the study described the population in this manner:

The study comprised 233 mildly to moderately depressed neurotic outpatients drawn from three populations: private general practice (N=121), private psychiatric practice (N=24), and the Psychopharmacology Clinic of the Philadelphia General Hospital (N=88).

Although the two psychiatric populations differed in socioeconomic status and in a number of demographic variables, a preliminary comparison showed their response to treatment to be strikingly similar. For purposes of final analysis, therefore, the two populations were combined to form a single "psychiatric patient group."

The psychiatric and general practice patients differed significantly in a number of demographic variables.

* * * * *

The two populations also differed in the nature and degree of their illness * * * [T]he psychiatric patients were somewhat more acutely ill, and were more often diagnosed as suffering from pure "depressive reactions" as contrasted with the general practice patients who were more often diagnosed as "mixed anxiety—depressive reactions."
(G–6.6 at 30–32)

Having reviewed this evidence, I find that the protocol for the Rickels study expressed an intention to draw subjects from two populations, i.e., a group from the offices of private general practitioners and a psychiatric practice group. However, with regard to grouping the subjects' results for statistical analysis by using the sources of the populations as a means of identifying groups, the protocol is less clear. The protocol does not expressly state that the general practice patients and the psychiatric practice patients are to be analyzed as two separate groups. Nevertheless, I will accept, for the sake of argument, that the protocol stated this intention. (I note that no issues have been raised regarding the grouping of the private practice psychiatric patients with the Philadelphia General Hospital Outpatient Clinics' group instead of with the private general practice group. Accordingly, I express no view regarding this matter. (See generally G–6.6 at 30–32.))

Assuming that the final grouping was in keeping with the protocol, I nevertheless conclude that the different sources for the two populations do not distinguish between the groups in a meaningful way. If a sponsor demonstrates that a drug is more effective in different groups of patients as distinguished by a certain characteristic, such as age, then such differences in effectiveness can be noted on the drug's labeling and taken into account by a physician when the drug is prescribed. However, differences such as those described in the Rickels protocol (private general practice patients versus psychiatric practice patients) are arbitrary and not clinically meaningful. There is nothing in the record which would demonstrate a clinical connection between a patient's illness and the type of medical care which the patient sought. Drugs are not labeled for use on the basis of something as arbitrary as which type of medical practice one seeks. More specifically, Deprol® does not have different labeled indications for use in private general practice versus psychiatric practice.

Moreover, because Dr. Rickels drew conclusions from this study which were based upon purported differences in the "nature and degree" of the illnesses in the two populations (G–6.6 at 32), the proper question is whether the study intended from the outset to contrast two populations with different types or degrees of illness. This does not appear to be the case. The protocol makes no mention of distinctions between groups according to types and degrees of illness, and it does not appear that this difference between the private general practice and the psychiatric practice groups was anything other than an accident or a convenient way of distinguishing between the groups. The difference in types and degrees of illness between the two populations became apparent only after the study was completed and the data analyzed. It seems that this was just one way of sorting the data after the fact.

A witness for the Center, Dr. Jerome Levine, was asked about the appropriateness of dividing the trial into subgroups which had not been specified in advance in the protocol. Dr. Levine stated:

If one plans a trial, with a stated intent to examine populations separately, and if one finds differences in response between the

groups, one is able safely to conclude that these differences are real. However, if differences are revealed in a post-hoc analysis—that is, separating the groups after the trial has been done and where it had not been planned as part of the protocol, then one is less sure about the conclusions, and these are usually considered to be hypotheses generating rather than hypotheses testing conclusions which then should be looked at prospectively in another trial.
(Levine, G–96 at 10)

Dr. Hoi Leung, another witness for the Center, similarly testified, "In general, results of any post hoc subgroup analysis can only serve as hypothesis generation rather than substantial evidence * * *. [A] particular subgroup should not be looked for based on the outcome of that subgroup." (Leung, G–95 at 9.)

The weakness of using the approach of looking for differences between groups after the study has been completed is that it leaves any conclusions drawn from the study open to questions of bias. One of the principal reasons for writing the protocol in advance of the study is to limit bias as much as possible. As was said in the Commissioner's decision on Mysteclin (emphasis added):

The data generated in a clinical investigation can be dissected in many ways, and the possible number of subgroups and endpoints that can be statistically tested grows geometrically with the addition of new patient characteristics to create subgroups and the recognition of different effects or results to create multiple endpoints. The greater the number of measurements taken for multiple subgroups or endpoints, the greater the likelihood that some will achieve statistical significance by chance alone * * *. *It is necessary, therefore, to identify subgroups and endpoints to be relied upon before executing a study if the results are to be free from suspicion of bias and in order to preclude statistical analyses from generating a study's hypothesis post hoc.*
(slip op. at 41–42 (FDA February 8, 1988), opinion denying review sub nom. *E. R. Squibb & Sons, Inc.*, v. *Bowen*, 870 F.2d 678 (D.C. Cir. 1989)).

While stratification of the data after a study is completed may be useful for generation of hypotheses, conclusions based upon post hoc stratification, such as that in the Rickels study, do not have the weight of an adequate and well-controlled clinical trial. (See the Commissioner's decision on Oral Proteolytic Enzymes, slip op. at 113–15 (FDA May 30, 1985) [hereinafter cited as Commissioner's decision on OPE], aff'd sub nom. *Warner-Lambert Co.* v. *Heckler*, 787 F.2d 147 (3d Cir. 1986).) This is particularly true when, as in the Rickels study, there is no overall drug effect found from the entire population in the study. (See Leung, G–95 at 11–12; Lee, G–94 at 14; accord Commissioner's decision on OPE, slip op. at 114 ["If no treatment effect is found in the overall comparison, then it is error to believe in a treatment effect that exists in only one subgroup of subjects."].)

For the above reasons, I conclude that the contrasting of the two groups in the Rickels study, on the basis of type and degree of illness appears to be a post hoc decision and opens to question the conclusions drawn by Carter-Wallace from the study.

c. *Multiple comparisons.* In a related argument, Carter-Wallace takes issue with the ALJ's conclusion that the failure to adjust the statistical analyses for multiple comparisons "reflects poorly on the confidence one can have in the results" (CW Exceptions at 27–28, quoting I.D. at 22). The ALJ found that there were two aspects to the issue of multiple comparisons: (1) The Rickels study evaluated numerous endpoints;[2] and (2) the Rickels study included comparisons among the four treatment arms of Deprol®, meprobamate, benactyzine, and placebo (I.D. at 10). The ALJ observed that, because of these multiple comparisons, questions arose as to whether the results reported as statistically significant for the particular endpoints relied upon by Carter-Wallace may have occurred solely by chance (I.D. at 10).

The number of assessments for each patient in the Rickels study was described as follows by Dr. Prien:

Assessments included an intake form [including basic background information and a psychiatric diagnosis]; a physician questionnaire, which consisted of 10 neurotic symptoms rated on a 7 point severity scale; a physician depression scale, which was actually a 23–item modified Hamilton depression rating scale; a patient symptom checklist, sometimes referred to as the SCL 35, consisting of 35 neurotic symptoms; the physician's disposition form [evaluating patient improvement and side-effects]; a physician and patient global improvement scale; and doctor personal record sheets [listing the patient's 3 main complaints].
(Prien, G–98 at 14)

There was also an addendum to the physician questionnaire which rated five other symptoms on a seven-point scale (G–6.6 at 21). This amounts to 76 assessment items per patient at each time of assessment, for a total of 152 endpoints per patient for weeks 2 and 4 combined. Besides the many endpoints, the Rickels study also involved comparisons between treatment groups, including Deprol® versus meprobamate, Deprol® versus benactyzine, and Deprol® versus placebo (Woolson, G–99 at 11).

Carter-Wallace first argues that the use of multiple comparisons is simply one factor which qualified experts take into account in evaluating the results of a study. Despite the fact that the testimony of the experts for Carter-Wallace and that of the experts for the Center disagreed on this point, Carter-Wallace argues that the conclusions of its own experts must be accepted unless there is adequate evidence which shows that these experts were unfair or irresponsible (CW Exceptions at 27–28). This argument has no merit for, as the court held in Warner-Lambert, the Commissioner is not bound by the conclusions of expert witnesses. (Warner-Lambert, 784 F.2d at 154; see also section I.B. of this document.)

As further support for its position, Carter-Wallace cites to the testimony of Dr. Gillings, who stated, "[W]here an overall F test indicates statistical significance in this type of analysis, no adjustment for multiple comparisons is necessary" (Gillings, CW–157 at 12). Based upon this testimony from Dr. Gillings, Carter-Wallace argues that no adjustment of its p values is necessary because its comparisons were preplanned (CW Post-Hearing Brief at 47).

The Center counters Carter-Wallace's argument by citing the testimony of three of its expert witnesses. These witnesses—Drs. Leung, Woolson, and Prien—testified that, because of the multiple comparisons, corrections in the p values are needed to maintain the correct Type I error rate because the likelihood of a Type I error increases with the number of individual comparisons (Leung, G–95 at 10; Woolson, G–99 at 10; Prien, G–98 at 26; accord Leung, G–95 at 13 [Wallace I]; Id. at 16 [Wallace II]; Prien, G–98 at 25 [Wallace I]; Id. at 26 [Rickels, Wallace I, Wallace II]). In other words, if enough pair-wise comparisons are made, some comparisons will be "statistically significant" by chance alone. This is of particular concern with a protocol such as that in the Rickels study, which did not specify in advance the particular endpoints which would be relied upon as the outcome criteria for determining statistical significance.

Regarding the need for correction of the p values, Dr. Woolson testified:

A lot of comparisons were made in this data analysis, and no multiple comparison procedure was used. This comes up in at least two regards, and I think [it is] important to keep them separate. There are many outcome variables that are assessed. For example, there were 10 on that physicians'

[2] While Carter-Wallace now raises this issue in connection only with the Rickels study, it should be noted that, because all of the studies evaluated numerous endpoints, this issue was addressed by the ALJ pertaining to the Rickels, Wallace I and Wallace II studies. (I.D. at 10–11.)

questionnaire, and there were 23 items on the Hamilton Depression scale. If you were to do an analysis of variance on each on[e] of these 33 items, you would have the opportunity to find differences between drugs for 33 of these analyses. That's one kind of multiple comparison problem that concerns me.

* * * * *

The second kind of error, which is pervasive through all of the Deprol studies, is multiple comparisons among the four drugs.

* * * * *

In my view, when one is doing studies whose intent is to confirm a hypothesis rather than to do an exploratory study to generate hypotheses, it is important to control the error rate as rigorously as possible. In therapeutic efficacy studies of this kind, an experiment-wise error rate ought to be reported since there are clearly at least three pair-wise comparisons of interest.

* * * * *

An experiment-wise error rate means that you are controlling the error rate for the entire set of comparisons that you have in mind. For example, in this case, there are three planned comparisons: Deprol versus meprobamate, Deprol versus benactyzine, and Deprol versus placebo. It seems to me that the error rate ought to be controlled so that it is kept at some agreed-upon level such as .05 for the entire set of three jointly, not at .05 for each individual one separately, thereby ignoring the outcome of the others.

* * * * *

The p value for each comparison needed to claim significance would be lowered. How much would depend on what type of correction you made.

(Woolson, G–99 at 10–11 [questions from examining attorney deleted].)

The need for adjustments for multiple comparisons was addressed in the Commissioner's decision on Mysteclin. On this subject, the Commissioner's decision stated: "[E]ven if the subgroups and multiple endpoints had been identified in the protocol, or that the post hoc stratification of subjects into numerous subgroups was acceptable, some downward adjustments in the p values should have been made to correct for the analyses of multiple subgroups and endpoints" (Commissioner's decision on Mysteclin, slip op. at 43). This reasoning applies with equal force to the Rickels study.

However, as Dr. Leung testified and as the ALJ observed in his decision, there is no single, generally accepted method for adjusting p values for multiple comparisons (Leung, G–95 at 14; I.D. at 10). Nevertheless, while I recognize that various means of adjusting for multiple comparisons exist, I do not find that this fact obviates the need for an adjustment. I therefore conclude that the necessity for an adjustment was established by the Center at the hearing, and I find no error in the ALJ's decision on this issue.

Carter-Wallace also attempts to cite to passages of a particular statistics text in support of its claim that adjustments of the p values are not necessary. (CW Exceptions at 28; CW Post-Hearing Brief at 47, citing CW–175 at 207, quoting P. Armitage, *Statistical Methods in Medical Research* (1973).) However, I find that, as the ALJ noted in his opinion, the Armitage text was marked only for identification purposes for use in cross-examination of witnesses and was not admitted into evidence (I.D. at 11 n.19.)

d. *Adequacy of the Rickels study.* Carter-Wallace next argues that the ALJ erred in concluding that the Rickels study was not adequate and well-controlled (CW Exceptions at 28–31). Carter-Wallace cites three reasons given by the ALJ for his conclusion: (1) The inclusion of patients with anxiety greater than depression created a possibility that any results obtained could have be confounded; (2) the subgroup analysis was not a part of the protocol, and appears to be a post hoc decision; and (3) adjustments were not made for multiple comparisons (CW Exceptions, citing I.D. at 22).

As I previously noted, even protocol violations which by themselves may not warrant rejection of a study can be considered in the aggregate in determining whether a study is adequate and well-controlled. (Commissioner's Decision on Benylin, 44 FR 51512 at 51531, August 31, 1979.) The same is true of other shortcomings in a study, such as improper analytic methods. (See § 314.126(b)(2)(5) and (b)(2)(7).)

To reiterate my previous conclusions, the inclusion of patients with diagnoses of anxiety or other diagnoses not specified in the protocol created the possibility that the outcome of the study was confounded. Additionally, the subgroup analysis purporting to analyze the patients according to degrees or types of illness was a post hoc subgrouping, sufficient only for hypothesis generation. Lastly, the analysis failed to adjust for multiple comparisons, making the borderline findings of statistical significance questionable. Accordingly, I find the reasons cited by the ALJ to be sufficient to support his conclusion that the Rickels study was not adequate and well-controlled.

Carter-Wallace further argues that even if the Rickels study can only be considered hypothesis-generating, the substantial evidence standard does not preclude reliance on this study as proof of efficacy of Deprol® (CW Exceptions at 29–30). Carter-Wallace's argument is in error on all points. The Rickels study is hypothesis-generating because it is not an adequate and well-controlled trial. The regulations clearly provide that studies which are not adequate and well-controlled can be used only as corroborative evidence (§ 314.126(e) ["Uncontrolled studies or partially controlled studies are not acceptable as the sole basis for the approval of claims of effectiveness. Such studies carefully conducted and documented, may provide corroborative support of well-controlled studies regarding efficacy * * *."]). The substantial evidence rule requires proof of efficacy through adequate and well-controlled clinical trials (*Hynson*, 412 U.S. at 630). Therefore, the Rickels study can be introduced into evidence only to corroborate other studies which are adequate and well-controlled.

2. The Wallace I Study

The Wallace I study was a three-arm, parallel-group study comparing Deprol® to meprobamate alone and to benactyzine alone (G–6.6 at 146). This study, which ran for 4 weeks, did not include a placebo concurrent control arm (Id. at 146). The Wallace I study began with initial interviews of the patients, followed by a 1–week, prestudy washout period during which a placebo was given to all patients. Patients who were found to have cooperated in taking the placebo for the prescribed period were asked to return for baseline data intake in preparation for the study (Id. at 148).

An initial group of 97 patients was chosen, of which 32 were assigned to the Deprol® arm, 33 to the meprobamate arm, and 32 to the benactyzine arm (G–6.6 at 169). Assessments and scores for the patients were to be taken at the start of the study and at weeks two and four (Id. at 170). For each patient, a total of 142 outcome measures were recorded for weeks two and four combined (Gillings, CW–157 at 7–10). At the beginning of the study, 90 patients were assessed; at week 2, 81 patients were assessed; at week 4, 73 were assessed (G–6.6 at 170). However, because of dropouts and exclusions for confounding therapy, the statistical analysis at the completion of the study included the results of only 44 patients at week 2, and 35 patients at week 4. (Leung, Tr. Vol. VII at 117; Clyde, CW–156 at 7–8.)

Regarding the number of exclusions, Dr. Clyde testified:

Investigator Ucer originally entered 37 patients. At the two week evaluation, 25 patients had received psychotherapy and were excluded. Of the remaining 12, 8 patients had no data for analysis. Although the remaining 4 patients theoretically could

have been analyzed. I believe it was appropriate not to analyze those 4 patients because they constituted too small a sample to provide meaningful information. By the 4-week evaluation point, 3 of the last 4 Ucer patients had received psychotherapy and one had discontinued the study, leaving no Ucer patients to analyze.

Investigator Tobin entered 23 patients. At the 2-week evaluation, 6 patients were excluded for receiving psychotherapy, and an additional 4 had no data for analysis. The remaining 13 patients were included in the two-week analysis. One additional patient was excluded from the four-week analysis for receiving psychotherapy in the second treatment period.

Investigator Crupie originally entered 37 patients. At the two-week analysis, 2 were excluded for receiving psychotherapy or other confounding treatment, and 4 either had no data or had not taken the study medication as directed. Thus, 31 patients were included in the two-week evaluation. At four weeks, one additional patient was excluded for psychotherapy, and 7 additional patients had no data for the second observation period.

(Clyde, CW-156 at 8-9)

Two statistical analyses were performed (Clyde, CW-156 at 5; see also G-12.1 at 4-19 passim). In the original analysis, a two-tailed test was used but in the reanalysis, a one-tailed test was used (Clyde, CW-156 at 5; Lee, G-94 at 8-9; Leung, G-95 at 12-13; Prien, G-98 at 24-25; see also G-12.1 at 4-19 passim). Statistical analysis of the week four results did not reveal significant differences among the treatment groups (G-6.6 at 171; Clyde, CW-156 at 12). The results of week two were relied upon by Carter-Wallace to support their position that the efficacy of Deprol® has been demonstrated (see Clyde, CW-156 at 5; Klein, CW-156 at 4-5, 11; Merlis, CW-159 at 9-10; Snyder, CW-160 at 5-6; Prien, G-98 at 24-25).

a. *Absence of placebo concurrent control.* Carter-Wallace argues that the ALJ erred in finding that the Wallace I study was not adequate and well-controlled because it did not contain a placebo concurrent control (CW Exceptions at 39, citing I.D. at 30). Carter-Wallace asserts that FDA regulations do not require a placebo concurrent control in every study, but rather require that the study use a design "that permits a valid comparison with a control to provide a quantitative assessment of drug effect." (CW Exceptions at 33, quoting § 314.126(b)(2).) Carter-Wallace argues that the comparison of Deprol® to each of its components (meprobamate and benactyzine) provides a valid comparison that satisfies the regulations (CW Exceptions at 33). I find these arguments unpersuasive.

Without question, FDA regulations require the use of a control group if a study is to be considered adequate and well-controlled. On this point, § 314.126(a) provides that the purpose of conducting clinical investigations of a drug is to distinguish the effect of a drug from other influences, such as spontaneous change in the course of the disease, placebo effect, or biased observation. The characteristics of an adequate and well-controlled clinical trial described in § 314.126(b) have been developed over a period of years and are recognized by the scientific community as the essentials of an adequate and well-controlled clinical investigation. FDA considers these characteristics in determining whether an investigation is adequate and well-controlled. Section 314.126(b) further requires the study to use a design that permits a valid comparison with a control to provide a quantitative assessment of drug effect.

Section 314.126(b)(2)(i) through (b)(2)(v) lists the five types of controls which have been recognized by the scientific community. These controls include: (1) Placebo concurrent control, (2) dose-comparison concurrent control, (3) no treatment concurrent control, (4) active treatment concurrent control, and (5) historical control.

While Carter-Wallace concedes that it did not use a placebo concurrent control, Carter-Wallace does not expressly identify the type of control which was purported to have been used in the Wallace I study (see CW Exceptions at 32-39). It should be noted that § 314.126(b)(2) requires that the protocol for the study and report of results describe the study design precisely. Under this section of the regulations, Carter-Wallace should have identified the type of control which it planned to use and that which it actually used. Nevertheless, I conclude that the control in the Wallace I study was intended to be an active treatment concurrent control, as this is the implication of Carter-Wallace's discussion of this control. (See, e.g., CW Exceptions at 38, citing Gillings, CW-157 at 6 (who testified regarding the "positive control" groups in the Wallace I study).) Also, the control used was clearly not a placebo control, dose-comparison concurrent control, no treatment concurrent control, or historical control—the other types of controls listed in FDA regulations.

In his Initial Decision, the ALJ cogently describes why the dose-comparison concurrent control, the no-treatment concurrent control, and the historical control are not appropriate for the Wallace I study (I.D. at 25-28). Because none of these three types of controls was used nor is it now argued that any of them should have been used, I will not in this decision address questions about the appropriateness of these three types of controls. For the purposes of my decision, I need discuss only the placebo concurrent control and the active treatment concurrent control.

The active treatment concurrent control is described in § 314.126(b)(2)(iv) as follows:

> The test drug is compared with *known effective therapy* * * *. An active treatment study may include additional treatment groups, however, such as a placebo control * * *. If the intent of the trial is to show similarity of the test and control drugs, the report of the study should assess the ability of the study to have detected a difference between treatments. Similarity of test drug and active control can mean either that both drugs were effective or that neither was effective. *The analysis of the study should explain why the drugs should be considered effective in the study,* for example, by reference to results in previous placebo-controlled studies of the active control drug. (emphasis added).

The preamble accompanying the publication of this regulation in the Federal Register elaborates on this section, stating:

> *[A] demonstration of effectiveness by means of showing similarity of the test drug to an active control is an indirect demonstration of effectiveness (the active control treatment serving as an intermediary in a comparison between the test drug and placebo).* Under this study design, similarity of test drug and active control drug can mean either that both drugs were effective or that neither was effective. Thus, the agency has added a requirement that the analysis of the study provide an explanation of why the active control drug should be considered to have been effective in the completed study, for example, by reference to results in previous placebo-controlled studies of the active control drug.

(50 FR 7452 at 7488, February 22, 1985 [emphasis added])

Thus, an active treatment control must be a drug or a therapy of known effectiveness for the illness, disease, or condition under study. Merely because a drug or therapy is active or has some effect does not mean that the drug is an acceptable control for the proposed indication under study if the effectiveness of the active control drug for that indication has not been previously demonstrated in other adequate and well-controlled studies.

A review of the evidence indicates that the Wallace I study does not satisfy the requirements for an active treatment control because it did not compare Deprol® with a known effective therapy, nor did it explain why the drugs used in the study should be considered effective. According to the testimony of one of Carter-Wallace's own witnesses, Dr. Frank J. Ayd, Jr., meprobamate is not approved as an

antidepressant (Ayd, Tr. Vol. II at 8). While Dr. Ayd expressed his personal belief that meprobamate had antidepressant properties, Dr. Ayd testified that he was not aware of any adequate and well-controlled studies which demonstrated that meprobamate has antidepressant properties (Id. at 8–11). Similarly, Dr. Ayd testified that benactyzine is not effective as an antidepressant (Id. at 12).

It is well settled that clinical impressions of practicing physicians do not constitute an adequate basis for establishing efficacy under the act (*Hynson*, 412 U.S. at 630; *Edison Pharmaceutical*, 600 F.2d at 843; see also section I.D. of this document). With no evidence in the record proving that either meprobamate or benactyzine are known effective therapies for depression, the labeled indication for Deprol® (G–6.1 at 64), and with no other acceptable control employed in the study, I find the Wallace I study lacked a control which meets regulatory requirements.

Regarding uncontrolled studies, § 314.126(e) provides that uncontrolled studies or partially controlled studies are not acceptable as the sole basis for the approval of claims of effectiveness. According to this regulation, uncontrolled studies, carefully conducted and documented, may provide corroborative support of well-controlled studies regarding efficacy and may yield valuable data regarding safety of the test drug. Such studies will be considered on their merits, with a view towards the principles listed in the regulations pertaining to adequate and well-controlled clinical trials. Isolated case reports, random experience, and reports lacking the details which permit scientific evaluation will not be considered.

As an uncontrolled study, the Wallace I study may, under the regulations (§ 314.126(e)), be admitted into evidence but it may not be used as more than corroborative support for studies which are adequate and well-controlled. (Accord *Cooper Laboratories, Inc.* v. *FDA*, 501 F.2d 772, 782 (D.C. Cir. 1974) ["By the regulations, a study must have some kind of controls if it is to constitute more than merely corroborative support for a claim of effectiveness."].)

It should be noted, however, that while uncontrolled studies may corroborate adequate and well-controlled clinical trials, the submission of uncontrolled or partially controlled studies does not vitiate the usual requirement for a minimum of two adequate and well-controlled studies (Commissioner's decision on OPE, slip op. at 23). This requirement arises from the statutory language in 21 U.S.C. 355(d), which mandates the submission of a plural number of adequate and well-controlled investigations.

Exceptions to the requirement for at least two adequate and well-controlled studies have been permitted by FDA in limited circumstances, including: (1) The disease is very rare and it is extremely difficult to obtain enough subjects for two studies; (2) the disease process is expensive to study experimentally; (3) the study conducted is very large and multi-centered; and (4) the disease is rapidly fatal and there is no alternative therapy (Commissioner's decision on OPE, slip op. at 24). It is not now argued that any of these exceptions applies to the present case, nor do I find that these exceptions do apply. Therefore, to reiterate, while the Wallace I study may be admitted into evidence as corroborative evidence, approval requires an additional two adequate and well-controlled studies demonstrating the effectiveness of Deprol®.

Carter-Wallace additionally avers that the review of Deprol® submitted by NAS/NRC to FDA for the DESI program did not question the efficacy of Deprol® as a whole, but that the focus was on the contribution of each component (CW Exceptions at 33 n.15, citing G–2 at 10). Whether or not that is a correct interpretation of the NAS/NRC report is of no moment because the recommendations of the NAS/NRC regarding the effectiveness of a new drug are advisory in nature and not binding on FDA. (*Holland Rantos Co.* v. *United States Dep't of Health, Education and Welfare*, 587 F.2d 1173, 1175 (D.C. Cir. 1978); see generally *Upjohn Co.* v. *Finch*, 422 F.2d 944, 948 (6th Cir. 1970) discussing the role of the NAS/NRC in the DESI program.) Furthermore, FDA's June 5, 1986, notice announcing the administrative hearing on Deprol® (51 FR 20551) stated specifically that one of its purposes was to evaluate whether Deprol® has the effect it purports to have under the conditions of use prescribed in the labeling. Therefore, I find no merit in Carter-Wallace's argument.

b. *Spontaneous remission and other nonspecific effects.* Besides Carter-Wallace's general argument against the need for a placebo concurrent control, Carter-Wallace offers several specific arguments against applying this requirement to the Wallace I study. The first of these arguments is that the ALJ erred when he held that a placebo concurrent control was necessary to control for spontaneous remission of disease and for other effects which were not specific to the drug, such as the effects of the expectations of the patients and of the investigators (CW Exceptions at 35, citing I.D. at 29).

Carter-Wallace believes that, while a placebo concurrent control might be needed as a control for nonspecific effects if one were "simply evaluating the overall effectiveness of Deprol® alone" (CW Exceptions at 34), that a placebo was not necessary in the Wallace I study because the use of meprobamate and benactyzine arms was adequate to control for these nonspecific effects in the evaluation of Deprol® vis-a-vis its individual components (CW Exceptions at 34). I find several serious flaws in Carter-Wallace's argument.

First, contrary to Carter-Wallace's assertion, the overall effectiveness of Deprol® has not been established and needs to be established by a minimum of two adequate and well-controlled clinical trials. The problems arising because of the absence of a placebo concurrent control in the Wallace I study were attested to by two witnesses for the Center: Dr. J. Hillary Lee and Dr. Jerome Levine. When Dr. Lee was questioned on this subject, she offered the following testimony:

> It is particularly important to have a placebo group if the drugs you are studying have not been demonstrated to be effective in the disorder. Without a placebo, it can be difficult to interpret the results. For example, it is possible that one of the treatments may make people worse than if they had merely received a placebo.

(Lee, G–94 at 4)

Similarly, when Dr. Levine was asked why a placebo was necessary, he testified, "Conceivably you could get a difference between drugs and not be able to interpret it. You can get an improvement of one drug over another which, if a placebo had been included in the trial, might indicate that none of them were effective." (Levine, Tr. Vol. III at 198.)

As was discussed in section I.C.2.a. of this document, neither meprobamate nor benactyzine is acceptable as an active treatment control because neither is approved as an effective treatment for depression. As such, the effect of these drugs on depression is ungauged. Without substantial evidence of effectiveness for the stated indication of depression for any of the drugs used in the Wallace I study, and in view of the absence of a placebo, it is meaningless to speak of Deprol's® superiority over its components.

Second, I find that Carter-Wallace misperceives the function of a control in a clinical trial. While nonspecific effects, such as spontaneous remission, may not be unique to the drug being

tested, this does not mean that any other drug could function as a control in lieu of a placebo—quite the contrary. The very purpose of a control in a clinical trial is to provide a reference of known effectiveness against which the test drug can be compared. If an active treatment control is to be employed, the effectiveness of the active control drug for the indication under study must known, i.e., it must previously have been established, making it possible to control for such nonspecific effects as spontaneous remission. (See § 314.126(b)(2)(iv); see also discussion in section I.C.2. of this document.) Under § 314.126(b)(2)(iv), if an active treatment control is to be used, the analysis of the study should explain why the drugs, both the test drugs and the active control drugs, should be considered effective, for example, by reference to results in previous placebo-controlled studies of the active control drug. Carter-Wallace failed to supply an explanation which meets this regulatory requirement. Because neither meprobamate nor benactyzine is acceptable as an active treatment control, a placebo concurrent control was needed. (As discussed in the previous section, FDA regulations recognize several types of controls, but none of these controls was used by Carter-Wallace in the Wallace I study. (See section I.C.2.a. of this document.))

Section 314.126(b)(2) requires a clinical study to employ a design that permits a valid comparison with a control if the study is to be considered adequate and well-controlled. The Wallace I study fails to comply with this regulation. I therefore find that the ALJ was correct in concluding that the Wallace I study failed to control for various nonspecific effects, and for this reason was not adequate and well-controlled.

c. *Possible greater effectiveness of placebo.* Carter-Wallace next argues that the ALJ erred in ruling that a placebo concurrent control was necessary to determine if Deprol® or its constituents was making the patients' illnesses worse than if they had received a placebo (CW Exceptions at 38; I.D. at 29, citing Lee, G–94 at 12). Carter-Wallace advances two reasons in support of its position.

First, Carter-Wallace cites the testimony of Dr. Dennis B. Gillings, a witness for Carter-Wallace, who testified that it was not realistic to expect that both of the "positive control" groups (meprobamate alone and benactyzine alone) failed in the Wallace I study (CW Exceptions at 38, citing Gillings, CW–157 at 6). I reject this argument because, as I previously discussed, I find neither meprobamate nor benactyzine to be acceptable as an active treatment control. (See discussion in section I.C.2.a. of this document.)

Additionally, Carter-Wallace makes the surprising argument that, even if it were true that treatment was worse than placebo, under the combination drug policy (§ 300.50) this is irrelevant to a determination of whether the combination is superior to its components (CW Exceptions at 38). It is argued that the only requirements under the regulations for combination drugs are that the combination be effective and that it be superior to each component used alone. Carter-Wallace concedes that proof of efficacy is required, but Carter-Wallace argues that this requirement is met by the Rickels and the Wallace II studies.

I disagree with the suggestion that under the combination drug policy it would be irrelevant if Deprol® or its components made the patients' illnesses worse than if they had taken the placebo. I find this proposition untenable and completely at odds with the requirement of proof of efficacy, the latter of which Carter-Wallace concedes in its brief. Combination drugs, no less than other drugs, must be safe and effective. This requirement is clearly set forth in the combination drug policy. In relevant part, the combination drug policy (§ 300.50(a)) states that two or more drugs may be combined in a single dosage form when each component makes a contribution to the claimed effects and the dosage of each component (amount, frequency, duration) is such that the combination is safe and effective for a significant patient population requiring such concurrent therapy as defined in the labeling for the drug. (Cf. *United States v. 225 Cartons, More or Less, of an Article of Drug*, 871 F.2d 409, 417 (3d Cir. 1989) (The court therein held that "21 C.F.R. 300.50 requires manufacturers to submit clinical evidence establishing the contribution of each ingredient to the effectiveness of a product for its indicated applications.")

As for Carter-Wallace's argument that efficacy of Deprol® over a placebo can be separately established in the Rickels and Wallace II studies, but that the Wallace I study can be used to establish the superiority of Deprol® over its components, this contention, too, must be rejected. In the absence of clear evidence that any of the treatments are superior to placebo, the results of a comparison of the components with the combination are uninterpretable. In this setting, the absence of an acceptable control renders the study not adequate and well-controlled. For this reason, I find Carter-Wallace's argument to have no merit.

Carter-Wallace also argues that the ALJ erred in concluding that Carter-Wallace wanted to "transfer" the placebo control from the Wallace II study to the Wallace I study (CW Exceptions at 39). Carter-Wallace contends that it had not argued for this transfer. Carter-Wallace further argues that such a transfer was not necessary because the results of the Wallace I study can stand on their own.

I find that while Carter-Wallace may not have expressly argued for the transfer of the placebo control, Carter-Wallace did, by implication, make such an argument through its contention that the efficacy of Deprol® over a placebo can be separately established in the Rickels and Wallace II studies. Furthermore, the results of the Wallace I study do not stand on their own as proof of efficacy. The Wallace I study lacked an acceptable control, and this defect cannot impliedly be corrected by reference to other studies.

d. *Reliance on the results of week two.* Carter-Wallace next argues that the ALJ erred in ruling that the "superiority of Deprol® must be determined through a combined examination of the week two and week four data" (CW Exceptions at 39, citing I.D. at 34). Carter-Wallace argues that there is no basis to dismiss the positive results of efficacy at week two, and Carter-Wallace offers several reasons for the failure to find statistical significance in week four (CW Exceptions at 40). The reasons offered by Carter-Wallace to explain the lack of statistical significance at week four include: (1) The ebb and flow of the depressive disorder caused the drug effect to disappear because the disorder was resolving itself, (2) Deprol® worked faster than either of its separate components, the latter "catching up" by week four, (3) the differences between the treatment groups lessened due to an unequal attrition rate, or (4) the possible loss of followup (Clyde, CW–156 at 5; Klein, CW–158 at 5; Merlis, CW–159 at 9). While the ALJ noted that these explanations are plausible, the ALJ found that Carter-Wallace failed to prove that any of these explanations was true for the Wallace I study (I.D. at 34).

I find the ALJ's rulings in this matter to be correct. It is a requirement of an adequate and well-controlled study that the analysis of the results be adequate to assess the effects of the drug (§ 314.126(b)(7)). Adequate measures must be taken to minimize bias on the part of the analysts of the data (§ 314.126(b)(5)). It stands to reason that a decision to ignore the data from the remaining 2 weeks of a 4-week study

cannot be made arbitrarily if a study is to be considered adequate and well-controlled. While Carter-Wallace suggests some possible reasons for the inconsistency between the results of weeks two and four, as the ALJ noted these suggestions are merely speculations. If anything, suggestions to the effect that the disease may be resolving itself, or that Deprol® works faster than its individual components, only highlight the need for a concurrent placebo control in the Wallace I study as a means of demonstrating the validity of these claims (see Prien, G–98 at 27). Moreover, contrary to Carter-Wallace's arguments, the ALJ did not dismiss from evidence the results of week two. The ALJ correctly considered the results of both week two and week four. I find no error in the ALJ's decision on this matter.

e. *One-tailed versus two-tailed significance tests.* Carter-Wallace further argues that the ALJ erred in ruling that the use of one-tailed tests of significance in the Wallace I study weighed against finding adequate the analysis of that study (CW Exceptions at 44; CW Post-Hearing Brief at 44; I.D. at 9-10). Carter-Wallace takes the position that it is immaterial whether one-tailed tests or two-tailed tests are used, as long as the analysis indicates which tests were employed (CW Post-Hearing Brief at 46). Carter-Wallace also cites the testimony of Dr. Gillings, a Carter-Wallace witness, who testified that a "two-sided p-value is simply two times the one-sided p-value for a particular comparison * * *" (CW Post-Hearing Brief at 45, citing Gillings, CW–157 at 3–4). However, it should be observed that, in other testimony, Dr. Gillings conceded that a majority of academic statisticians advocate the use of two-tailed tests in drug efficacy studies (Gillings, Tr. Vol. VI at 33).

As further support of its position, Carter-Wallace quotes the testimony of Dr. Clyde, who said, "I believe that one-tailed tests are more appropriate than two-tailed tests for the questions these studies were intended to answer, i.e., whether Deprol® is more effective than placebo or its components alone." (Clyde, CW–156 at 5-6.) The Center counters by citing the testimony of Dr. Leung, who testified that a one-tailed test is appropriate only when "you have prior knowledge that the new treatment would not be worse than the standard treatment that you are comparing [it] with." (Leung, Tr. Vol. VII at 99–100.)

Another witness for the Center, Dr. Prien, offered this testimony regarding the need for two-tailed tests:

> My opinion is that a two-tail test is the more appropriate test for evaluating the efficacy of a combination drug because interest should focus not only on findings in which the combination is more effective than each of the components but also on findings in which the combination is less effective than one or both of the components. For example, a combination conceivably can be significantly more effective than either of its components with regard to some symptoms or signs but be significantly less effective with others. The negative results for the combination would then have to be weighed against the positive ones in determining the overall efficacy of the combination compared to its constituents.

(Prien, G–98 at 24)

The regulations do not specify whether one-tailed tests or two-tailed tests are to be used. Section 314.126(b)(7) requires that an analysis of the results of the study be adequate to assess the effects of the drug. In some cases, as was noted in the Commissioner's decision on OPE, the use of a one-tailed test is not necessarily inappropriate because a one-tailed test can demonstrate that a drug is more effective than a placebo (Commissioner's decision on OPE, slip op. at 126). However, because the drug discussed in the OPE decision was not a combination drug, that decision did not address concerns such as those raised by Dr. Prien regarding the need to demonstrate Deprol's® effectiveness vis-a-vis its components. Also, as the evidence in the instant case indicates, a majority of academic statisticians advocate the use of two-tailed tests of significance in drug efficacy studies (Gillings, Tr. Vol. VI at 33).

Notwithstanding the arguments for and against one-tailed tests, an even more questionable aspect of the Wallace I study (and, by the same token, the Wallace II study) is that in the second of the two analyses performed, a switch was made from two-tailed to one-tailed tests of significance (Center Post-Hearing Brief at 3, citing Lee, G–94 at 8–9; Leung, G–95 at 12–13; Prien, G–98 at 24; Clyde, CW–156 at 5). In my review of the evidence, I did not find an explanation for this change in significance testing. The regulations require that a protocol contain a description of the proposed methods of analysis. If the protocol does not contain a description of the proposed methods of analysis, the study report should describe how the methods used were selected (§ 314.126(b)(1)). The regulations further require that adequate measures be taken to minimize bias on the part of the subjects, observers, and analysts of the data (§ 314.126(b)(5)).

To avoid bias, the choice between one-tailed and two-tailed tests of significance should be made before the analysis is performed (see Prien, G–98 at 24). It is not proper to allow the results of the study to influence the choice between one-tailed and two-tailed tests of significance. Because of the unexplained switch from the two-tailed to the one-tailed tests, I find that the use of one-tailed tests in the Wallace I study was properly considered by the ALJ in his review of the study and its results, and could be a factor in finding the study not adequate and well-controlled.

f. *Adequacy of the Wallace I study.* Carter-Wallace argues that the ALJ erred in concluding the Wallace I study was not adequate and well-controlled (CW Exceptions at 45). I find this argument to be without merit. I find that the ALJ correctly considered all of the previously discussed issues in reaching his conclusion. The absence of a placebo group is a flaw which by itself renders the Wallace I study inadequate. Other factors listed by the ALJ included the failure to adjust for multiple comparisons, the use of one-tailed tests of significance, and the failure to find statistically significant superiority of Deprol® at week four. I find no error in the ALJ's conclusion, and I similarly find the Wallace I study not to be adequate and well-controlled.

3. The Wallace II Study

The Wallace II study was a three-arm trial comparing Deprol® to meprobamate alone and to a placebo in depressed, neurotic patients (G–6.2 at 57). This study did not include a benactyzine test group (Id. at 57).

As with the Wallace I study, the Wallace II study began with initial interviews of the patients, followed by a 1 week, prestudy washout period, during which a placebo was given to all patients. Patients who cooperated in taking the placebo were interviewed at a second visit; at this time baseline scores were taken. Patients were then randomly assigned to one of three treatment conditions. After 2 weeks, patients returned for a third visit at which an interim assessment was made. This was followed 2 weeks later by a final visit at which another assessment was made (G–6.2 at 60–62).

For each patient, a total of 142 outcome measures were recorded for weeks 2 and 4 combined (Gillings, CW–157 at 7–10). Two analyses of the results were performed (Clyde, CW–156 at 5; G–12.1 at 20–27 passim). In the original analysis, two–tailed tests of significance were used, but in the reanalysis, one-tailed tests were employed (Clyde, CW–156 at 5; G–12.1 at 20–27 passim).

According to a witness for Carter-Wallace, Dr. Dean J. Clyde, the results of the Wallace II study "[did] not show clear statistically significant superiority of Deprol# over meprobamate" (Clyde,

CW–156 at 16). Another witness for Carter-Wallace, Dr. Sidney Merlis, conceded that Deprol's® superiority over meprobamate was "very borderline" (Merlis, CW–159 at 12). Nevertheless, several witnesses for Carter-Wallace took the position that the trends of the Wallace II study generally supported a finding that Deprol® was more effective than meprobamate alone (Clyde, CW–156 at 16; Merlis, CW–159 at 12; Snyder, CW–160 at 8; see also Ayd, CW–155 at 9–10 [discussing the Rickels, Wallace I, and Wallace II studies collectively]). However, a witness for the Center, Dr. James Mitchell, noted in his testimony that several illness-rating factors were only of borderline statistical significance, perhaps suggesting that Deprol® may be more effective than meprobamate but not strongly enough for the results to be considered conclusive (Mitchell, Tr. Vol. I at 77–79).

As for the comparison of Deprol® versus placebo, Carter-Wallace suggests Deprol's® superiority over placebo is demonstrated in the Patient Self-Rating Scale Factor 1 scores at week two and week four (CW Post-Hearing Brief at 54, citing G–12.1 at 46–47). The items in Factor 1 included loneliness, hopelessness, feeling blue, blaming, trouble concentrating, difficulty in making decisions, and crying (CW Post-Hearing Brief at 54, citing G–12.7 at 166). These items are said to be relevant to a clinical finding of depression (CW Post-Hearing Brief at 54, citing Clyde, CW–156 at 15). Carter-Wallace asserts that, "[w]hile fewer of the individual items showed Deprol® statistically superior to placebo, the overall results support the results in the Physician Symptom Evaluation Form" (CW Post-Hearing Brief at 54).

a. *Exclusion of patients' results from analysis.* The Center argues that the ALJ incorrectly concluded that the exclusion criteria employed in the Wallace II study were adequate (Center Exceptions at 9; Center Post-Hearing Brief at 32). The ALJ, citing *Cooper Laboratories, Inc.* v. *FDA*, 501 F.2d 772 (D.C. Cir. 1974), ruled that the Center failed to carry its burden of proof to adequately explain its allegation that these exclusions may have biased the results (I.D. at 39). The ALJ cited to the following language from the court's decision:

> We shall expect the FDA to make its criticisms express and detailed, and to cite precisely to the pertinent regulation and evidentiary flaws. The regulations are extensive and technical; submitted evidence is typically abstruse and voluminous. Courts cannot efficiently shoulder their heavy burden of review under Hynson [412 U.S. 609 (1973)] unless the Administration's orders make utterly transparent why each piece of submitted evidence fails the particular regulatory provisions relied upon. If a regulatory provision or a piece of evidence is fairly open to several interpretations, the Administration must explain and defend its chosen interpretation.

(*Cooper Laboratories, Inc.* v. *FDA*, 501 F.2d at 787, cited by I.D. at 5)

The argument advanced by the Center turns on the testimony of Dr. Leung, one of the Center's witnesses. Dr. Leung testified that, in his review of the analysis for the Wallace II study, he found that at week 2 the number of patients in the analysis ranged from 22 to 66, depending on the factor being analyzed (Leung, G–95 at 16; Tr. Vol. VII at 115). Similarly, at week 4, Dr. Leung found that the number of patients ranged from 20 to 55, again depending on the item analyzed (Leung, G–95 at 16). Dr. Leung observed that the Wallace II and the Wallace I studies differed in their methods of excluding patients. On this point, Dr. Leung testified:

> The method of excluding patients in the analysis of Wallace II was somewhat different from that used in the Wallace I study. Only those items on which a patient had a baseline score of 1 or less were excluded in Wallace II whereas all items for a patient were excluded in Wallace I when there was only one item with a low baseline score.

(Leung, G–95 at 17)

The exclusion rule as specified in the protocol provided, "If the baseline severity for a particular target symptom for a patient is 'one' (i.e., symptom is absent) none of the data obtained on that symptom for that patient will be included in the statistical analysis" (G–6.2 at 64). The scale used to rate patients' symptoms was as follows: "1 = absent; 2 = very mild; 3 = mild; 4 = moderate; 5 = moderately severe; 6 = severe; 7 = very severe" (Id. at 59).

Thus, in the Wallace II study, each separate score rating a particular symptom of the patient was subject to exclusion if it did not meet the baseline criteria. The remainder of the patient's scores would nevertheless be included in the analysis. (By contrast, the Wallace I study excluded all scores for a patient if one item did not meet the baseline criteria.)

Drawing upon his review of the Wallace II study, Dr. Leung offered this testimony:

> Based on these figures, it can be inferred that there were a large number of missing observations or that there was a large number of patients with low baseline scores on some items. In any case, this may be a source of bias in the interpretation of the results of the study.

(Leung, G–95 at 16)

Carter-Wallace contends that the exclusions were proper (CW Post-Hearing Brief at 51). Carter-Wallace asserts that the Center is, in effect, arguing that all patients randomized to treatment should have been analyzed in an intent-to-treat/completer analysis, which, Carter-Wallace argues, is not required in the regulations (Id. at 51).

The ALJ concluded that since neither the Center nor Carter-Wallace performed an intent-to-treat/completer analysis, the issue turned on which party had the burden of proof to show whether or not the results were biased (I.D. at 39). The ALJ reasoned that, since he found the endpoint analysis in the Rickels study to be proper, and since there was no evidence that a completer analysis in the Wallace II study would show significance in another test arm, the lack of a completer analysis for the Wallace I study could not be held against Carter-Wallace (I.D. at 39–40). I find this to be error.

First, the Center does not bear the burden of proof in this matter. The burden of proving safety and efficacy lies with the applicant (*Hynson*, 412 U.S. at 617; § 12.87(d) [21 CFR 12.87(d)]; 21 U.S.C. 355(e)). The regulations are clear on this point. Section 12.87(d) requires that at a hearing relating to the safety or effectiveness of a drug, the participant who is contending that the product is safe or effective or both, and who is requesting approval or contesting withdrawal of approval, has the burden of proof in establishing safety or effectiveness or both, and thus the right to approval. Under this regulation, and the statute it implements,[3] the burden of proof remains on the participant in an amendment or revocation proceeding.

The decision in *Cooper Laboratories* does not shift this burden of proof because in that case the court was defining the requirements for summary judgment by FDA. Because we are at present involved in a formal evidentiary public hearing, *Cooper Laboratories* is inapposite on the burden of proof issue.

Turning now to the issue of exclusions from analysis, I note that this question was considered in the Commissioner's decision on Mysteclin, in which the Commissioner stated:

> *The danger of excluding a large number of randomized patients from analysis is that such exclusions upset subject randomization and may thereby bias the results of the study.* Even if equal numbers of subjects are

[3] Statutory law provides that the Secretary shall withdraw approval of an application with respect to any drug if the Secretary finds on the basis of new information before him, together with the evidence available to him when the application was approved, that there is a lack of substantial evidence that the drug will have the effect it purports or is represented to have under the conditions of use prescribed in the labeling thereof (21 U.S.C. 355(e) and (e)(3)).

withdrawn from each group, bias is still a serious concern because the reasons for exclusion may be different for treatment and control groups, or for subject groups who receive test and control drugs in different sequences.

(Commissioner's decision on Mysteclin, slip op. at 39–40 [emphasis added])

According to the testimony of Dr. Leung, on some items from the patients' scores in the Wallace II study, as many as two-thirds of the patients (44 out of 66 patients) were excluded from the analysis. Regardless of the reasons for these exclusions, this certainly qualifies as a "large number of randomized patients" and does open the results to questions of bias.

b. *Absence of benactyzine control group.* Carter-Wallace argues that the ALJ erred in ruling that, because the Wallace II study lacked a benactyzine test group, the study was not adequate and well-controlled (CW Exceptions at 46). The ALJ reasoned that, since the combination drug policy in FDA regulations requires that each component make a contribution to the claimed effect of the combination, an adequate and well-controlled study of a combination drug must be designed to demonstrate the contribution of each component (I.D. at 37). The ALJ interpreted this requirement to mean that the Wallace II study had to have one testing arm each for Deprol®, meprobamate, benactyzine, and placebo.

Carter-Wallace counters by arguing that the requirements for an adequate and well-controlled study, as set forth in the regulations at § 314.126(b)(2), require that a study have a control only to the extent necessary for assessing the drug effect in question in the study (CW Exceptions at 46; CW Post-Hearing Brief at 49). Carter-Wallace further contends that the absence of a benactyzine test group in the Wallace II study is, at most, relevant to clinicians in assessing the weight to be accorded the Wallace II study results (CW Post-Hearing Brief at 50.)

Additionally, Carter-Wallace makes the convoluted argument that the Wallace II study "did not include a benactyzine control group because the Deprol® versus benactyzine comparison had demonstrated the contribution of the meprobamate component of Deprol® in other studies * * *" (CW Exceptions at 45; CW Post-Hearing Brief at 48–49). This is a nonsequitur. However, Carter-Wallace's position on this matter appears to be presented more clearly in the narrative contained in Carter-Wallace's "Request for a Hearing." While this narrative does not identify the study under discussion, it would appear to be referring to the Wallace II study. The narrative reads:

The basis for this substitution [of placebo for benactyzine] was that the effectiveness of meprobamate, the principal active component, was accepted and well recognized, but that the possible added effectiveness of benactyzine for symptoms of depression was not. The important comparison was, therefore, between 'Deprol' and meprobamate. The comparison between 'Deprol' and benactyzine was considered unnecessary, and the benactyzine group could therefore be replaced by a placebo group.

(G–6.1 at 6–7)

From this statement, it appears that Carter-Wallace is first arguing that meprobamate was an acceptable active treatment control. Additionally, Carter-Wallace is arguing that a comparison between Deprol® and meprobamate would demonstrate any effectiveness of Deprol® over meprobamate resulting from the presence of benactyzine. Through this study design, Carter-Wallace intended to demonstrate the contribution of the benactyzine component to the claimed effects of the combination drug.

To address these arguments, the regulation pertaining to combination drugs, commonly known as the combination drug policy, needs to be reviewed. In relevant part, § 300.50(a) states that two or more drugs may be combined in a single dosage form "when each component makes a contribution to the claimed effects."

In interpreting this regulation, the United States Court of Appeals for the Third Circuit expressly ruled that it is not sufficient to show that a combination drug is effective as compared with one of its individual ingredients; each active ingredient must be shown by substantial evidence of adequate and well-controlled clinical trials to contribute to the claimed effects of the combination (*United States* v. *225 Cartons, More or Less, of An Article of Drug*, 871 F.2d 409, 416–17 (3d Cir. 1989), aff'g, 687 F. Supp. 946, 959 (D.N.J. 1988) [hereinafter cited as *225 Cartons*]; see also Commissioner's decision on Mysteclin, slip op. at 18; cf. *United States v. Articles of Drug * * * Promise Toothpaste*, 826 F.2d 564, 570 (7th Cir. 1987) (over-the-counter drug); *United States v. An Article of Drug Consisting of 4,680 Pails*, 725 F.2d 976, 987 (5th Cir. 1984) (animal drug) ["Adequate and well-controlled investigations required by the [animal drug] combination policy necessitate studies that compare the effect of the individual ingredients with the effect of the combination, and that include a control group"]).

A study of a combination drug should include testing arms for each component of the combination. (There must, of course, be a control. Whether or not a placebo should be selected as a control depends upon the circumstances (§ 314.126(b)(2)). This is necessary to show the contribution of each active ingredient to the claimed effect (See Lee, G–94 at 21–22; Leung, G–95 at 18; Levine, G–96 at 13; Prien, G–98 at 29; Woolson, G–99 at 18, 21). As the court wrote in *225 Cartons*, "For the same reasons that drug companies may not market drugs that are not clinically significant, they may also not include components in combination drugs that are not shown to be necessary for the effect claimed" (871 F.2d at 426).

However, I will allow that there may be exceptions to this general rule. At this time, I do not hold that all studies of combination drugs must include a placebo arm and, concurrently, an arm for each of the individual components *if there are extenuating circumstances precluding such a study design.* Just as there may be ethical reasons for foregoing the use of a placebo as a control,[4] there may be ethical reasons precluding a testing arm for each of the individual components of a combination drug if this would have an adverse effect on the subjects in a particular clinical study. An examination of such extenuating circumstances will, by comparison to the Wallace II study, be illustrative of the general rule.

In some instances the combination drug may have a different effect from that of each component individually. (Commissioner's decision on X-Otag Plus Tablets, slip op. at 46 (FDA March 18, 1982); accord *United States v. Articles of Drug * * * Promise Toothpaste*, 826 F.2d at 566 (over-the-counter drug) ["There is a possibility that the component drugs, when combined, may have a different effect from that of each component drug individually."]) The individual

[4] The regulations at § 314.126(b)(2)(iv) state that an active treatment can be used in lieu of a placebo "where the condition treated is such that administration of placebo or no treatment would be contrary to the interest of the patient." The preamble to this regulation expanded on the meaning of this regulation, stating that ethical and practical considerations will play a central role in the type of study selected, a decision that will ordinarily depend upon the type and seriousness of the disease being treated, availability of alternative therapies, and the nature of the drug and the patient population. As the preamble explained, in each case, applicants must choose the particular type of study they will use based on ethical, scientific, and practical reasons. So long as these judgments are justifiable, and the studies are properly designed, the approvability of an application will not be affected (50 FR 7452 at 7487, February 22, 1985).

components may have dangerous effects if administered separately to some patients, which could mean that in some instances one of the drugs may not be appropriate to administer to patients with certain conditions. (See, e.g., Commissioner's Decision on Cothyrobal, 42 FR 28602 at 28604 through 28607, June 23, 1977 (thyroid drug used on cardiac patients), aff'd sub nom. *Edison Pharmaceutical Co.* v. *FDA*, 600 F.2d 831 (D.C. Cir. 1979).) In such situations, the clinical trials must be designed to test the contribution of each component to the claimed effects of the combination but by means of a study design that does not endanger the patients, such as through additional testing arms using healthy patients. Still, the contribution of each component must be demonstrated by substantial evidence of adequate and well-controlled clinical trials (§ 300.50; *225 Cartons*, 871 F.2d at 416–17; Commissioner's decision on Cothyrobal, 42 FR 28602 at 28607).

For example, in the Commissioner's decision on Cothyrobal, the issue was raised as to whether it was ethical to use cardiac patients in clinical trials comparing a combination drug to its individual active ingredients. The proposed labeling for Cothyrobal said that it could be use as an adjunctive therapy in connection with oral thyroid medication. One of the active ingredients in Cothyrobal was levothyroxine, a thyroid medication which could cause heart failure in cardiac patients (42 FR 28602 at 28605). It was claimed by the manufacturer that the second active ingredient, cyanocobalamin, blocked the thyrotoxic effects of levothyroxine and that the combination would be safe and effective for cardiac patients.

Because of the danger of thyrotoxic effects, the manufacturer did not test levothyroxine separately but instead submitted reports from physicians telling of their experiences with Cothyrobal (42 FR 28602 at 28607). The Commissioner's decision on Cothyrobal found the clinical trials which were submitted to be inadequate because they failed to demonstrate that the cyanocobalamin component of Cothyrobal protected patients against possible adverse side effects in the recommended adjunctive therapy, and that the combination drug had some effect greater than that which would be achieved by one of its ingredients alone (42 FR 28602 at 28606).

While the Commissioner's decision agreed with the manufacturer's argument that it would be unethical to conduct a study using two groups of cardiac patients in a comparison of Cothyrobal versus levothyroxine as adjunctive therapies, the decision also ruled that it would be equally unethical to administer Cothyrobal as an adjunctive therapy for cardiac patients until there had been a demonstration of the protective effects of the cyanocobalamin component (42 FR 28602 at 28605). Without proof of the latter, the effectiveness of the combination drug for its labeled indication was not established.

To prove efficacy, the Commissioner's decision on Cothyrobal ruled that a "series of adequate tests" should be employed to establish efficacy of the combination (42 FR 28602 at 28605). The Commissioner's decision advised that an initial trial comparing the combination drug with its active ingredients could ethically be performed using noncardiac patients (42 FR 28602 at 28606). By this means, the effectiveness of the cyanocobalamin component could safely be demonstrated. Subsequent testing on cardiac patients could then be performed comparing the combination drug in adjunctive therapy with conventional therapy. The Commissioner's decision concluded that if preliminary testing were performed on noncardiac patients, the subsequent testing on cardiac patients would not have to include a trial with levothyroxine (42 FR 28602 at 28605).

In the present case, Carter-Wallace offers no evidence that would suggest that it would have been unethical in the Wallace II study to have had a testing arm in which depressed patients were given benactyzine. Without the benactyzine test group, the Wallace II study failed to demonstrate that each component contributed to the claimed effects of the combination. (See *225 Cartons*, 871 F.2d at 416–17.)

Moreover, the labeling for Deprol® contained certain claims about the properties of benactyzine which were unsubstantiated by adequate and well-controlled clinical trials. The labeling read:

> "Deprol" combines the tranquilizing action of meprobamate with the antidepressant action of benactyzine hydrochloride. Meprobamate is * * * a central nervous system relaxant with selective action on the thalamus. It reduces tension, anxiety, excitability, and muscle spasm without significant cortical inhibition. *Benactyzine hydrochloride is * * * a mild antidepressant, and an anticholinergic agent which reduces the autonomic response to emotion-provoking stress.*

(G–2 at 2 (emphasis added))

I note that testimony of one of Carter-Wallace's own expert witnesses, Dr. Ayd, contradicts this labeling claim, as Dr. Ayd testified that benactyzine is not effective as an antidepressant. (Ayd, Tr. Vol. II at 12.)

The burden of proving safety and efficacy lies on the applicant. (21 U.S.C. 355(e); § 12.87(d); *Hynson*, 412 U.S. at 617.) I conclude that in the instant case, the ALJ ruled appropriately in finding that the Wallace II study was not adequate and well-controlled because it lacked a benactyzine test group. Without the benactyzine test group, the study failed to demonstrate the contribution of the benactyzine component.

Carter-Wallace additionally asserts that the lack of a benactyzine test arm was raised in prestudy discussions with FDA, and that since FDA did not object, this indicates an "admission" by FDA that this test arm was not necessary (CW Exceptions at 47 n.21). While Carter-Wallace does not raise a specific argument on this point, I nevertheless wish to note that even if this claim were shown to be true, it does not relieve Carter-Wallace from the responsibility of conducting an adequate and well-controlled trial. As was noted in the Commissioner's decision on Mysteclin:

> The burden of designing and conducting studies lies with the proponent of the drug. Even if the [FDA] sometimes devotes a portion of its scarce reviewer resources to the review of protocols of studies before they are begun, the agency's review of a protocol cannot equal the detailed, careful review it does when deciding whether to approve the application once the data are submitted. FDA does not and cannot guarantee that use of a particular protocol will make a study adequate and well-controlled or will result in approval of the drug being tested, particularly where the protocol is not executed properly * * *. [T]he agency cannot be estopped on safety and effectiveness issues. *U.S.* v. *Articles of Drug * * * Hormonin*, 498 F. Supp. 424, [437] (D.N.J. 1980), aff'd, 672 F.2d 904 (3d Cir. 1981) * * *. FDA's "acceptance" of the protocols for the studies does not constitute evidence that the protocols were adequate and in conformity with the regulation defining adequate and well-controlled investigations.

(Commissioner's decision on Mysteclin, slip op. at 11–12) Therefore, I find no merit in Carter-Wallace's attempt to assert estoppel of FDA.

c. *Conclusions from the Wallace II study.* Carter-Wallace argues that the ALJ erred in ruling that the Wallace II study was not adequate and well-controlled (CW Exceptions at 50). Carter-Wallace cites to the testimony of its expert witnesses in support of its argument.

I find correct the ALJ's conclusion that the Wallace II study was not adequate and well-controlled, although I find additional reasons in addition to those relied upon by the ALJ to support my decision. I conclude that the

exclusion of a large number of the rating scores of randomized subjects, the absence of a benactyzine test group, and the change from two-tailed tests to one-tailed tests of significance in the reanalysis (see section I.C.2.e. of this document) make the Wallace II study inadequate and not well-controlled. Additionally, because of the lack of a statistically significant difference between Deprol® and meprobamate, the Wallace II study has not satisfied the combination drug policy in that it has not shown that both active ingredients are necessary to the claimed effect (§ 300.50(a)). I therefore find this study not to be adequate and well-controlled.

D. Other Studies Offered to Prove Efficacy

Carter-Wallace also argues that the ALJ erred in finding that the results of four other "supportive" studies did not provide substantial evidence of the efficacy of Deprol® (CW Exceptions at 50; CW Post-Hearing Brief at 58; I.D. at 42). Carter-Wallace admits that none of these studies--the Gordon, Wygant, Parvaresh, and Alexander studies--was adequate and well-controlled, but Carter-Wallace argues that the ALJ should have weighed these studies in his decision.

As I previously discussed, studies which are not adequate and well-controlled can, at most, be used to corroborate other studies which are adequate and well-controlled (see section I.C.2.a. of this document, citing § 314.126(e)). Regardless of the number of corroborative studies submitted, the submission of corroborative studies does not vitiate the usual requirement for a minimum of two adequate and well-controlled studies (Commissioner's decision on OPE, slip op. at 23; see also section I.C.2.a. of this document, citing 21 U.S.C. 355(d)).

Corroborative studies must, of necessity, have other studies to corroborate. Accordingly, I find that the ALJ was correct in ruling that, inasmuch as neither the Rickels, nor the Wallace I, nor the Wallace II studies provided substantial evidence of the efficacy of Deprol®, there was nothing for the "supportive" studies to corroborate.

E. Admissibility of Safety Data

Carter-Wallace further argues that the ALJ erred in rejecting data regarding the safety of Deprol# on the grounds that the data were not taken from adequate and well-controlled studies (CW Exceptions at 14, citing I.D. at 43-44). Carter-Wallace points out that, under the substantial evidence test, safety of a drug is not required to be shown by adequate and well-controlled studies (CW Exceptions at 16, citing *American Cyanamid Co.* v. *FDA*, 606 F.2d 1307, 1313 (D.C. Cir. 1979) (an animal drug), appeal after remand, opinion denying petition for review 770 F.2d 1213 (D.C. Cir. 1985); *Edison Pharmaceutical Co.* v. *FDA*, 600 F.2d 831, 840–41 (D.C. Cir. 1979); *E.R. Squibb & Sons, Inc.* v. *Weinberger*, 483 F.2d 1382, 1385 (3d Cir. 1973); accord, Commissioner's decision on Cothyrobal, 42 FR 28602 at 28614).

The evidence which Carter-Wallace submitted consisted of "spontaneous," i.e., voluntary, adverse reaction reports, which were said to indicate that the benactyzine component in Deprol® decreases the potential for abuse of the meprobamate component. (CW Post-Hearing Brief at 61, citing CW–74 at 26–32). Carter-Wallace also introduced data from published and unpublished reports, which Carter-Wallace admitted were not adequate and well-controlled clinical trials, purporting to show that Deprol® produced fewer anticholinergic effects than benactyzine alone (CW Post-Hearing Brief at 62, citing CW–74 at 2–25).

Carter-Wallace is correct in its view that the proof of safety of a drug does not have to meet all of the requirements of an adequate and well-controlled clinical trial.[5] (Commissioner's decision on Cothyrobal, 42 FR 28602 at 28614; *Edison Pharmaceutical Co.* v. *FDA*, 600 F.2d at 840; *E.R. Squibb & Sons, Inc.* v. *Weinberger*, 483 F.2d at 1385.) Nevertheless, I find the general rule pertaining to admission of safety evidence inapplicable to the instant case because, while Carter-Wallace ostensibly is seeking the admission of safety data, Carter-Wallace's stated reason for introducing this evidence is to prove efficacy (see CW Exceptions at 14–15). Carter-Wallace concedes that its proffered safety data "were not submitted as an independent basis [from efficacy data] for compliance with the combination policy." (CW Exceptions at 14.)

Carter-Wallace argues that safety data concerning Deprol® and its components provide additional relevant information pertaining to efficacy for clinical experts reviewing the studies. (CW Exceptions at 14.) Carter-Wallace avers that its expert witnesses used the safety data in drawing their conclusions that substantial evidence existed of Deprol's® efficacy. (CW Exceptions at 15.)

I find Carter-Wallace's attempt to rely on these data to be unsound. By statutory mandate, a drug's efficacy must be proved by substantial evidence from adequate and well-controlled clinical trials (21 U.S.C 355(d)). Moreover, the regulations specifically state that isolated case reports, random experience, and reports lacking the details which permit scientific evaluation will not be considered as proof of efficacy (§ 314.126). If Carter-Wallace is to prove efficacy, it must do so with substantial evidence of adequate and well-controlled clinical trials. As the Supreme Court has ruled with regard to proof of efficacy, "The 'substantial evidence' requirement reflects the conclusion of Congress * * * that clinical impressions of practicing physicians * * * do not constitute an adequate basis for establishing efficacy." (*Hynson*, 412 U.S. at 630; see also *Edison Pharmaceutical Co.*, 600 F.2d at 843 ["Personal testimonials simply do not meet the exacting standards required by the [Federal Food, Drug, and Cosmetic] Act and the regulations."])

I therefore conclude that, although the ALJ may have erred in stating the evidentiary standard with regard to proof of safety, the result which the ALJ reached was proper because Carter-Wallace's express intention for the evidence in question was as proof of efficacy, not safety. Accordingly, the ALJ applied the correct evidentiary standard, i.e., substantial evidence of adequate and well-controlled clinical trials, for the proposed use of the evidence, and I therefore affirm the ALJ's conclusion.

Alternatively, I find the issue regarding safety data to be moot, absent proof of efficacy of Deprol® through

[5] It should be noted, however, that even though proof of safety of a drug does not necessarily have to satisfy every requirement (such as blinding) of an adequate and well-controlled clinical trial, this does not mean that any and all evidence will be accepted for a showing of safety. The standard of proof necessary to establish safety of a drug was set forth in the Commissioner's decision on Cothyrobal. In that decision, the Commissioner stated that while tests to show the safety of a drug do not need to be "adequate and well-controlled" within the meaning of § 314.111(a)(5) [currently 21 CFR 314.126], they must be adequately constructed so that scientists can draw reasonable conclusions from them. Factors that are appropriate for consideration in determining whether a study of drug effectiveness is adequate and well-controlled, therefore, are also relevant to the question of whether a study of drug safety is adequate, e.g., the number of subjects involved, the blinding or the failure to blind the subjects and the observer, possibilities of bias entering into the tests because of variables not accounted for, the adequate use of controls, etc. (42 FR 28602 at 28614). There must be substantial evidence of safety; if the evidence does not meet this burden, the Commissioner can find the evidence to be insufficient. (*Edison Pharmaceutical Co.*, 600 F.2d at 841; Commissioner's decision on Cothyrobal, 42 FR 28602 at 28613.) The judgment of physicians who have administered the drug in question in their own practices can be considered, but their judgment is not determinative and must be considered in light of all the evidence pertaining to safety.

substantial evidence of adequate and well-controlled clinical trials. While Deprol® is a combination drug and does have to comply with the safety requirements of the combination drug policy, it must be kept in mind that neither Deprol® nor either of its two components has been approved as effective for use in treating neurotic depression, the labeled indication for Deprol®. Without proof of efficacy of the fixed-combination, it is not sufficient to show that Deprol® is safe as a combination.

II. Conclusion and Order

The foregoing opinion in its entirety constitutes my findings of fact and conclusions of law. Based on the foregoing discussion, findings, and conclusions, I affirm the ALJ's Initial Decision in all respects, except where specifically stated otherwise. I find that there is a lack of substantial evidence that Deprol® will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in its labeling. Accordingly, pursuant to 21 U.S.C. 355(e)(3), the NDA for Deprol® must be withdrawn. I further find that, by reason of the lack of substantial evidence of effectiveness, Deprol® is a "new drug" within the meaning of 21 U.S.C. 321(p).

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), and under authority delegated to me by the Secretary (21 CFR 5.10(a)(1)), the NDA for Deprol® and all amendments and supplements thereto, are hereby withdrawn, effective October 29, 1993.

Dated: September 17, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

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BILLING CODE 4160-01-F

Health Resources and Services Administration

Program Announcement and Proposed Minimum Percentages for "High Rate" and "Significant Increase in the Rate" for Implementation of the General Statutory Funding Preference for Advanced Nurse Education Grants for Fiscal Year 1994

The Health Resources and Services Administration (HRSA) announces that applications will be accepted for fiscal year (FY) 1994 Advanced Nurse Education Grants under the authority of section 821, title VIII of the Public Health Service Act, as amended by the Nurse Education and Practice Improvement Amendments of 1992, title II of the Health Professions Education Extension Amendments of 1992, Public Law 102-408, dated October 13, 1992. Comments are invited on the proposed minimum percentages for "high rate" and "significant increase in the rate" for implementation of the general statutory funding preference.

The administration's budget request for FY 1994 includes approximately $8.2 million for this program. Total continuation support recommended is $4.4 million. It is anticipated that $3.8 million will be available to support 21 competing awards averaging $180,000.

Previous Funding Experience

Previous funding experience information is provided to assist potential applicants to make better informed decisions regarding submission of an application for this program. Data are not yet available for FY 1993. In the first cycle of FY 1992, HRSA reviewed 67 applications for Advanced Nurse Education Grants. Of those applications, 46 percent were approved and 54 percent were disapproved. Twenty three projects, or 74 percent of the applications approved, were funded. In the second cycle of FY 1992, HRSA reviewed 41 applications for Advanced Nurse Education Grants. Of those applications, 22 percent were approved and 78 percent were disapproved. Six projects, or 67 percent of the applications approved, were funded.

Purpose

Section 821 of the Public Health Service Act, as implemented by 42 CFR part 57, subpart Z, authorizes assistance to meet the costs of projects to: (1) Plan, develop and operate new programs, or (2) significantly expand existing programs leading to advanced degrees that prepare nurses to serve as nurse educators or public health nurses, or in other clinical nurse specialties determined by the Secretary to require advanced education. The period of Federal support should not exceed 3 years.

Eligibility

To be eligible to receive a grant, a school must be a public or nonprofit private collegiate school of nursing and be located in a state.

National Health Objectives for the Year 2000

The Public Health Service urges applicants to submit work plans that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report; Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone 202-783-3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

Review Criteria

The review of applications will take into consideration the following criteria:

(1) The need for the proposed project including, with respect to projects to provide education in professional nursing specialties determined by the Secretary to require advanced education:

(a) The current or anticipated national and/or regional need for professional nurses educated in the specialty; and

(b) The relative number of programs offering advanced education in the specialty;

(2) The need for nurses in the specialty in which education is to be provided in the State in which the education program is located.

(3) The potential effectiveness of the proposed project in carrying out the educational purposes of section 821 of the Act and 42 CFR part 57, subpart Z;

(4) The capability of the applicant to carry out the proposed project;

(5) The soundness of the fiscal plan for assuring effective utilization of grant funds;

(6) The potential of the project to continue on a self-sustaining basis after the period of grant support; and

(7) The degree to which the applicant proposes to attract, retain and graduate minority and financially needy students.

Other Considerations

In addition, the following funding factors may be applied in determining funding of approved applications.

A funding preference is defined as the funding of a specific category or group of approved applications ahead of other categories or groups of approved applications.

A funding priority is defined as the favorable adjustment of aggregate review scores of individual approved applications when applications meet specified criteria.

It is not required that applicants request consideration for a funding

factor. Applications which do not request consideration for funding factors will be reviewed and given full consideration for funding.

Statutory General Preference

As provided in section 860(e)(1) of the PHS Act, preference will be given to any qualified applicant that—

(A) Has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or

(B) During the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings.

This preference will only be applied to applications that rank above the 20th percentile of proposals recommended for approval by the peer review group.

Proposed Minimum Percentages for "High Rate" and "Significant Increase in the Rate"

"High rate" is defined as a minimum of 30 percent of graduates in academic year 1991–92 or academic year 1992–93, whichever is greater, who spend at least 50 percent of their worktime in clinical practice in the specified settings. Public health nurse graduates can be counted if they identify a primary work affiliation at one of the qualified work sites. Graduates who are providing care in a medically underserved community as a part of a fellowship or other educational experience can be counted.

"Significant increase in the rate" means that, between academic years 1991–92 and 1992–93, the rate of placing graduates in the specified settings has increased by a minimum of 50 percent and that not less than 15 percent of graduates from the most recent year are working in these settings.

Additional information concerning the implementation of this preference has been published in the **Federal Register** at 58 FR 40659, dated 7/29/93.

Established Funding Priorities

The following funding priority was established in FY 1989 after public comment (54 FR 11570, dated March 21, 1989) and the Secretary is extending this priority in FY 1994.

A funding priority will be given to applications which develop, expand or implement courses concerning ambulatory, home health care and/or inpatient case management services for individuals with HIV disease.

The following funding priority was established in FY 1993 after public comment (58 FR 32710, dated June 11, 1993) and the Administration is extending this funding priority in FY 1994. In determining the order of funding of approved applications a funding priority will be given to applicant institutions which demonstrate either substantial progress over the last three years or a significant experience of ten or more years in enrolling and graduating trainees from those minority or low-income populations identified as at risk of poor health outcomes.

Information Requirements Provision

Under section 860(e)(2) of the Act, the Secretary may make an award under the Advanced Nurse Education Grants only if the applicant for the award submits to the Secretary the following information:

1. A description of rotations of preceptorships for students, or clinical training programs for residents, that have the principal focus of providing health care to medically underserved communities.
2. The number of faculty on admissions committees who have a clinical practice in community-based ambulatory settings in medically underserved communities.
3. With respect to individuals who are from disadvantaged backgrounds or from medically underserved communities, the number of such individuals who are recruited for academic programs of the applicant, the number of such individuals who are admitted to such programs, and the number of such individuals who graduate from such programs.
4. If applicable, the number of recent graduates who have chosen careers in primary health care.
5. The number of recent graduates whose practices are serving medically underserved communities.
6. A description of whether and to what extent the applicant is able to operate without Federal assistance under this title.

Additional details concerning the implementation of this information requirement have been published in the **Federal Register** at 58 FR 43642, dated August 17, 1993, and will be provided in the application materials.

Paperwork Reduction Act

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. This approval includes the burden for collection of information for the statutory general preference and for the information requirement provision. (OMB #0915–0060, expiration date 7/31/95)

Additional Information

Interested persons are invited to comment on the proposed minimum percentages for "high rate" and "significant increase in the rate" for implementation of the general statutory funding preference. The comment period is 30 days. All comments received on or before October 29, 1993, will be considered before the final minimum percentages for "high rate" and "significant increase in the rate" for implementation of the general statutory funding preference are established. Written comments should be addressed to: Marla Salmon, ScD, RN, FAAN, Director, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 9–35, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Nursing, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

Application Requests

Requests for application materials and questions regarding grants policy and business management issues should be directed to: Ms. Donna Nash, Grants Management Specialist, Grants Management Branch (D–23), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857.

Telephone: (301) 443–6960 FAX: (301) 443–6343. Completed applications should be returned to the Grants Management Branch at the above address.

If additional programmatic information is needed, please contact: Dr. Tom Phillips, Chief, Advanced Nursing Education Branch, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 9–36, 5600 Fishers Lane, Rockville, Maryland 20857.

Telephone : (301) 443–6333 FAX: (301) 443–8586

The deadline date for receipt of applications is December 1, 1993. Applications will be considered to be "on time" if they are either:

(1) Received on or before the established deadline date, or

(2) Sent on or before the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal

Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late applications not accepted for processing will be returned to the applicant.

This program, Advanced Nurse Education Grants, is listed at 93.299 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). This program is not subject to the Public Health System Reporting Requirements.

Dated: August 11, 1993.

William A. Robinson,

Acting Administrator.

[FR Doc. 93–23852 Filed 9–28–93; 8:45 am]

BILLING CODE 4160–15–U

Program Announcement and Proposed Minimum Percentages for "High Rate" and "Significant Increase in the Rate" for Implementation of the General Statutory Funding Preference for Grants for Faculty Development in Family Medicine for Fiscal Year 1994

The Health Resources and Services Administration (HRSA) announces that applications for fiscal year (FY) 1994 for Grants for Faculty Development in Family Medicine are being accepted under the authority of section 747(a), (previously section 786(a)), title VII of the Public Health Service (PHS) Act, as amended by the Health Professions Education Extension Amendments of 1992, title I of Public Law 102–408, dated October 13, 1992. Comments are invited on the proposed minimum percentages for "high rate" and "significant increase in the rate" for implementation of the general statutory funding preference.

The Administration's budget request for FY 1994 includes $8.5 million for the Faculty Development program. Total continuation support recommended is $3.7 million. It is anticipated that $4.8 million will be available to support 30 competing awards averaging $160,000.

This program announcement is subject to the appropriation of funds for FY 1994. Applicants are advised that this program announcement is a contingency action being taken to assure that should funds become available for this purpose, that can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Previous Funding Experience

Previous funding experience information is provided to assist potential applicants to make better informed decisions regarding submission of an application for this program.

In FY 1993, HRSA reviewed 42 applications for Grants for Faculty Development in Family Medicine. Of those applications, 52 percent were approved and 48 percent were disapproved. Eight projects, or 19 percent of the applications received, were funded. In FY 1992, HRSA reviewed 34 applications. Of those applications, 56 percent were approved and 44 percent were disapproved. Nineteen projects, or 56 percent of the applications received were funded.

Purpose

Section 747(a)(3) of the PHS Act authorizes the award of grants to public or nonprofit private hospitals, schools of medicine or osteopathic medicine, or other public or private nonprofit entities to assist in meeting the cost of planning, developing and operating programs for the training of physicians who plan to teach in family medicine training programs. In addition, section 747(a)(4) authorizes assistance in meeting the cost of supporting physicians who are trainees in such programs and who plan to teach in a family medicine training program.

To receive support, applicants must meet the requirements of final regulations as specified in 42 CFR part 57, subpart Q and section 791(b) of the PHS Act. The period of Federal support will not exceed 5 years.

National Health Objectives for the Year 2000

The Public Health Service (PHS) urges applicants to submit work plans that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone (202) 783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service education programs which provide comprehensive primary care services to the underserved.

Review Criteria

The review of applications will take into consideration the following criteria:

(1) The potential effectiveness of the proposed project in carrying out the training purposes of section 747(a)(3) of the Act;

(2) The degree to which the proposed project provides for the project requirements and guidelines;

(3) The administrative and management ability of the applicant to carry out the proposed project in a cost-effective manner; and

(4) The potential of the project to continue on a self-sustaining basis after the period of grant support.

Other Considerations

In addition, the following funding factors may be applied in determining the funding of approved applications.

(1) A funding preference is defined as the funding of a specific category or group of approved applications ahead of other categories or groups of approved applications.

(2) A funding priority is defined as the favorable adjustment of aggregate review scores when applications meet specified objective criteria.

It is not required that applicants request consideration for a funding factor. Applications which do not request consideration for funding factors will be reviewed and given full consideration for funding.

General Statutory Funding Preference

As provided in section 791(a) of the PHS Act, preference will be given to any qualified applicant that—

(A) Has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or

(B) During the 2-year period preceding the fiscal year for which an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This preference will only be applied to applications that rank above the 20th percentile that have been recommended for approval by the peer review group.

Proposed Minimum Percentages for "High Rate" and "Significant Increase in the Rate"

"High rate" is defined as a minimum of 20 percent of faculty development/fellowship program graduates in academic year 1991–92 or academic year 1992–93, whichever is greater, who spend at least 50 percent of their worktime in the specified settings.

"Significant increase in the rate" means that, between academic years 1991–92 and 1992–93, the rate of placing faculty development/fellowship program graduates in specified settings has increased by a minimum of 50 percent and that not less than 15 percent of the academic year 1992–93 graduates are working in these areas.

Additional information concerning the implementation of this preference has been published in the **Federal Register** at 58 FR 40659, dated July 29, 1993.

Established Funding Priority for FY 1994

The following funding priority was established in FY 1993, after public comment, dated January 22, 1993 at 58 FR 5736 and is being extended in FY 1994.

In making awards for fiscal year 1994, a funding priority will be given to:

Applications that can demonstrate either substantial progress over the last 3 years or a significant experience of 10 or more years in enrolling and graduating trainees from those minority or low-income populations identified as at-risk of poor health outcomes.

Information Requirements Provision in Statute

Under section 791(b) of the Act, the Secretary may make an award under the Grants for Faculty Development in the Family Medicine program only if the applicant for the award submits to the Secretary the following information:

1. A description of rotations of preceptorships for students, or clinical training programs for residents, that have the principal focus of providing health care to medically under-served communities.
2. The number of faculty on admissions committees who have a clinical practice in community-based ambulatory settings in medically underserved communities.
3. With respect to individuals who are from disadvantaged backgrounds or from medically underserved communities, the number of such individuals who are recruited for academic programs of the applicant, the number of such individuals who are admitted to such programs, and the number of such individuals who graduate from such programs.
4. If applicable, the number of recent graduates who have chosen careers in primary health care.
5. The number of recent graduates whose practices are serving medically underserved communities.
6. A description of whether and to what extent the applicant is able to operate without Federal assistance under this title.

Additional details concerning the implementation of this information requirement have been published in the **Federal Register** at 58 FR 43642, dated August 17, 1993 and will be provided in the application materials.

Paperwork Reduction Act

The information supporting the statutory general preference and the section 791 provision is included in the application materials approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (OMB #0915–0060, expiration date 7/31/95).

Additional Information

Interested persons are invited to comment on the proposed minimum percentages of "high rate" and "significant increase in the rate" for implementation of the general statutory funding preference. The comment period is 30-days. All comments received on or before October 29, 1993 will be considered before the final minimum percentages for "high rate" and "significant increase in the rate" for implementation of the general statutory funding preference are established.

Written comments should be addressed to: Marc L. Rivo, M.D., M.P.H., Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 4C–25, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

Application Requests

Requests for application materials and questions regarding grants policy and business management issues should be directed to: Ms. Judy Bowen, Grants Management Specialist (D15), Residency and Advanced Grants Section, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 8C–26, Rockville, Maryland 20857. Telephone: (301) 443–6960

Completed applications should be mailed to the Grants Management Branch at the above address.

Questions regarding programmatic information should be directed to: Ms. Joan Harrison, Resources Development Section, Primary Care Medical Education Branch, Division of Medicine, Bureau of Health Professions. Health Resources and Services Administration, 5600 Fishers Lane, room 4C–04, Rockville, Maryland 20857. Telephone: (301) 443–3614

The application deadline date is November 10, 1993. Applications shall be considered to be "on time" if they are either:

1. Received on or before the established deadline date, or
2. Sent on or before the deadline date and received in time for orderly processing. (Applicants should request a legible dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late applications not accepted for processing will be returned to the applicant.

This program is listed at 93.895 in the Catalog of Federal Domestic Assistance. Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, (as implemented through 45 CFR part 100).

This program is not subject to the Public Health System Reporting Requirements.

Dated: August 2, 1993.

William A. Robinson,

Acting Administrator.

[FR Doc. 93–23851 Filed 9–28–93; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

National Institute of Child Health and Human Development; National Advisory Board on Medical Rehabilitation Research; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Institute of Child Health and Human Development, October 13-15, 1993, Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

The three-day meeting will be open to the public from 9 a.m. to 5 p.m. on October 13-14 and 9 a.m. to adjournment on October 15. Attendance by the public will be limited to space available. The board will review progress achieved by the Center in developing medical rehabilitation research and reports on workshops, conferences, grants, and other activities. The Board will review a draft of the annual report on progress implementing the Report and Plan for Medical Rehabilitation Research that will

include the areas of opportunity for new research, and for reducing the economic impact of lost function associated with disability. The Board will also discuss what areas in the Report and Plan should be developed in the near future. The meeting will have a specific period of time set aside for public comment on the activities of the Center and medical rehabilitation research.

Ms. Mary Plummer, Committee Management Specialist, NICHD, 6100 Building, room 5EO3, National Institutes of Health, Bethesda, Maryland 20892, Area Code 301, 496–1485, will provide a summary of the meeting and a roster of Advisory Board members as well as substantive program information. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Plummer.

Dated: September 22, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–23805 Filed 9–28–93; 8:45 am]

BILLING CODE 4140–01–M

Research Priorities Subcommittee of the National Deafness and Other Communication Disorders Advisory Board; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Research Priorities Subcommittee of the National Deafness and Other Communication Disorders Advisory Board on November 3, 1993. The meeting will take place from 9 a.m. to 11:30 a.m. in room 3C05, Building 31, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892, and will be conducted as a telephone conference with the use of a speaker phone.

The meeting, which will be open to the public from 9 a.m. to 9:45 a.m. and from 10 a.m. to adjournment, is being held to discuss scientific advances in the field of voice and voice disorders since the National Strategic Research Plan for that area was developed. Attendance by the public will be limited to the space available.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public from 9:45 a.m. to 10 a.m. for the discussion and recommendation of individuals to serve as consultants to the Research Priorities Subcommittee. This discussion could reveal personal information concerning these individuals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of the Subcommittee's meeting and a roster of members may be obtained from Ms. Monica Davies, Executive Director, National Deafness and Other Communication Disorders Advisory Board, Building 31, room 3C08, National Institutes of Health, Bethesda, Maryland 20892, (301) 402–1129, upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Director in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.173, Biological Research Related to Deafness and Communication Disorders)

Dated: September 23, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–23795 Filed 9–28–93; 8:45 am]

BILLING CODE 4140–01–M

Deafness and Other Communication Disorders Programs Advisory Committee; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Deafness and Other Communication Disorders Programs Advisory Committee on October 25, 1993. The meeting will take place from 8:30 a.m. to 3 p.m. in Conference Room 10, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting, which will be open to the public, is being held for the orientation of new members and discussion of the Extramural Research and Training Support programs. Attendance by the public will be limited to space available.

Further information concerning the Committee meeting may be obtained from Dr. Ralph F. Naunton, Executive Secretary, NDCD Programs Advisory Committee, National Institute on Deafness and Other Communication Disorders, Executive Plaza South, room 400C, National Institutes of Health, Bethesda, Maryland 20892, 301–496–1804. A summary of the meeting and a roster of the members may also be obtained from his office. For individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, please contact Dr. Naunton two weeks prior to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Other Communication Disorders)

Dated: September 23, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–23801 Filed 9–28–93; 8:45 am]

BILLING CODE 4140–01–M

Subcommittees B, C, and D of the Diabetes and Digestive and Kidney Diseases Special Grants Review Committee; Meetings

Pursuant to Public Law 92–463, notice is hereby given of meetings of Subcommittees B, C, and D of the National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK).

These meetings will be open to the public to discuss administrative details at the beginning of the first session of the first day of the meetings. Attendance by the public will be limited to space available. Notice of the meeting rooms will be posted in the hotel lobby.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion, and evaluation of individual research grant applications. Discussion of these applications could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winnie Martinez, Committee Management Officer, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, Building 31, room 9A19, Bethesda, Maryland 20892, 301–496–6917, will provide summaries of the meetings and rosters of the committee members upon request. Other information pertaining to the meetings can be obtained from the Scientific Review Administrators indicated.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Scientific Review Administrators at least two weeks prior to the meeting date.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, Subcommittee B

Scientific Review Administrator: Francis Calvo, Westwood Building, room 605,

National Institutes of Health, Bethesda, Maryland 20892, Phone: 301-594-7563

Dates of Meeting: October 28-29, 1993

Place of Meeting: Embassy Suites Hotel, Chevy Chase Pavilion, 4300 Military Rd., NW., Washington, DC 20015

Open: October 28, 5:30 p.m.—recess, October 29, 8:30 a.m.-8:45 a.m.

Closed: October 29, 8:45 a.m.-adjournment

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, Subcommittee C

Scientific Review Administrator: Daniel Matsumoto, Westwood Building, room 604, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301-594-7587

Dates of Meeting: October 28-29, 1993

Place of Meeting: Embassy Suites Hotel, Chevy Chase Pavilion, 4300 Military Rd., NW., Washington, DC 20015

Open: October 28, 5:30 p.m.—recess, October 29, 8:30 a.m.-8:45 a.m.

Closed: October 29, 8:45 a.m.-adjournment

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, Subcommittee D

Scientific Review Administrator: Ann A. Hagan, Westwood Building, room 604, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301-594-7575

Dates of Meeting: October 28-29, 1993

Place of Meeting: Embassy Suites Hotel, Chevy Chase Pavilion, 4300 Military Rd., NW., Washington, DC 20015

Open: October 28, 5:30 p.m.—recess, October 29, 8:30 a.m.-8:45 a.m.

Closed: October 29, 8:45 a.m.-adjournment

(Catalog of Federal Domestic Assistance Program No. 93.847-849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: September 23, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93-23797 Filed 9-28-93; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Diabetes and Digestive and Kidney Diseases; Board of Scientific Counselors; Meeting

Pursaunt to Public Law 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), October 20, 21 and 22, 1993, National Institutes of Health, Building 5, first floor conference room, Bethesda, Maryland 20892. This meeting will be open to the public on October 20 from 8:50 p.m. to 9:30 p.m. and October 21 from 9 a.m. to 12 noon and again from 2 p.m. to 4:30 p.m. The open portion of the meeting will be devoted to scientific presentations by various laboratories of the NIDDK Intramural Research Program. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public on October 20 from 8:20 p.m. to 8:50 p.m., October 21 from 12 noon to 2 p.m. and again from 4:30 p.m. to recess, and October 22 from 8:30 a.m. to adjournment for the review, discussion and evaluation of individual intramural programs and projects conducted by the NIDDK, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of the meeting and rosters of the members will be provided by the Committee Management Office, National Institute of Diabetes and Digestive and Kidney Diseases, Building 31, room 9A19, Bethesda, Maryland 20892. For any further information, and for individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, please contact Dr. Allen Spiegel, Scientific Review Administrator, Board of Scientific Counselors, National Institutes of Health, Building 10, room 9N-222, Bethesda, Maryland 20892, (301) 496-4128. Please note, if you plan to request special assistance, you must do so two weeks prior to the meeting date.

(Catalog of Federal Domestic Assistance Program No. 93.847-849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: September 23, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93-23798 Filed 9-28-93; 8:45 am]

BILLING CODE 4140-01-M

National Digestive Diseases Advisory Board; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Digestive Diseases Advisory Board on October 25-26, 1993. Meetings on both days will begin at approximately 8:30 a.m. and adjourn at approximately 5 p.m. The focus of these meetings will be Veterans Administration's Activities Related to Digestive Diseases, Small Business Innovation Research Grants, Infectious Digestive Diseases and the 1994 Annual Report. These meetings which are open to the public, will be held at the Washington Dulles Airport Marriott, Chantilly, Virginia. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

For any further information, and for individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, please contact Mr. Raymond M. Kuehne, Executive Director, National Digestive Diseases Advisory Board, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 496-6045, two weeks prior to the meeting date. In addition, his office will provide a membership roster of the Board and an agenda and summaries of the actual meetings.

(Catalog of Federal Domestic Assistance Program No. 93.847-849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: September 23, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93-23802 Filed 9-28-93; 8:45 am]

BILLING CODE 4140-01-M

National Institute on Drug Abuse; Meetings

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the review committees of the National Institute on Drug Abuse for October 1993.

These meetings will be open to the public for approximately one-half hour at the beginning of the first day of the meeting for announcements and reports of administrative, legislative, and program development. Attendance by the public will be limited to space available.

As indicated below in accordance with provisions set forth in sec. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, these meetings will be closed to the public for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of the meetings and rosters of committee members may be obtained from: Ms. Camilla L. Holland, NIDA Committee Management Officer, National Institutes of Health, Parklawn

Building, room 10–42, 5600 Fishers Lane, Rockville, MD 20857 (Telephone: (301) 443–2755).

Substantive program information may be obtained from the contacts whose names, room numbers, and telephone numbers are listed below.

Committee Name: Pharmacology II Research Subcommittee, Drug Abuse Biomedical Research Review Committee.
Meeting Date: October 12–14, 1993.
Place: Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, Maryland 20852.
Open: October 12, 9 a.m. to 9:30 a.m.
Closed: 9:30 a.m., October 12, to adjournment on October 14.
Contact: Gamil Debbas, Ph.D., Parklawn Building, room 10–42, Telephone (301) 443–2620.

Committee Name: Pharmacology I Research Subcommittee, Drug Abuse Biomedical Research Review Committee.
Meeting Date: October 12–15, 1993.
Place: Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, Maryland 20852.
Open: October 12, 9 a.m. to 9:30 a.m.
Closed: 9:30 a.m., October 12, to adjournment on October 15.
Contact: Syed Husain, Ph.D., Parklawn Building, room 10–42, Telephone (301) 443–2620.

Committee Name: Biochemistry Research Subcommittee, Drug Abuse Biomedical Research Review Committee.
Meeting Date: October 18–20, 1993.
Place: The Ritz-Carlton, Pentagon City, 1250 South Hayes Street, Arlington, Virginia 22202.
Open: October 18, 8:30 a.m. to 9 a.m.
Closed: 9 a.m., October 18, to adjournment on October 20.
Contact: Rita Liu, Ph.D., Parklawn Building, room 10–42, Telephone (301) 443–2620.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the contact persons named above in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93.277, Drug Abuse Research Scientist Development and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Program)

Dated: September 22, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–23804 Filed 9–28–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Board of Scientific Counselors; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, NIEHS, October 18–19, 1993 in building 101 Conference Room, South Campus, NIEHS, Research Triangle Park, North Carolina.

This meeting will be open to the public 9 a.m. to 12 noon on October 18, for the purpose of presenting an overview of the organization and conduct of research in the Laboratory of Reproductive and Developmental Toxicology. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6) of title 5, U.S. Code and section 10(d) of Public Law 92–463, the meeting will be closed to the public on October 18 from approximately 1 p.m. to recess and on October 19 from 9 a.m. to adjournment, for the evaluation of the programs of the Laboratory of Reproductive and Developmental Toxicology, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Executive Secretary, Dr. John McLachlan, Scientific Director, Division of Intramural Research, NIEHS, Research Triangle Park, NC 27709, telephone (919) 541–3205, will furnish summaries of the meeting, rosters of committee members and substantive program information. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–23799 Filed 9–28–93; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine Board of Scientific Counselors; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Library of Medicine, on October 28 and October 29, 1993, in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting will be open to the public from 8:30 a.m. to 12:45 p.m. and from 1:45 to 4:45 p.m. on October 28 and from 8:30 a.m. to approximately 12 noon on October 29 for the review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communications. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Jackie Duley at 301–496–4441 in advance of the meeting.

In accordance with provisions set forth in section 552b(c)(6), title 5, U.S.C., and section 10(d) of Public Law 92–463, the meeting will be closed to the public on October 28, from approximately 12:45 p.m. to 1:45 p.m. for the consideration of personnel qualifications and performance of individual investigators and similar items, the disclosure of which would constitute an unwarranted invasion of personal privacy.

The Executive Secretary, Dr. Daniel R. Masys, Director, Lister Hill National Center for Biomedical Communications, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone (301) 496–4441, will furnish summaries of the meeting, rosters of committee members, and substantive program information.

Dated: September 23, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–23796 Filed 9–28–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the review committees of the National Institute of Mental Health for November 1993.

These meetings will be open to the public as indicated below for the discussion of NIMH policy issues and will include current administrative, legislative, and program developments.

All meetings will be closed to the public as indicated below in accordance with the provision set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Joanna L. Kieffer, Committee Management Officer, National Institute of Mental Health, Parklawn Building, room 9–105, 5600 Fishers Lane, Rockville, MD 20857, Area Code 301,

443–4333, will provide a summary of the meeting and a roster of committee members.

Other information pertaining to the meetings may be obtained from the contact person indicated.

Committee Name: Psychobiological, Biological, and Neuroscience Subcommittee of the Mental Health AIDS and Immunology Review Committee.

Contact: Rehana A. Chowdhury, room 9C–15, Parklawn Building, Telephone: 301, 443–6470.

Meeting Date: November 2–3, 1993.

Place: The Hampshire Hotel, 1310 New Hampshire Avenue, NW., Washington, DC 20036.

Open: November 2, 1993, 8:30 a.m.–9 a.m.

Closed: November 2, 1993, 9 a.m.–5 p.m., November 3, 1993, 8:30 a.m.–adjournment.

Committee Name: Child Psychopathology and Treatment Review Committee.

Contact: Tammye M. Cross, room 9C–14, Parklawn Building, Telephone: 301, 443–1340.

Meeting Date: November 3–5, 1993.

Place: Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20009.

Open: November 3, 1993, 9 a.m.–10 a.m.

Closed: November 3, 1993, 9 a.m.–5 p.m., November 4, 1993, 10 a.m.–5 p.m., November 5, 1993, 9 a.m.–adjournment.

Committee Name: Clinical Neuroscience Review Committee.

Contact: Maurine L. Eister, room 9C–18, Parklawn Building, Telephone: 301–443–3936.

Meeting Date: November 3–5, 1993.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Open: November 3, 1993, 9 a.m.–10 a.m.

Closed: November 3, 1993, 10 a.m.–5 p.m., November 4, 1993, 9 a.m.–5 p.m., November 5, 1993, 9 a.m.–adjournment.

Committee Name: Clinical Subcommittee, Mental Health Special Projects Review Committee.

Contct: Phyllis L. Zusman, room 9C–02, Parklawn Building, Telephone: 301–443–1340.

Meeting Date: November 3–5, 1993.

Place: Holiday Inn University Center, 100 Lytton Avenue, Pittsburgh, PA 15213.

Open: November 3, 1993, 5 p.m.–7 p.m.

Closed: November 3, 1993, 7 p.m.–10 p.m., November 4, 1993, 9 a.m.–5 p.m., November 5, 1993, 9 a.m.–adjournment.

Committee Name: Behavioral, Clinical, and Psychosocial Subcommittee of the Mental Health AIDS and Immunology Review Committee.

Contact: Regina M. Thomas, room 9C–15, Parklawn Building, Telephone: 301–443–6470.

Meeting Date: November 4–5, 1993.

Place: The Hampshire Hotel, 1310 New Hampshire Avenue, NW., Washington, DC 20036.

Open: November 4, 1993, 8:30 a.m.–9 a.m.

Closed: November 4, 1993, 9 a.m.–5 p.m., November 5, 1993, 8:30 a.m.–adjournment.

Committee Name: Epidemiology Review Committee.

Contact: Tammye M. Cross, room 9C–14, Parklawn Building, Telephone: 301–443–1340.

Meeting Date: November 15–17, 1993.

Place: Embassy Suites Hotel, 4300 Military Road, NW., Washington, DC 20015.

Open: November 15, 1993, 9 a.m.–10 a.m.

Closed: November 15, 1993, 10 a.m.–5 p.m., November 16, 1993, 9 a.m.–5 p.m., November 17, 1993, 9 a.m.–adjournment.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the contact person named above in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers 93.126, Small Business Innovation Research; 93.176, ADAMHA Small Instrumentation Program Grants; 93.242, Mental Health Research Grants; 93.281, Mental Research Scientist Development Award and Research Scientist Development Award for Clinicians; 93.282, Mental Health Research Service Awards for Research Training; and 93.921, ADAMHA Science Education Partnership Award)

Dated: September 22, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–23803 Filed 9–28–93; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants Advisory Committee; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Division of Research Grants Advisory Committee, November 15–16, 1993, Building 31C, Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 8:30 a.m. on November 15 to adjournment on November 16. The topics for the meeting will include, among others, the NIH Alternative Medicine Program, a DRG survey on the quality of summary statements, and a report on interviews with study section chairpersons. Attendance by the public will be limited to space available.

The Office of Committee Management, Division of Research Grants, Westwood Building, room 433, National Institutes of Health, Bethesda, Maryland 20892, telephone (301) 594–7265, will furnish a summary of the meeting and a roster of the committee members.

Dr. Samuel Joseloff, Executive Secretary of the Committee, Westwood Building, room 449, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 594–7248, will provide substantive program information upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary at least two weeks in advance of the meeting.

Dated: September 23, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–23800 Filed 9–28–93; 8:45 am]

BILLING CODE 4140–01–M

Social Security Administration

Redelegations of Authorities To Perform Certain Functions Under the Coal Industry Retiree Health Benefit Act of 1992

The Coal Industry Retiree Health Benefit Act of 1992 (the Coal Act) is contained in sections 19141–19143 of the Energy Policy Act of 1992, Public Law 102–486. Section 19143 of the Coal Act added sections 9704 (b)(2) and (h), and 9706 (a)–(f) to the Internal Revenue Code (IRC) which require the Secretary of Health and Human Services (the Secretary) to perform various functions under the Coal Act. The Secretary must calculate a per beneficiary premium for each plan year beginning on or after February 1, 1993, based on a formula set out in the legislation. Before October 1, 1993, the Secretary must assign each eligible beneficiary (the miner and eligible family members) to an appropriate signatory coal operator or related person and notify the trustees of the Combined Fund who are responsible for administering the benefit plan and the assigned operator of the names and Social Security numbers of eligible beneficiaries who have been assigned to the operator and additionally provide the operator with a brief summary of the facts related to the basis for such assignments. Next, the Secretary is required to provide, on request of assigned operators, detailed information as to the work history of the miners who are assigned to them and the basis for the assignment. Finally, the Secretary must conduct a review of assignments, if the assigned operator requests such review and submits evidence with the request that demonstrates a prima facie case of error regarding the assignments, and provide appropriate notifications regarding her action on the requests for review.

If an assignment cannot be made, the eligible beneficiary is considered "unassigned." Premiums for the unassigned are paid for on a proportionate basis by those operators who have been assigned premium

responsibility for other eligible beneficiaries.

On July 12, 1993, the Secretary delegated her authority under sections 9704 (b)(2) and (h) and 9706 (a)–(f) of the IRC to the Commissioner of Social Security, with authority to redelegate.

The above functions under the Coal Act that the Secretary has delegated authority to the Commissioner of Social Security to perform are hereby redelegated by the Acting Commissioner as follows:

Authorities

1. Authority to calculate a per beneficiary premium for each plan year beginning on or after February 1, 1993.

2. Authority to assign each eligible beneficiary to an appropriate coal operator or related person and make necessary notifications of assignments.

3. Authority to provide, to assigned operators on request, detailed information as to the work history of the miners who are assigned to them and the basis for the assignment; and to conduct a review of assignments upon request, on a showing by the assigned operator of a prima facie case of error, and to make the necessary notifications.

Delegatees	Scope of Authority
a. Deputy Commissioner for Operations b. Deputy Commissioner for Programs c. Chief Actuary and Deputy Chief Actuary d. Associate Commissioner and Deputy Associate Commissioner for Retirement and Survivors Insurance e. Regional Commissioners and Deputy Regional Commissioners f. Assistant Regional Commissioners for Processing Center Operations g. Social Insurance Specialists, Office of Retirement and Survivors Insurance	b.–c. The incumbents of these positions may exercise authority 1. a., b., and d.–j. The incumbents of these positions may exercise authorities 2. and 3. on Coal Act cases within the responsibility and control of their respective components, to the extent permitted by their particular functional responsibilities, as specified in their position descriptions, operating instructions or other pertinent issuances.
In the Program Service Centers: h. Benefit Authorizers, Claims Authorizers, Claims Authorizer Technical Assistants, Claims and Recovery Technical Assistants, Reconsideration Reviewers, Disability Examiners, Disability Specialists, Recovery Reviewers, Recovery Technical Assistants, Postentitlement Technical Experts, Program Analysts and Inquiry and Expediting Specialists In the Office of Central Records Operations: i. Claims Clerks (ERC & AfC), Lead Claims Clerks (LERC & LAfC), Claims Technicians (ECT), Lead Claims Technicians (LECT), Earnings Inquiry Specialists (COE) and Reconsideration Specialists j. All positions in the direct line of management above the positions specified in item e.–i. above	

Conditions

1. Further redelegations are not authorized.

2. These redelegations apply to the Coal Act legislation and do not alter existing delegations.

3. These redelegations must be exercised in accordance with all pertinent provisions of law, regulations, procedures, operating instructions, and other requirements.

The above redelegations are effective on the date that they are published in the **Federal Register**. I affirm and ratify any actions by the above delegatees which may constitute the exercise of any of the subject authorities before the date that these redelegations are published in the **Federal Register**.

Dated: September 17, 1993.

Lawrence H. Thompson,

Acting Commissioner of Social Security.

[FR Doc. 93–23847 Filed 9–28–93; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–967–4230–05–P; AA–11726]

Alaska Native Claims Selection; Decision To Issue Conveyance

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(h)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(1), will be issued to Koniag, Inc., Regional Native Corporation for 5.27 acres.

The lands involved are in the vicinity of Kodiak, Alaska.

T. 33 S., R. 30 W., Seward Meridian, Alaska

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Kodiak Daily Mirror. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until October 29, 1993 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal.

Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Terry R. Hassett,

Chief, Branch of KCS Adjudication.

[FR Doc. 93–23773 Filed 9–28–93; 8:45 am]

BILLING CODE 4310–JA–P

[MT–070–93–4333–02]

Emergency Closures to Motorized Vehicle Uses on Public Lands Within the Headwaters Resource Area, MT

AGENCY: Butte District Office, Bureau of Land Management, DOI.

ACTION: Notice of implementation of emergency closures to motorized vehicle uses on public lands for three specific locations within the Headwaters Resource Area.

SUMMARY: Notice is hereby given that effective immediately the lands and/or roads described below are closed to motorized vehicle travel:

1. The Sawmill Gulch area and existing roads in Sections 13 (all) and 12 (SW¼), T. 1 S., R. 10 W., will be closed seasonally from December 2 until April 15. The immediate need is to curtail big-game harassment occurring from snowmobile users and to protect winter/early spring habitat.

2. The upper BLM portion of the Johnny Gulch Road located in the NW¼NW¼ of Section 5, T. 5 N., R. 1 W., about 400 yards below the existing Helena National Forest closure, will be closed seasonally to use from December 2 until May 15 to eliminate elk winter/spring harassment and to protect critical habitat. The location of this new gate closure will be significantly more effective in deterring violations than the former open meadow site due to the presence of steep side slopes.

3. A small, 17-acre tract of public land within the outer city limits of Helena, Lot 41 in Section 36, T. 10 N., R. 4 W., is closed yearlong to all unauthorized motor vehicle uses. The immediate needs are to minimize public safety concerns, curtail further soil erosion and noxious weed expansion, eliminate noise disturbances experienced by proximity homeowners, and compliment the cooperative management of the Mt. Helena area.

Authority for these emergency actions is cited in 43 CFR 8341.2. All closures will remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT: Merle Good, Headwaters Resource Area Manager, P.O. Box 3388, Butte, Montana 59702; telephone (406) 494-5059.

Dated: September 20, 1993.

James R. Owings,

District Manager.

[FR Doc. 93-23770 Filed 9-28-93; 8:45 am]

BILLING CODE 4310-DN-M

[CA-010-03-4210-4; CA-32544]

Realty Action; Direct Sale of Public Lands, Calaveras County, CA; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment to notice of realty action: direct sale of public lands, CA-32544.

SUMMARY: This notice amends the Notice of Realty Action published on Friday, July 16, 1993, in Vol. 58, No. 135, Pages 38435 and 38436. The sentence "The 3.22-acre remnant would be sold to adjacent land owner Fred Ault (or heirs) at fair market value." is hereby amended to read as follows: "The 3.22 acre tract of public land would be sold to the heirs of Fred Ault, Sr. who hold a possessory interest in the subject land. The land would be sold at fair market value."

Dated: September 16, 1993.

Timothy J. Carroll,

Acting Area Manager.

[FR Doc. 93-23771 Filed 9-28-93; 8:45 am]

BILLING CODE 4310-40-M

[NV-930-4210-05; N-56543]

Realty Action; Lease/Purchase for Recreation and Public Purposes, Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and public purpose lease/purchase.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/purchase for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The West Valley Assembly of God proposes to use the land for a church facility.

Mount Diablo Meridian, Nevada

T. 21 S., R. 60 E.,
Sec. 11: Lots 143, 144.
Containing 10.00 acres, more or less.

The land is not required for any federal purpose. The lease/purchase is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement 30.00 feet in width along the north boundary and 30.00 feet in width along the east boundary of Government Lot 143, in favor of Clark County for roads, public utilities and flood control purposes.

2. An easement 30.00 feet in width along the east boundary and 30.00 feet in width along the south boundary of Government Lot 144, in favor of Clark County for roads, public utilities and flood control purposes. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/purchase under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/purchase until after the classification becomes effective.

Dated: September 16, 1993.

Gary Ryan,

District Manager, Las Vegas, NV.

[FR Doc. 93-23828 Filed 9-28-93; 8:45 am]

BILLING CODE 4310-HC-M

[CO-930-4214-10; COC-53648]

Amendment to Proposed Withdrawal: Opportunity for Public Meeting; Colorado

September 20, 1993.

AGENCY: Bureau of Land Management, Interior

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to amend its withdrawal application for the Catamount Ski Area to include an additional 885 acres of National Forest System land. This notice closes this land to location and entry under the mining laws for up to two years. The land remains open to mineral leasing.

DATES: Comments on this proposed withdrawal or requests for public meeting must be received on or before December 28, 1993.

ADDRESSES: Comments and requests for a meeting should be sent to the

Colorado State Director, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, 303–239–3706.

SUPPLEMENTARY INFORMATION: On August 20, 1993, the Department of Agriculture, Forest Service, filed an application to amend its withdrawal application to include an additional 885 acres of National Forest System land to be withdrawn from location and entry under the United States mining laws (30 U.S.C. ch. 2). The area originally described in the Notice of Proposed Withdrawal appearing in the Federal Register of April 3, 1992, page 11505 is hereby amended to include the following described parcel within Unsurveyed Tps. 4 and 5 N., R. 83 W. of the Sixth Principal Meridian, Colorado:

Routt National Forest

Beginning at a point on Green Creek from which the West one-quarter section corner, section 10, T. 4 N., R. 84 W., bears N. 54°39'37"W., a distance of 9,855.70 feet;

by metes and bounds:

S. 0°49'23" W. 2, 352.39 feet to the top of the ridge between Green Creek and Service Creek drainage: Thence southeasterly and northeasterly along the ridge between the said drainage approximately 10,400 feet; Thence northerly from the ridge top approximately 4,150 feet to a point on the right bank of Green Creek; Thence westerly along the right bank of Green Creek approximately 9,500 feet to the point of beginning.

The area described contains approximately 885 acres in Routt County.

The purpose of this amendment is to include these lands in the original application to protect natural resource values and recreation facilities at the Catamount Ski Resort.

For a period of 90 days from the date of publication of this notice, all parties who wish to submit comments, suggestions, or objections in connection with this proposed amendment, or to request a public meeting, may present their view in writing to the Colorado State Director. If the authorized officer determines that a meeting should be held, the meeting will be scheduled and conducted in accordance with 43 CFR 2310.3–1(c)(2).

This entire application will be processed in accordance with the regulations set forth in 43 CFR part 2310.

For a period of two years from the date of publication in the Federal Register this land will be segregated from the mining laws as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. During this period the Forest Service will continue to manage these lands.

Robert S. Schmidt,

Chief, Branch of Realty Programs.

[FR Doc. 93–23768 Filed 9–28–93; 8:45 am]

BILLING CODE 4310–JB–M

Minerals Management Service

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 (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting Jeane Kalas at (303) 231–3046. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer at the telephone number listed below, and to the OMB Paperwork Reduction Project, (1010–0063) Washington, DC 20503, telephone (202) 395–7340.

Title: Production Accounting and Auditing System Reports on Solid Minerals

OMB Approval Number: 1010–0063

Abstract: The Production Accounting and Auditing System information is needed to provide comprehensive production and disposition data on solid minerals produced from Federal and Indian leases. The data collected from lease and mine operators will be used to monitor production and check reported disposition against royalties. Data will also be used for audits. The monitoring function will enable MMS to verify that proper royalties are being received for solid minerals produced from Federal and Indian land.

Bureau Form Numbers: MMS–4050, MMS–4051–S, MMS–4059 A and B, MMS–4060 A and B

Frequency: Intermittently, monthly, quarterly

Description of respondents: Companies producing and processing solid minerals from Federal and Indian leases.

Estimated completion time: .5 to 1.5 hours

Annual Responses: 4,017

Annual Burden Hours: 3,425

Bureau Clearance Officer: Arthur Quintana (703) 787–1101.

Dated: July 20, 1993.

Jimmy W. Mayberry,

Acting Associate Director for Royalty Management.

[FR Doc. 93–23767 Filed 9–28–93; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–346]

Commission Decision Not To Review an Initial Determination Terminating the Investigation With Prejudice

In the Matter of certain magnetic switches for coaxial transmission lines and products containing the same.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 16) issued on August 26, 1993, by the presiding administrative law judge (ALJ) in the above-captioned investigation granting the motion of complainants Sector Microwave Industries, Inc. (SMI) and Victor Nelson (Nelson) to withdraw their complaint and terminate the investigation with prejudice.

FOR FURTHER INFORMATION CONTACT: Elizabeth C. Rose, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3113.

SUPPLEMENTARY INFORMATION: On December 15, 1992, complainants SMI and Nelson filed a complaint under section 337 alleging unfair acts in the sale for importation into the United States, importation, and sale after importation of certain magnetic switches for coaxial transmission lines and products containing the same. The complaint alleged that these products infringed claim 6 of U.S. Letters Patent 4,965,542 (the '542 patent), owned by Nelson and exclusively licensed to SMI. The Commission instituted an investigation of the complaint on January 14, 1993. A notice of investigation was published on January 21, 1993, naming Com Dev Ltd., of Canada, as respondent. 58 FR 5414.

On August 2, 1993, complainants filed an unopposed motion seeking leave to withdraw their complaint and to terminate the investigation with prejudice. The ALJ issued an ID granting the motion on August 26, 1993. No petitions for review of the ID or

government agency comments were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53(h), 19 CFR 210.53(h).

Copies of the nonconfidential version of the ID and all nonconfidential documents filed in connection with this investigation are, or will be, available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information of this matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810.

Issued: September 22, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–23884 Filed 9–28–93; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Investigation No. 731–TA–627 (Final)

Pads for Woodwind Instrument Keys From Italy

Determination

On the basis of the record [1] developed in the subject investigation, 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 not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Italy of pads for woodwind instrument keys, provided for in subheading 9209.99.40 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective May 25, 1993, following a preliminary determination by the Department of Commerce that imports of pads for woodwind instrument keys from Italy were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 16, 1993 (58 FR 33282). The hearing was held in Washington, DC, on August 12, 1993, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on September 21, 1993. The views of the Commission are contained in USITC Publication 2679 (September 1993), entitled "Pads for Woodwind Instrument Keys from Italy: Investigation No. 731–TA–627 (Final)."

By order of the Commission.

Issued: September 23, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–23883 Filed 9–28–93; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Chairman Newquist dissenting.

[Inv. No. 337–TA–358 and 603–TA–11]

Certain Recombinantly Produced Human Growth Hormones; Notice of Investigation; Termination of Preliminary Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of an investigation pursuant to 19 U.S.C. 1337, provisional acceptance of a motion for temporary relief, and termination of a preliminary investigation under 19 U.S.C. 2482(a).

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on March 16, 1993, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Genentech, Inc., 460 Point San Bruno Boulevard, South San Francisco, California 94080. Letters supplementing the complaint were filed on March 30, March 31, April 5, April 6, April 9, April 12, and April 22, 1993. On August 18, 1993, complainant Genentech filed an amended complaint and a motion for temporary relief with the Commission. The complaint, as supplemented and amended, alleges violations of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of recombinantly produced human growth hormones alleged to be manufactured abroad by processes covered by certain claims of United States Patent Nos. 4,366,246, 4,342,832, 4,601,980, and 5,221,619. Named as proposed respondents are Novo-Nordisk A/S, Novo-Nordisk of North America, Inc., Novo-Nordisk Pharmaceuticals, Inc., Zymogenetics, Inc., Bio-Technology General Corp., and Bio-Technology General (Israel) Ltd. The complainant requests that the Commission institute an investigation and, after an investigation, issue a permanent exclusion order and permanent cease and desist orders.

The motion for temporary relief requests that the Commission issue a temporary exclusion order and temporary cease and desist orders prohibiting, during the course of the Commission's investigation, the importation into and sale within the United States after importation of infringing recombinantly produced human growth hormones for use in the treatment of growth hormone deficiency.

On April 26, 1993, the U.S. International Trade Commission voted to institute a preliminary investigation under section 603(a) of the Trade Act of 1974, 19 U.S.C. § 2482(a), into the proposed respondents' activities with respect to the products that were the subject of Genentech's original complaint. At the same time, pursuant to 19 CFR 210.12, the Commission voted to defer a determination of whether to institute a section 337 investigation. 58 FR 26796 (May 5, 1993).

The Commission's determination to institute a section 337 investigation after conducting a section 603 preliminary investigation is not to be interpreted as a Commission determination on any issue in the section 337 investigation.

ADDRESSES: The complaint, the supplements thereto, the amended complaint, and the motion for temporary relief, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., room 112, Washington, DC 20436, telephone 202–205–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: Kent Stevens, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2579.

Authority

The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12. The authority for provisional acceptance of the motion for temporary relief is contained in § 210.24(e) of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.24(e). The authority for termination of the preliminary investigation is contained in 19 U.S.C. 2482.

Scope of Investigation

Having considered the complaint, supplements thereto, the amended complaint, and the motion for temporary relief, the U.S. International Trade Commission, on September 21, 1993, *Ordered That*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain recombinantly produced human growth hormones made abroad by processes covered by claims 1, 2, 3, 5, 6, 10, or 11 of U.S. Letters Patent 4,366,246, claims 1, 2, 4, or 5 of U.S. Letters Patent 4,342,832, claim 2 of U.S. Letters Patent 4,601,980, or claims 1, 2, 5, 6, 7, 10, 11, 30, or 38 of U.S. Letters Patent 5,221,619, and whether there exists, or is in the process of being established, an industry in the United States as required by subsection (a)(2) of section 337.

(2) Pursuant to section 210.24(e)(8) of the Commission's Interim Rules of Practice and Procedure, 19 C.F.R. § 210.24(e)(8), the motion for temporary relief under subsection (e) of section 337 of the Tariff Act of 1930, which was filed with the amended complaint, be provisionally accepted and referred to an administrative law judge.

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Genentech, Inc., 460 Point San Bruno Boulevard, South San Francisco, California 94080.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the amended complaint and motion for temporary relief shall be served:

Novo Nordisk A/S, Novo Alle, DK–2880, Bagsvaerd, Denmark

Novo Nordisk of North America, Inc., 405 Lexington Avenue, Suite 6200, New York, New York 10174

Novo Nordisk Pharmaceuticals, Inc., 100 Overlook Center, Suite 200, Princeton, New Jersey 08540

Zymogenetics, Inc., 4225 Roosevelt Way, N.E., Seattle, Washington 98105

Bio-Technology General Corp., 1250 Broadway, 20th Floor, New York, New York 10001

Bio-Technology General (Israel) Ltd., Kiryat Weizmann Industrial Park, Rehovot, Israel 76326

(c) Kent Stevens, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401–L, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation.

(4) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

(5) Pursuant to § 210.58(b)(1) of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.58(b)(1), the Commission delegates to the presiding administrative law judge for this investigation the authority to compel discovery, take evidence, and hear argument with respect to the public interest in this investigation, as appropriate, and directs the presiding administrative law judge to file with the Commission recommended findings of fact on this issue within 14 days after filing the initial determination under Interim Rule 210.53(a), 19 CFR 210.53(a), on whether there is a violation of section 337 for purposes of permanent relief.

(6) The preliminary investigation under section 603(a) of the Trade Act of 1974, 19 U.S.C. 2482(a), instituted pursuant to notice published on May 5, 1993, 58 FR 26796, is terminated.

Responses to the amended complaint, the motion for temporary relief, and the notice of investigation must be submitted by the named respondents in accordance with sections 210.21 and 210.24 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.21 and 210.24. Pursuant to sections 201.16(d), 210.21(a), and 210.24(e)(9) of the Commission's Rules, 19 CFR 201.16(d), 210.21(a), and 210.24(e)(9), such responses will be considered by the Commission if received not later than 10 days after the date of service by the Commission of the amended complaint, the motion for temporary relief, and the notice of investigation. Extensions of time for submitting responses will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the amended complaint, in the motion for temporary relief, and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the amended complaint, motion for temporary relief, and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the amended complaint, motion for temporary relief, and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against such respondent.

Issued: September 22, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–23885 Filed 9–28–93; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32356]

Denver Terminal Railroad Company—Acquisition and Operation Exemption—Denver Railway, Inc.

Denver Terminal Railroad Company (DTMR) has filed a verified notice (misstyled a "petition for exemption") under 49 CFR part 1150, Subpart D—*Exempt Transactions* to acquire and operate 11.27 miles of rail line in Denver, CO, owned by the former Denver Railway, Inc. (DRI), (1) between mileposts 0.00 and 0.80 (Denver stockyards), and (2) between mileposts 0.76, at or near Poplar Street, and milepost 3.99, at or near Belt Junction (Airlawn).

DMTR sold the involved line to DRI on August 1, 1989, subject to a Deed of Trust and Security Agreement. When DRI defaulted and ceased operations, the Commission issued Directed Service Order No. 1512, as amended (expiring 11:59 a.m., September 4, 1993), authorizing The Great Western Railway Company d/b/a Platt Valley Railway to operate over the DRI. DTMR asserts that it has foreclosed on DRI's personal property under the Security Agreement and has begun foreclosure on the real estate (easements and rail line) under

the Deed of Trust. This exemption is permissive in nature and should not be construed as determinative of DTRM's interests in the former DRI properties. The exemption would permit DTMR to operate the involved line if its present interest in the line gives it the legal right to do so or once it does lawfully acquire the line.

Any comments must be filed with the Commission and served on Roy N. Hollaway, Denver Terminal Railroad Company, 1227 Lake Plaza Drive, Suite A, Colorado Springs, CO 80906.

If the verified 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 23, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-23853 Filed 9-28-93; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether section 3504(h) of Public Law 96-511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395-7340 and to the Department of Justice's Clearance Officer, Mr. Lewis Arnold, on (202) 514-4305. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Lewis Arnold, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

New Collection

(1) Prison Suicide: An Overview and Guide to Prevention

(2) No form number. National Institute of Corrections

(3) One time

(4) State or local governments, Federal agencies or employees. The survey will collect information not currently available from existing databases and/or other sources. The purpose of the information is to develop a monograph devoted exclusively to prison suicide prevention and make it available to criminal justice professionals.

(5) 51 annual respondents at 1 hour per respondent

(6) 51 annual burden hours

(7) Not applicable under section 3504(h)

Public comment on these items is encouraged.

Dated: September 24, 1993.

Lewis Arnold,

Department Clearance Officer, Department of Justice.

[FR Doc. 93-23880 Filed 9-28-93; 8:45 am]

BILLING CODE 4410-18-M

Drug Enforcement Administration

[Docket No. 93-50]

Johnson Matthey, Inc., West Deptford, NJ; Hearing

SUMMARY: Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice of an adjudicatory hearing regarding the application of Johnson Matthey, Inc., for registration as a bulk manufacturer of the Schedule II controlled substance hydromorphone. A notice, dated April 15, 1993, naming the applicant and stating that the applicant has applied to be registered as a bulk manufacturer of the Schedule II controlled substance hydromorphone was published in the **Federal Register** on April 28, 1993 (58 FR 25,848). By letter dated May 25, 1993, Knoll Pharmaceuticals Co. filed an objection and a request for hearing on the matter, in accordance with § 1301.43(a).

DATES: The hearing will commence at 9:30 a.m. on November 2, 1993, at the Drug Enforcement Administration Headquarters, 600 Army Navy Drive Hearing Room, room E-2103, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Ms. Helen Farmer, Hearing Clerk, Drug Enforcement Administration, Washington, DC 20537; Telephone (202) 307-8188.

Dated: September 23, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93-23843 Filed 9-28-93; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Maryland Environment Department; Boilers Installation; Tentative Determination

ACTION: Second notice of tentative determination, opportunity to request a public hearing, and opportunity to submit written comments.

SUMMARY: The National Archives and Records Administration gives notice that the Maryland Department of the Environment has made a tentative decision to issue a Permit to Construct to NARA to install four natural gas/no. 2 oil-fired boilers at the National Archives at College Park (Archives II), in College Park, Maryland. Public comment is solicited at this time.

FOR FURTHER INFORMATION CONTACT: The Maryland Department of the Environment at (410) 631-3230, or Marvin Shenkler of NARA at (301) 713-6500.

SUPPLEMENTARY INFORMATION: NARA has been notified that the Maryland Department of the Environment, Air and Radiation Management Administration, has completed its review of NARA's application for a Permit to Construct to install four natural gas/no. 2 fuel oil-fired boilers rated at 16.7 million BTU/hour at the National Archives at College Park (Archives II) facility. The plant will be located at 8601 Adelphi Road, College Park, Maryland, in Prince Georges County.

The Department has made a tentative decision to issue the Permit to Construct

and is now ready to receive public comment on the application. Copies of the application, the proposed permit limitations and conditions, and other supporting documents are available for public inspection. Ask for Docket #26–93 at the Maryland Department of the Environment, Air and Radiation Management Administration, 2500 Broening Highway, Baltimore, MD 21224, or the Prince Georges County Public Library, Hyattsville Branch, 6530 Adelphi Road, Hyattsville MD 20782, during normal business hours.

Interested persons may submit written comments on the Issuance of a Permit to Construct for the equipment and/or request a public hearing. Written comments must be submitted to the Department no later than October 20, 1993. Requests for a public hearing must be submitted in writing and must be received by the Department no later than October 12, 1993. All requests for a public hearing and written comments must be directed to the attention of Ms. Caryn Coyle, Office of the Director, Air and Radiation Management Administration, 2500 Broening Highway, Baltimore, MD 21224.

Dated: September 21, 1993.

James C. Megronigle,

Assistant Archivist for Management and Administration.

[FR Doc. 93–23792 Filed 9–28–93; 8:45 am]

BILLING CODE 7515–01–M

Move of the Still Picture Branch of the Nontextual Archives Division to the New National Archives Facility in College Park, MD

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of closure and reopening of reference services for holdings of the Still Picture Branch related to the move to the National Archives at College Park (Archives II).

SUMMARY: This notice provides information about the period of time that reference service on certain holdings of the National Archives will be unavailable due to the move of those holdings and the associated National Archives staff from their current location in the National Archives Building to the new Archives II facility. Additional notice will be published by NARA relating to the move of other holdings to Archives II.

Between December 1993 and May 1994, the Still Picture Branch (NNSP) of the Nontextual Archives Division will close its research room and suspend reference services (requests for reproductions and reference inquiries) in its current location; move its records, staff, and equipment to the new building; and then resume reference services and open its new research room in The National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001.

During the periods shown on the following schedule, the branch will be unable to process requests for reproductions (fee orders) or requests for information, and the research room in which its holdings are made available to researchers will be closed. Requests received during the periods of suspended service will be returned for resubmission after the date indicated for resumption of reference service. Changes in the overall move schedule may require changes in these dates.

Activity	Date
Stop accepting fee orders	12/30/93
Resume accepting fee orders	5/2/94
Stop accepting phone, mail, and fax reference inquiries	1/24/94
Resume accepting phone, mail, and fax reference inquiries	5/2/94
Close current research room	1/28/94
Open new research room at Archives II	5/2/94

FOR FURTHER INFORMATION CONTACT: For schedules updates, call the Still Picture Branch at (202) 501–5455, or Debra Wall at 202–501–5449.

Dated: September 22, 1993.

Raymond A. Mosely,

Acting Archivist of the United States.

[FR Doc. 93–23793 Filed 9–28–93; 8:45 am]

BILLING CODE 7515–01–M

Move of the Motion Picture, Sound, and Video Branch of the Nontextual Archives Division to the New National Archives Facility in College Park, MD

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of closure and reopening of reference services for holdings of the Motion Picture, Sound, and Video Branch related to the move to the National Archives at College Park (Archives II).

SUMMARY: This notice provides information about the period of time that reference service on certain holdings of the National Archives will be unavailable due to the move of these holdings and the associated National Archives staff from their current locations in the National Archives Building and Pickett Street Facility to the new Archives II facility. Additional notices will be published by NARA relating to the move of other holdings to Archives II.

Between December 1993 and May 1994, the Motion Picture, Sound, and Video Branch (NNSM) of the Nontextual Archives Division will close its research room and suspend reference services (requests for reproductions and reference inquiries) in its current location; move its records, staff, and equipment to the new building; and then resume reference services and open its new research room in The National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001.

During the periods shown on the following schedule, the branch will be unable to process requests for reproductions (fee orders) or requests for information, and the research room in which its holdings are made available to researchers will be closed. Requests received during the periods of suspended service will be returned for resubmission after the date indicated for resumption of reference service. We have consulted with the research community in matters related to the move. Changes in the overall move schedule may require changes in these dates.

Activity	Date
Stop accepting fee orders	12/13/93
Resume accepting fee orders	3/21/94
Stop accepting phone, mail, and fax reference inquiries	12/30/93
Resume accepting phone, mail, and fax reference inquiries	3/21/94
Close current research room	2/12/94
Open new research room at Archives II	3/21/94

FOR FURTHER INFORMATION CONTACT: For schedule updates, call the Motion Picture, Sound, and Video Branch at (202) 501–5449, or Debra Wall at 202–501–5445.

Dated: September 22, 1993.

Raymond A. Mosley,

Acting Archivist of the United States.

[FR Doc. 93–23794 Filed 9–28–93; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL LABOR RELATIONS BOARD

Privacy Act of 1974; Publication of a New System of Records

AGENCY: National Labor Relations Board (NLRB).

ACTION: Notification of establishment of a system of records for the NLRB telephone call detail records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, the National

Labor Relations Board publishes this notice of its intention to establish a previously unpublished system of records to be entitled "NLRB–19, Telephone Call Detail Records." This new system of records, created by the modification of an existing system not subject to the Privacy Act, will permit the collection, retention, and retrieval of information relevant to the usage of the Federal Telecommunications System (FTS) by Agency employees. A complete listing of the Agency's 16 notices of systems of records was last published in 1988. In addition, Privacy Act System of Records Notice NLRB–17, Personnel Security Files, was published in 55 FR 29918 on July 23, 1990; and Notice NLRB–18, Office of Inspector General Investigative Files, was published in 57 FR 11523 on April 3, 1992.

All persons are advised that in the absence of submitted comments, views, or arguments considered by the NLRB as warranting modification of the notice as herewith to be published, it is the intention of the NLRB that the notice as herewith published shall be effective on expiration of the comment period without further action by this Agency.

DATES: Written comments, views, or arguments must be submitted no later than November 8, 1993.

ADDRESSES: All persons who desire to submit written comments, views, or arguments for consideration by the NLRB in connection with the proposed new system of records shall file the same with the Executive Secretary, National Labor Relations Board, 1099 14th Street, NW., Washington, DC 20570–0001. Copies of all such communications will be available for examination by interested persons during normal business hours (8:30 a.m. to 5 p.m., Monday through Friday, excluding Federal holidays) in the Office of the Executive Secretary, National Labor Relations Board, room 11600, 1099 14th Street, NW., Washington, DC 20570–0001.

FOR FURTHER INFORMATION CONTACT: John C. Truesdale, Executive Secretary, National Labor Relations Board, room 11600, 1099 14th Street, NW., Washington, DC 20570–0001.

Dated Washington, DC, September 22, 1993.

By direction of the Board.

John C. Truesdale,

Executive Secretary.

NLRB–19

SYSTEM NAME:

Telephone Call Detail Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Records are authorized to be maintained for current and former NLRB employees in all Agency offices. See the attached appendix for the addresses of these offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current and former employees (permanent, temporary, part or full time) and all contractors, subcontractors, and consultants who make long-distance calls and individuals who receive telephone calls placed from or charged to Agency telephones.

CATAGORIES OF RECORDS IN THE SYSTEM:

Records relating to use of NLRB telephones to place long-distance calls; records relating to long-distance telephone calls charged to the Agency; records indicating assignment of telephone numbers and authorized calling card numbers to employees, and records relating to the location of telephones in the Agency.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 153, 154, 155; 31 U.S.C. 1348(b); 44 U.S.C. 3101; 41 CFR 201–21.601; 5 U.S.C. 552a, and FIRMR Bulletin C–13, dated January 31, 1991.

PURPOSE:

These documents are used to support the certification that telephone calls listed on call detail records were required for official business.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be disclosed to:

(1) A congressional office, in response to an inquiry from the congressional office, made at the written request of the subject individual.

(2) The General Services Administration and the National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

(3) A court, magistrate, administrative tribunal, or other adjudicatory body in the course of presenting evidence or argument, including disclosure to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in connection with criminal law proceedings, where the NLRB determines that litigation is likely to affect the NLRB or any of its components, is a party to litigation or has interest in such litigation, and determines that such disclosure of the records is compatible with the purpose for which the records were collected.

(4) Other agencies, offices, establishments, and authorities, whether Federal, state, or local, authorized or charged with the responsibility to investigate, litigate, prosecute, enforce, or implement a statute, rule, regulation, or order, where the record or information, by itself or in connection with other records or information, indicates a violation or potential violation of law, whether criminal, civil, administrative, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto.

(5) The Department of Justice for use in litigation when either (a) the NLRB, or any component thereof, (b) any employee of the NLRB in his or her official capacity, (c) any employee of the NLRB in his or her individual capacity, where the Department of Justice has agreed to represent the employee, or (d) the United States, where the NLRB determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the NLRB to be relevant and necessary to the litigation, provided that in each case the NLRB determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

(6) Officials of labor organizations recognized under Public Law 95–454, when relevant and necessary to their duties of exclusive representation of NLRB employees under the Act. Whenever feasible and consistent with responsibilities under the Act, such information shall be furnished in depersonalized form, i.e., without personal identifiers.

(7) NLRB current and former employees and other individuals currently or formerly provided telephone services by the NLRB to determine their individual responsibility for telephone calls.

(8) A Federal agency, in response to its request, made in connection with the hiring or retention of an employee, the letting of a contract or issuance of a grant, license, or other benefit by the requesting agency, but only to the extent that the information disclosed is relevant and necessary to the requesting agency's decision on the matter.

(9) A telecommunications company providing telecommunications support to permit servicing the account.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures may be made from this system, pursuant to 5 U.S.C. 552(a)b)(12), to consumer reporting agencies as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966, 31 U.S.C. 3701(a)(3), in accordance with 3711(f) of Title 31.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The telephone call detail records consist of paper records maintained in files and records on computer disks and diskettes, and/or on computer tapes.

RETRIEVABILITY:

The records are retrievable by name, authorized calling card number, and telephone number.

SAFEGUARDS:

These records are only available to those persons whose official duties require such access. Paper records are maintained in file cabinets. During duty hours cabinets containing the records are under the surveillance of personnel charged with custody of the records. During off-duty hours they are kept inside locked offices, in locked file cabinets. Computer records can be accessed only through use of confidential procedures and passwords.

RETENTION AND DISPOSAL:

Telephone call detail records are retained and disposed of in accordance with the National Archives and Records Administration (NARA), General Records Schedule 12.

SYSTEM MANAGER(S) AND ADDRESS(S):

Assistant Branch Chief, Facilities and Safety, Room 6100, NLRB, 1099 14th Street, NW., Washington, DC 20570–0001. See the attached appendix for the titles and addresses of officials at other locations responsible for this system at their locations.

NOTIFICATION PROCEDURES:

An individual may inquire whether this system contains a record pertaining to him or her by directing a request to the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(f).

RECORDS ACCESS PROCEDURES:

An individual seeking to gain access to records in this system pertaining to him or her should contact the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(g).

CONTESTING RECORDS PROCEDURES:

An individual may request amendment of a record pertaining to such individual maintained in this system by directing a request to the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(i).

RECORD SOURCE CATEGORIES:

Telephone assignment records; telephone call detail listings; results of administrative inquiries relating to assignment of responsibility for placement of specific long-distance calls.

Appendix

Names and addresses of NLRB offices referenced in Notice of Telephone Call Detail Records Systems shown above.

NLRB HEADQUARTERS OFFICES:
1099 14th Street, NW, Washington, DC 20570–0001

Offices of the Board

Members of the Board
Executive Secretary, Office of the Executive Secretary
Director, Office of Representative and Appeals
Director, Office of Information
Solicitor
Chief Administrative Law Judge, 1550 Wilson Boulevard, 6th Floor, Arlington, VA 22209–2426
Deputy Chief Administrative Law Judge, San Francisco Judges, 901 Market Street, suite 300, San Francisco, CA 94103–1779
Associate Chief Administrative Law Judge, New York Judges, 120 West 45th Street, 11th Floor, New York, NY 10036–5503
Associate Chief Administrative Law Judge, Atlanta Judges, Peachtree Summit Building, 401 W. Peachtree St., NW—suite 1708, Atlanta, GA 30308–5510

Offices of the General Counsel

General Counsel
Associate General Counsel, Division of Operations Management
Associate General Counsel, Division of Advice
Associate General Counsel, Division of Enforcement Litigation
Director, Division of Administration
Director, Equal Employment Opportunity
Chief, Procurement and Facilities Branch
Chief, Administrative Service Branch
Chief, Management Information System Branch
Chief, Library and Records Management Branch
Chief, Finance Branch
Chief, Budget Branch
Director, Personnel Branch

INSPECTOR GENERAL, OFFICE OF INSPECTOR GENERAL

NLRB Field Offices

Regional Director, Region 1, Thomas P. O'Neal, Jr., Federal Office Building, 10 Causeway Street, 6th Floor, Boston, MA 02222–1072
Regional Director, Region 2, Jacob K. Javits Federal Building, 26 Federal Plaza, room 3614, New York, NY 10278–0104
Regional Director, Region 3, Federal Building—room 901, 111 W. Huron Street, Buffalo, NY 14202–2387
Resident Officer, Albany Resident Office, Clinton Avenue at Pearl Street—room 342, Albany, NY 12207–2350
Regional Director, Region 4, Philadelphia Life Building—7th Floor, 615 Chestnut Street, One Independence Mall, Philadelphia, PA 19106–4404
Regional Director, Region 5, Candler Building, 4th Floor, 109 Market Place, Baltimore, MD 21202–4026
Resident Officer, Washington Resident Office, Gelman Building, suite 100, 2120 L Street, NW., Washington, DC 20037–1560
Regional Director, Region 6, William S. Moorehead, Federal Office Building, room 1501, 1000 Liberty Avenue, Pittsburgh, PA 15222–4173
Regional Director, Region 7, Patrick V. McNamara, Federal Office Building, 477 Michigan Avenue, room 300, Detroit, MI 48226–2569
Resident Officer, Grant Rapids Resident Office, 82 Ionia, Northwest—3rd Floor, Grand Rapids, MI 49503–3022
Regional Director, Region 8, Anthony J. Celebrezze, Federal Office Building—room 1695, 1240 East 9th Street, Cleveland, OH 44199–2086
Regional Director, Region 9, John Weld Peck, Federal Office Building, 550 Main Street, room 30003, Cincinnati, OH 45202–3271
Regional Director, Region 10, Marietta Tower—Suite 2400, 101 Marietta Street, Northwest, Atlanta, GA 30323–3301
Resident Officer, Birmingham Resident Office, Massey Building, suite 407, 2025 3rd Avenue, North, Birmingham, AL 35203–3323
Regional Director, Region 11, U.S. Courthouse/Federal Building, 251 Main Street, room 447, Winston Salem, NC 27101–3986
Regional Director, Region 12, Enterprise Plaza, suite 530, 201 E. Kennedy Boulevard, Tampa, FL 33602–5824
Resident Officer, Miami Resident Office, Claude Pepper Federal Building—13th Floor, 51 Southwest 1st Avenue, Miami, FL 33130–1608
Resident Officer, Jacksonville Resident Office, Federal Building, room 278, 400 West Bay Street, Jacksonville, FL 33130–4412
Regional Director, Region 13, Bank of America Building—suite 800, 200 West Adams Street, Chicago, IL 60606–5208
Regional Director, Region 14, 611 N. 10th Street—suite 400, St. Louis, MO 63101–1932
Regional Director, Region 15, 1515 Poydras Street—room 610, New Orleans, LA 70112–3723
Regional Director, Region 16, Fritz G. Lanham, Federal Office Building, 819 Taylor Street, room 8A24, Fort Worth, TX 76102–6178
Resident Officer, Houston Resident Office, Lyric Centre, 440 Louisana Street, Houston, TX 77002–2649
Resident Officer, San Antonio Resident Office, US Post Office/Courthouse

Building—room 565, 615 East Houston Street, San Antonio, TX 78205–2040
Regional Director, Region 17, 5799 Broadmoor—room 500, Kansas City, KS 66302–2408
Resident Officer, Tulsa Resident Office, Grantson Building—suite 990, 111 West Fifth Street, Tulsa, OK 74103–4262
Regional Director, Region 18, Federal Building—room 316, 110 South 4th Street, Minneapolis, MN 55401–2291
Resident Officer, Des Moines Resident Office, Federal Building—room 909, 210 Walnut Street, Des Moines, IA 50309–2116
Regional Director, Region 19, Henry Jackson Federal Building—room 2948, 915 Second Avenue, Seattle, WA 48174–1078
Resident Officer, Anchorage Resident Office, Federal Office Building, 222 West 7th Avenue, room 510, Box 21, Anchorage, AK 99513–3546
Officer in Charge, Subregion 36, Koin Center—room 401, 222 Southwest Columbia Street, Portland, OR 97201–5878
Regional Director, Region 20, 901 Market Street—suite 400, San Francisco, CA 94103–1735
Officer in Charge, Subregion 37, Prince Kuhio Federal Building—room 7318, 300 Ala Moana Boulevard, Honolulu, HI 96850–4980
Regional Director, Region 21, 615 South Flower Street—11th Floor, Los Angeles, CA 90017–2803
Resident Officer, San Diego Resident Office, Pacific Professional Center—suite 302, 555 West Beech Street, San Diego, CA 92101–2939
Regional Director, Region 22, Peter D. Rodino Jr., Federal office Building—room 1600, 970 Broad Street, Newark, NJ 07102–2570
Regional Director, Region 24, Frederico Degetau, Federal Building/Courthouse—room 591, 150 Carlos E. Chardon Avenue, Hato Rey, PR 00918–1720
Regional Director, Region 25, Minton Capehart Federal Building—room 238, 575 North Pennsylvania Street, Indianapolis, IN 46204–1577
Regional Director, Region 26, Mid-Memphis Tower—suite 800, 1407 Union Avenue, Memphis, TN 38104–3627
Resident Officer, Little Rock Resident Office, TCBY Building—suite 375, 425 West Capitol Avenue, Little Rock, AR 72201–3489
Nashville Resident Office, Estes Kefauver Federal Building, U.S. Courthouse, room 716, 801 Broadway, Nashville, TN 37203–3816
Regional Director, Region 27, Dominion Plaza, 3d Floor, 600 17th Street, Denver, CO 80202–5433
Regional Director, Region 28, Security Building, suite 440, 234 North Central Avenue, Phoenix, AZ 85004–2212
Resident Officer, Albuquerque Resident Office, Western Bank Plaza—room 1820, 505 Marquette Avenue, NW., Albuquerque, NM 87102–2181
Resident Officer, El Paso Resident Office, Federal Building, suite C–403, 700 East San Antonio Avenue, El Paso, TX 79901–7020
Resident Officer, Las Vegas Resident Office, Alan Bible Federal Building—suite 400, 600 W. Las Vegas Boulevard, South, Las Vegas, NV 89101–6637
Regional Director, Region 29, 75 Clinton Street—8th Floor, Brooklyn, NY 11201–4201
Regional Director, Region 30, Henry S. Reuss Federal Plaza—suite 700, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2211
Regional Director, Region 31, Federal Building/USPO—room 12100, 11000 Wilshire Boulevard, Los Angeles, CA 90024–3682
Regional Director, Region 32, Breuner Building, 2d Floor, 2201 Broadway, PO Box 12983, Oakland, CA 94612–3017
Regional Director, Region 33, Hamilton Square Building—suite 200, 300 Hamilton Boulevard, Peoria, IL 61602–1104
Regional Director, Region 34, 1 Commercial Plaza—21st Floor, Church and Trumbull Streets, Hartford, CT 06103–3599

[FR Doc. 93–23829 Filed 9–28–93; 8:45 am]
BILLING CODE 7545–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to OMB for review the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35)

1. Type of submission, new, revised, or extension: Extension.
2. The title of the information collection: "Solicitation of Information on Actual Decommissioning Activities."
3. The form number if applicable: Not applicable.
4. How often is the collection required: This is a voluntary one-time solicitation by the NRC.
5. Who will be required or asked to report: Previous and current material licensees—licensed under 10 CFR parts 30, 40, 70, and 72, as well as Agreement State licensees who are likely to have information based on a screening by the NRC of their licensee docket files.
6. An estimate of the number of respondents: 300 for initial contact (phone conservation); 30 for follow-up through a site visit by the NRC contractor.
7. An estimate of the number of hours annually needed to complete the requirement or requests: 290.
8. An indication of whether Section 3504(h), Pub L. 96–511 applies: Not applicable.
9. Abstract: The Nuclear Regulatory Commission is soliciting information on the actual costs for decommissioning nuclear facilities covered under 10 CFR parts 30, 40, 70, and 72 (material licensees) from previous and current NRC and Agreement State licensees. This information is needed to make a more accurate, realistic, and potentially less conservative assessment of decommissioning costs than those presented in the current regulation for decommissioning funding certification. This information also may be used as a basis for revising the current requirements and for determining if the current financial assurance burdens on the licensees can be reduced.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street NW., (Lower Level), Washington, DC.

Comments and questions can be directed by mail to the OMB reviewer: Tim Hunt, Office of Information and Regulatory Affairs (3150–0173), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 21st day of September, 1993.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management

[FR Doc. 93–23837 Filed 9–28–93; 8:45 am]
BILLING CODE 7590–01–M

Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment

involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from September 3, 1993, through September 17, 1993. The last biweekly notice was published on September 15, 1993 (58 FR 48376).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By October 15, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 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 a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any

hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, 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 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3, Maricopa County, Arizona

Date of amendment request: June 30, 1993

Description of amendment request: The proposed amendment would increase the response time for the turbine-driven auxiliary feedwater pump from 30 seconds to 46 seconds.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis about the issue of no significant hazards consideration, which is presented below:

Standard 1 -- Involve a significant increase in the probability or consequences of an accident previously evaluated.

This amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated based on the safety analysis for the electric motor-driven AF [auxiliary feedwater] pump response time. The proposed change would increase the response time of the turbine-driven AF pump from 30 seconds to 46 seconds (46 seconds is the required time response for the electric motor-driven AF pump). Increasing the required response time of the turbine-driven AF pump is expected [to] increase the reliability of the turbine-driven AF pump [by] reducing the probability of actuation failures. The consequences of an accident previously evaluated are not affected by the proposed change.

Standard 2 -- Create the possibility of a new or different kind of accident from any accident previously analyzed.

This amendment request does not create the possibility of a new or different kind of accident from any accident previously analyzed based on the existing analysis for the electric motor-driven AF pump. In the case of steam generator low level, the response time for the turbine-driven AF pump would be the same as the response time for the electric motor-driven AF pump. In the case of LOCV [loss of condenser vacuum], the implementation of the proposed change modifies the time of AF delivery. The change in delivery time for the turbine-driven AF pump is after the limiting conditions (RCS [reactor coolant system] and Secondary peak pressures) are reached and has no significant effect on long term cooling.

Standard 3 -- Involve a significant reduction in a margin of safety.

The margin of safety presently provided is not reduced by the proposed change in the turbine-driven AF pump response time, based on the margin of safety as established by the electric motor-driven AF pump response time. The reliability of the turbine-driven AF pump is expected to increase, increasing the reliability of the AF safety function.

The NRC staff has reviewed the licensees' analysis and, based on that review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072-3999

NRC Project Director: Theodore R. Quay

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3, Maricopa County, Arizona

Date of amendment requests: August 5, 1993

T3

Description of amendment requests: The proposed amendment would change Technical Specification Table 3.3-10, item 4, and Table 4.3-7, item 4, from "Pressurizer Pressure - Wide Range" to "Reactor Coolant System Pressure - Wide Range." This Technical Specification amendment will clarify the intended instrumentation required and eliminate potential confusion between the reactor coolant system pressure instruments and the pressurizer pressure instruments.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis about the issue of no significant hazards consideration, which is presented below:

Standard 1 -- Involve a significant increase in the probability or consequences of an accident previously evaluated.

This amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated since the change clarifies the equipment description of Technical Specification Table 3.3-10, item 4, and Table 4.3-7, item 4, by changing the wording from "Pressurizer Pressure" to "Reactor Coolant System Pressure."

Standard 2 -- Create the possibility of a new or different kind of accident from any accident previously analyzed.

This amendment request does not create the possibility of a new or different kind of accident from any accident previously analyzed since the change does not modify, add or remove equipment. The change clarifies the equipment description of Technical Specification Table 3.3-10, item 4, and Table 4.3-7, item 4, by changing the wording from "Pressurizer Pressure" to "Reactor Coolant System Pressure."

Standard 3 -- Involve a significant reduction in a margin of safety.

The margin of safety presently provided is not affected by the change. The change does not affect any process parameters or system setpoints. The change clarifies the equipment description of Technical Specification Table 3.3-10, item 4, and Table 4.3-7, item 4, by changing the wording from "Pressurizer Pressure" to "Reactor Coolant System Pressure."

The NRC staff has reviewed the licensees' analysis and, based on that review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Attorney for licensees: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072-3999

NRC Project Director: Theodore R. Quay

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3, Maricopa County, Arizona

Date of amendment request: August 23, 1993

Description of amendment request: The proposed amendment would remove License Condition 2.C(13) from the Unit 1 Operating License and License Condition 3 of Attachment 1 to the Unit 3 Operating License. The amendment request would also remove the Confirmatory Order Modifying the Operating License for Unit 2. The License Condition and Confirmatory Order required Arizona Public Service Company (APS) to implement an augmented vibration monitoring program for each of the four reactor coolant pumps (RCPs) in Units 1, 2, and 3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis about the issue of no significant hazards consideration, which is presented below:

Standard 1 -- Involve a significant increase in the probability or consequences of an accident previously evaluated.

In the unlikely event of an RCP shaft developing a crack and propagating undetected until failure, the results would not involve a significant increase in the probability or consequences of an accident previously evaluated. The RCP shaft break event with a concurrent loss of offsite power has been previously evaluated in UFSAR subsection 15.3.4 with acceptable results. The sequence of events and system operations is similar to that for the RCP rotor seizure event, subsection 15.3.3. The difference is that for the shaft break event, the reactor is tripped on differential pressure across either steam generator, whereas for the pump rotor seizure event, the reactor is tripped by the Core Protection Calculator (CPC) on a low RCP shaft speed condition.

The flow coastdown for a rotor seizure event is faster than the coastdown for a shaft break event. For a shaft break, the rotor is still capable of rotating, thereby offering less resistance to flow during the rapid flow decrease. This results in a less severe coastdown for the shaft break event than for the rotor seizure event. The shaft break trip time is 1.2 seconds; the rotor seizure trip time is 0.865 seconds. Despite the later trip time, the slower shaft break coastdown results in a higher minimum DNBR and less fuel failure for shaft break than for rotor seizure.

For both rotor seizure and shaft break, three seconds after turbine trip a loss of offsite power (LOP) was assumed. Both rotor seizure and shaft break reach the same three pump asymptotic flow before their respective LOPs and do not result in decreasing DNBR after LOP. The rotor seizure plus LOP minimum transient DNBR (0.808) is lower and fuel failure higher than those for the shaft break plus LOP.

Therefore, the amendment to remove the License Condition from Units 1 and 3, and the Confirmatory Order Modifying the License for Unit 2 would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Standard 2 -- Create the possibility of a new or different kind of accident from any accident previously evaluated.

This amendment request does not involve any changes in equipment and will not alter the manner in which the plant will be operated. For this reason, this amendment will not create the possibility of a new or different kind of accident from any previously evaluated.

Standard 3 -- Involve a significant reduction in a margin of safety.

The margin of safety is not reduced. There are no changes to the equipment or plant operations. The analysis of effects and consequences of a shaft break is similar to that for the RCP rotor seizure event, UFSAR subsection 15.3.3. The shaft break coastdown is slower and the trip is later than those of the rotor seizure event. The shaft break plus LOP event produces a higher minimum DNBR and less radiological release than the rotor seizure plus LOP event.

The radiological consequences due to steam release from the secondary system would be less than the consequences of the rotor seizure event. Thus, the two hour thyroid inhalation dose for the shaft break with LOP is bounded by the rotor seizure event in subsection 15.3.3.3.1, item C. The offsite doses for the rotor seizure event result from steam released through the ADVs. The resultant radiological consequences are a 2-hour site boundary thyroid dose of less than 240 Rem. This is within the 10 CFR 100 limits of 300 Rem.

The conclusion from the shaft break event is that this event would be no more adverse than the rotor seizure event. For both events, the total number of fuel pins calculated in DNB, which are conservatively assumed to fail, is no more than 4.5%. The conclusions of the accident analyses in the UFSAR remain valid and the safety limits continue to be met. Therefore, the amendment request to remove the License Condition on Units 1 and 3 and the Confirmatory Order Modifying the License for Unit 2 will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072-3999

NRC Project Director: Theodore R. Quay

Baltimore Gas and Electric Company, Docket No. 50-317, Calvert Cliffs Nuclear Power Plant, Unit No. 1, Calvert County, Maryland

Date of amendment request: September 3, 1993

Description of amendment request: The proposed amendment would revise the heatup and cooldown curves and the Low Temperature Overpressure Protection (LTOP) controls for Calvert Cliffs, Unit 1, to support modifications to the LTOP system that are scheduled for the spring 1994 refueling outage. The current design utilizes administrative controls and hardware to protect the 10 CFR Part 50, Appendix G, Pressure Temperature (P-T) limits from an LTOP event for reactor pressure vessel irradiation (accumulated neutron fluence) up to 22 Effective Full-Power Years (EFPY).

The proposed heatup and cooldown curves and rates are based on projected fluence with no reference to the corresponding EFPY due to the fact that vessel embrittlement calculations are actually based on fluence and not EFPY. Therefore, it is more appropriate to base the heatup and cooldown curves on fluence.

The current LTOP system utilizes two pressurizer power operated relief valves (PORVs). When the LTOP system is enabled, each of the two PORVs is set to open at a reduced pressure. The present configuration of the Minimum Pressure and Temperature (MPT) Enable temperature circuitry (with the single setpoint PORV), combined with the reactor coolant pump (RCP) operating curves, gives a small operating window with a "knee" at the MPT Enable temperature. The MPT Enable temperature is the reactor coolant system (RCS) temperature below which the LTOP controls are required to be in place to protect the Appendix G limits. In addition, the current LTOP system does not allow the use of one RCP in each coolant loop which could be used for recovery from certain postulated accidents.

A variable-setpoint low temperature overpressure protection (VLTOP) system will be installed to increase the allowable operating pressure band in the LTOP region and to increase flexibility in the use of RCPs. The VLTOP system uses a variable PORV setpoint to take advantage of increased Appendix G pressure limits at increased RCS temperatures. The new system will allow operators to cooldown to shutdown cooling (SDC) conditions while running one RCP in each loop. This system will significantly increase the operating window in the LTOP region.

The specific TS changes proposed are:

1. Heatup and Cooldown Curves and Rates

a. Change TS Limiting Condition for Operation (LCO) 3.4.9.1.a, maximum allowable heatup rates, as follows:

Maximum allowable heatup rates	RCS temperature
From:	
30 °F in any one hour period.	70 °F to 164 °F
40 °F in any one hour period.	>164 °F to 328 °F
10 °F in any one hour period.	>328 °F to 355 °F
60 °F in any one hour period.	>355 °F
To:	
30 °F in any one hour period.	70 °F to 164 °F
40 °F in any one hour period.	>164 °F to 256 °F
60 °F in any one hour period.	>256 °F

b. Change TS LCO 3.4.9.1.b, maximum allowable cooldown rates, as follows:

Maximum allowable cooldown rates	RCS Temperature
From:	
100 °F in any one hour period.	>254 °F
20 °F in any one hour period.	254 °F to 184 °F
10 °F in any one hour period.	<184 °F
To:	
100°F in any one hour period.	270°F
20°F in any one hour period.	270 °F to 184 °F
10°F in any one hour period.	<184 °F

c. Replace TS Figures 3.4.9-1 and 3.4.9-2, RCS P-T Limits, with new figures. The revised curves and rates are based on the lower fluence value of 2.61 x 10^{19} n/cm^2 (E >1 MeV). This change in the fluence value makes it necessary to revise the Adjusted Reference Temperatures (ART) for 1/4 T position and 3/4 T position in the Bases. Accordingly, the ART for 1/4 T position has been changed from 253.7°F to 241.4°F, and the ART for 3/4 T position has been changed from 193.8°F to 181.0°F.

2. LTOP Controls

a. Change TS 3.4.9.3.a.1 and 2 from "[less than or equal to] 429 psia" to "below the curve in Figure 3.4.9-3*" to account for the variable LTOP system that will be installed. The footnote, "When on shutdown cooling, the PORV trip setpoint shall be [less than or equal to] 429 psia," has been added to account for SDC operation.

b. The MPT Enable temperature has been changed from 355°F to 365°F. The TS effected by this change are 3.1.2.1, 3.1.2.3, Table 3.3-3, 3.4.1.2, 3.4.1.3, 3.4.9.3, 4.5.2, 3.5.3, Bases 3/4.4.1, Bases 3/4.4.9, and Bases 3/4.5.2.

c. Due to the higher MPT Enable temperature, the transition region at which the high pressure safety injection (HPSI) pumps are placed under manual control on cooldown and restored to automatic status on heatup has been changed from 355°F-375°F, to 365°F - 385°F. This affects TS 3.5.3 and Table 3.3-3.

d. The allowable HPSI pump flow rate has been changed from "less than or equal to 200 gpm" to "less than or equal to 210 gpm" when used to add mass to the RCS. This affects Technical Specification 3.4.9.3, Bases 3/4.4.9, and Bases 3/4.5.2.

3. Technical Specification Bases

Revise the Technical Specification Bases 3/4.4.1, Coolant Loops and Coolant Circulation, and Bases 3/4.4.9, Pressure/Temperature Limits, and Bases 3/4.5.2, ECCS Subsystem, to be consistent with the above changes and to clarify some of the existing material.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Low Temperature Overpressure Protection (LTOP) system, including the administrative controls, ensures that the 10 CFR Part 50, Appendix G, Pressure-Temperature (P-T) limits for the reactor pressure vessel will not be violated while operating at low temperatures. The heatup and cooldown curves are conservatively developed in accordance with the fracture toughness requirements of 10 CFR Part 50, Appendix G, as supplemented by the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code Section III, Appendix G. The reactor vessel material Adjusted RT_{NDT} values are based on the conservative methodology provided in Regulatory Guide 1.99, Revision 2.

Analyses show that the proposed use of a variable LTOP system will not result in a significant increase in the probability of an inadvertent opening of a Power-Operated Relief Value (PORV) causing a small break Loss-of-Coolant-Accident. The proposed heatup and cooldown curves and associated limits continue to provide conservative restrictions on Reactor Coolant System (RCS) pressure to minimize material stresses in the RCS due to normal operating transients, thus minimizing the likelihood of a rapidly propagating fracture due to pressure transients at low temperatures. Because the proposed heatup and cooldown curves and rates are based on conservative Appendix G methods, and because the LTOP controls protect the Appendix G P-T limits, the proposed curves and limits do not involve an increase in the probability of accidents previously evaluated.

The proposed use of a variable PORV trip setpoint and the decrease in the allowable fluence at the reactor vessel wall results in the changes to the heatup and cooldown curves and rates, the Minimum Pressure and Temperature (MPT) Enable temperature, high-pressure safety injection (HPSI) pump flow limit, and HPSI pump manual control transition temperature. These proposed changes continue to provide sufficient margin to accommodate postulated pressurization from mass and energy addition transients. Calculations have been performed that predict the response to such transients. Because the results of the analyses remain well within the conservative acceptance limits of Appendix G, these changes do not increase the consequences of accidents previously evaluated.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

The new variable LTOP control system along with the proposed changes to the Technical Specifications will ensure that the Appendix G P-T limits will not be violated during low temperature operations. While setpoints and curves have changed, this proposed change does not introduce any operator actions that are significantly different from current operator actions used at the plant. The variable LTOP system will continue to have redundant channels to ensure that no single equipment failure or operator error will result in violation of the P-T limits. The use of a variable LTOP system does not create a new failure mechanism for the PORV. The failure mechanism for the PORV continues to be an inadvertent opening or the failure to open during a pressure transient which has been previously evaluated. Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

This change will ensure that the margin of safety is maintained with respect to energy or mass addition events in that none of the events postulated could challenge the Appendix G limits. The proposed use of a variable PORV trip setpoint and the decrease

in the allowable fluence at the reactor vessel wall necessitate the changes to the heatup and cooldown curves and rates, the MPT Enable temperature, HPSI pump flow limit, and HPSI pump manual control transition temperature. These changes ensure that the margin of safety is maintained by protecting the Appendix G limits for all postulated transients. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Robert A. Capra

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: April 1, 1993, as supplemented on July 22 and September 8, 1993. This notice supersedes the notice published on May 12, 1993 (58 FR 28052)

Description of amendments request: The proposed amendments would revise Technical Specification (TS) 3/4.8.2, "Onsite Power Distribution Systems AC Power Distribution - Operating," in relation to the actions to be taken if any of the 120 volt alternating current (AC) vital busses are not operable. The existing TS 3.8.2.1 Action Statement requires that an inoperable vital bus be restored to operable status within 8 hours or be in at least hot standby within the next 6 hours and cold shutdown within the following 30 hours. The proposed action statement change would change the time to restore a vital bus to operable from 8 hours to 2 hours and add an additional option.

The April 1993 initial proposal retained the existing action statement with an option that an inoperable vital bus would be powered from its associated backup bus within the first 8 hours and the vital bus restored to operable status by reenergizing the vital bus from its associated inverter, which is the normal source of power, within 48 hours or be in at least hot standby within the next 6 hours and cold shutdown within the following 30 hours.

The July 22 and September 8, 1993, supplements modified the existing action statement changing the time to restore a vital bus to operable from 8 hours to 2 hours. The proposed option was also modified by changing the time an inoperable vital bus would be powered from its associated backup bus from within the first 8 hours to within the first 2 hours and changed the time to restore the vital bus to operable from 48 hours to 24 hours. The licensee noted that the changes would be consistent with NUREG-1432, "Standard Technical Specifications - Combustion Engineering Plants." The licensee further noted, and the staff agrees, that the modified action statement times of 2 hours and 24 hours are more conservative than the initial request of 8 hours and 48 hours as discussed above.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The 120 Volt Vital Alternating Current (AC) system is designed to supply continuous power to plant vital instrumentation and control systems. The only event evaluated in the Updated Final Safety Analysis Report (UFSAR) potentially affected by the 120 Volt Alternating Current (VAC) vital bus being energized by the inverter backup bus is the loss of off-site power (LOOP). Allowing the vital bus to be energized by the inverter backup bus does not affect the probability of having a LOOP, since this lineup is not an initiator to the event. No precursors to any of the accidents in the UFSAR are affected when the plant is in this lineup. Therefore, having a 120 VAC vital bus energized by the inverter backup bus [within the first 2 hours] for 48 hours [24 hours as modified] does not involve a significant increase in the probability of an accident previously evaluated.

The consequences of having a LOOP while a 120 VAC vital bus is energized by the inverter backup bus are the same for the existing 8-hour [2 hours as modified] Action Statement and the proposed 48-hour [24 hours as modified] Action Statement. In either case, if there is a LOOP while a vital bus is on the inverter backup bus, the vital bus will experience an interruption of power until the diesel restores power to the inverter backup bus. This causes the Reactor Protective System (RPS) and Engineered Safety Features Actuation System (ESFAS) sensors on the channel powered by this vital bus to trip and increase the possibility of an inadvertent actuation.

This interruption of power may also cause an actuation channel to be de-energized resulting in an emergency diesel generator (EDG) not receiving an undervoltage signal. The result of having a de-energized actuation channel is equivalent to having an inoperable EDG: one train of ESFAS equipment would not be operable. As current Technical Specifications allow an EDG to be inoperable for 72 hours, allowing a vital bus to be powered by the inverter backup bus for 48 hours [24 hours as modified] is more restrictive. For all other analyzed initiating events, the vital bus energized by the inverter backup bus will still perform its function.

While the consequences of the two allowed outage times (AOTs) for the vital bus remain the same, the probability of the interruption of power increases because the AOT for the vital bus has increased. However, as the probability of a loss of offsite power is small, this increase in probability is not significant.

Therefore, this change will not involve a significant increase in the probability of consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

The proposed change to add an Action Statement to the AC Electrical Distribution System Technical Specification to allow a 120 VAC vital bus to be energized by the inverter backup bus for 48 hours [24 hours as modified] does not represent a change in the configuration of the plant. Specifically, no new hardware is being added to the plant as part of the proposed change nor are there significantly different types of operations being introduced. Allowing a vital bus to be powered by the inverter backup bus for 48 hours [24 hours as modified] does not create the possibility of a new or different type of accident. Therefore, this change would not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Would not involve a significant reduction in the margin of safety.

The proposed change to add an Action Statement to the AC Electrical Distribution System Technical Specification to allow a 120 VAC vital bus to be powered by the inverter backup bus for 48 hours [24 hours as modified] does not represent a significant reduction in the margin of safety. By using the inverter backup bus to supply power to a 120 VAC vital bus, the RPS and ESFAS channel, which would be in the tripped position if the vital bus was de-energized, is able to perform its function for all analyzed design basis accidents except for those involving a concurrent LOOP.

During a LOOP, the vital bus powered by the backup bus will experience an interruption of power until the EDG restores power. This causes all sensors for the RPS and ESFAS channels on this vital bus to trip. In addition, an actuation channel may be de-energized resulting in an EDG not receiving an undervoltage signal. The result of having a de-energized actuation channel is equivalent to having an inoperable EDG: one train of ESFAS equipment would not be operable. Current Technical Specifications allow an EDG to be inoperable for 72 hours. The proposed change allows a vital bus to be on the backup bus for 48 hours [24 hours as modified] and is therefore more restrictive than the AOT for an inoperable EDG.

Currently, the Technical Specifications have an AOT of eight hours for a de-energized vital bus. Using the inverter backup bus to energize a 120 VAC vital bus when an inverter is out-of-service improves the reliability of the safety protection system when compared with operating with a de-energized vital bus. Therefore, the proposed change would not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Robert A. Capra

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: August 27, 1993

Description of amendments request: The proposed amendments would revise the Calvert Cliffs Nuclear Power Plant, Units 1 and 2, Technical Specifications (TSs) to remove the containment isolation valve list. The requested action is consistent with the guidance provided in Generic Letter (GL) 91-08, "Removal of Component Lists From Technical Specifications." The GL indicates that an acceptable alternative to identifying every component by its plant identification number in the TSs is to incorporate the detailed component list into plant procedures that are subject to the control provisions for plant procedures in the TS Administrative Controls Section. Removing the containment isolation valves list from the TSs permits administrative control of changes to the list without processing a license amendment. Any change to the list contained in plant procedures is subject to the requirements specified in the Administrative Controls Section of the TSs. The change control provisions of the TS provide an adequate means to control changes to the containment isolation valves list without including the list in the TSs.

Specifically, TS Table 3.6.1, "Containment Isolation Valves," is deleted. TSs 1.8.1.b, 3.6.1.1, 4.6.1.1.a, 3.6.4.1, 3.6.4.1.1, 4.6.4.1.2, and 4.6.4.1.3 are changed to reflect the deletion of TS Table 3.6.1. The table notations, which are deleted with the table, are replaced by footnotes to the appropriate TSs sections. TS 4.9.9 is changed to require that the isolation times for the containment isolation valves are within their required limits when tested. The TS Bases Section B3/4 6-3 is changed to reflect the deletion of the table and indicate that the containment isolation will be within the time limits specified in the plant procedures.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to remove the containment isolation valves list from the Technical Specification will not change the technical requirements for these valves. This change will not affect the function of the containment isolation valves or change the operability requirements for the containment isolation valves. The proposed change will not change any accident initiators or the consequences of any analyzed accident. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

The proposed change to remove the list of containment isolation valves from the Technical Specifications does not change the function of the containment isolation valves. The proposed change does not represent a change in the configuration or operation of the plant. No new hardware is being added to the plant as part of the proposed change. The Technical Specification requirements for the containment isolation valves will remain the same. Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The proposed change will not affect the function of the containment isolation valves. Removing the containment isolation valves list will not alter the Technical Specification requirements on the valves. The change control provisions for plant procedures in the Technical Specification Administrative Controls Section are adequate to control revisions to the containment isolation valve list. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Robert A. Capra

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 amendment request: August 27, 1993

Description of amendment request: The proposed changes will incorporate changes to reactor core safety limits, reactor trip system instrumentation setpoints, power distribution limits, and shutdown Boron concentration control in support of the transition from nuclear fuel supplied by Westinghouse Electric Corporation to nuclear fuel supplied by Siemens Power Corporation and a reactor core safety average temperature reduction effort.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

a) The Reactor Core Safety Limits lines of Figure 2.1-1 provide the limits on T_{avg} and pressure which protect against DNB and hot leg saturation. These lines incorporate the results of analyses with both Siemens and Westinghouse DNB correlations. The revisions of these lines do not involve a significant increase in the probability or consequences of an accident previously evaluated. The lines are explicitly determined to provide the limits to protect against DNB and hot leg saturation. There is no change to the system, thus the accident precursors are unaffected. Therefore, there is no increase in the probability of an accident previously evaluated. Because the limits are established to protect to the same criteria, there is no increase in the consequences of the accidents previously evaluated.

The expanded OT delta T deadband limits in this table reduce the potential of invoking the f_1 (delta 1) function during normal operation. The revised OT delta T f_1 (delta 1) setpoints have been incorporated in the plant analyses supporting Cycle 6 operation. Based on these analyses, the revision of this table does not involve a significant increase in the probability of consequences of an accident previously evaluated. The system is unchanged by this amendment, so the precursors to the accidents are unchanged. The revised setpoints were incorporated in the safety analyses. The results of these evaluations demonstrate compliance with the

criteria identified in Chapter 15 of the Standard Review Plan (NUREG-0800).

b) The average coolant temperature is a boundary condition used in the plant neuronic and safety analyses. Siemens Power Corporation has incorporated the reduced T_{ave} in the plant analyses supporting Cycle 6 operation. Based on these analyses, the reduction does not involve a significant increase in the probability or consequences of an accident previously evaluated. The reduction in temperature does not change precursors that could cause any of the accidents previous evaluated. Therefore, the probability of the event is unchanged. The consequences of all of the accidents which are sensitive to the temperature reduction are evaluated by Siemens Power Corporation using their reload analysis methodologies. The results of these evaluations demonstrate compliance with the criteria identified in Chapter 15 of the Standard Review Plan. Therefore, there is not an increase in the consequences of an accident previously evaluated.

c) The addition of wording to Table 3.9-1 (valve 1CS-510) to reference the COLR required refueling boron concentration has no effect on the consequences of accidents previously evaluated in the FSAR. The change places more restrictive conditions on the boric acid batch tank boron concentration before the tank discharge valve may be opened. The additional conditions reduce the probability of an accident previously evaluated in the FSAR (boron dilution accident in Mode 6) if the required refueling boron concentration is in excess of 2000 ppm. It has no impact on the probability of a dilution accident if the required refueling boron concentration is equal to 2000 ppm.

Therefore, there would be no significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does no create the possibility of a new or different kind of accident from any accident previously evaluated.

a) The Reactor Core Safety Limits lines of Figure 2.1-1 provide the limits on T_{avg} and pressure which protect against DNB and hot let saturation. These lines incorporate the results of analyses with both Siemens and Westinghouse DNB correlations. The revisions of these lines do not create the possibility of a new or different kind of accident from any accident previously evaluated. Because the system is unchanged, the precursors to any accidents are unchanged. Therefore, the possibility of a new or different kind of accident from those previously evaluated is not changed.

The expanded OT delta T deadband limits in this table reduce the potential of invoking the f_1 (delta I) function during normal operation. The revised OT delta T f_1 (delta I) setpoints have been incorporated in the plant analyses supporting Cycle 6 operation. Based on these analyses, the revision of this table does not create the possibility of a new or different kind of accident from any accident previously evaluated. Because the system is unchanged for fuel related accidents, the possibility of a new or different kind of accident from any fuel related accident previously evaluated is unchanged.

b) The average coolant temperature is a boundary condition used in the plant neuronic and safety analyses. Siemens Power Corporation has incorporated the reduced T_{avg} in the plant analyses supporting Cycle 6 operation. Based on these analyses, the reduction does not create the possibility of a new or different kind of accident from any accident previously evaluated. Because the precursors are unchanged for fuel related accidents, the possibility of a new or different kind of accident from any fuel related accident previously evaluated is unchanged.

c) The addition of wording to Table 3.9-1 to reference the COLR required refueling boron concentration does not create the possibility of a new accident than any previously evaluated in the FSAR. This TS change will eliminate the possibility of a dilution path in Mode 6 with the required refueling boron concentration in excess of 2000 ppm.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

a) The Reactor Core Safety Limits lines of Figure 2.1-1 provide the limits on T_{avg} and pressure which protect against DNB and hot leg saturation. These lines incorporate the results of analyses with both Siemens and Westinghouse DNB correlations. The revisions of these lines do not involve a significant reduction in the margin of safety. The limits should be changed to incorporate the DNB characteristics of the Siemens fuel as well as the Westinghouse fuel. The limits are explicitly determined using the same criteria as before. Therefore, there is no significant reduction in the margin of safety.

The expanded OT delta T deadband limits in this table reduce the potential of invoking the f_1 (delta I) function during normal operation. The revised OT deta T f_1 (delta I) setpoints have been incorporated in the plant analyses supporting Cycle 6 operation. Based on these analyses, the revision of this table does not involve a significant reduction in the margin of safety. The revised OT delta T setpoint is incorporated in the safety evaluations. These evaluations must satisfy the criteria defined in Chapter 15 of the Standard Review Plan consistent with the SHNPP licensing basis as defined in the FSAR. Because the criteria are unchanged, there is not a significant reduction in the margin of safety.

b) The average coolant temperature is a boundary condition used in the plant neutronic and safety analyses. Siemens Power Corporation has incorporated the reduced T_{avg} in the plant analyses supporting Cycle 6 operation. Based on these analyses, the reduction does not involve a significant reduction in the margin of safety. The reduction in temperature is explicitly included in the safety evaluations. These evaluations must satisfy the criteria defined in Chapter 15 of the Standard Review Plan consistent with the SHNPP licensing basis as defined by the FSAR. Because the criteria are unchanged, there is not a significant reduction in the margin of safety.

c) The addition of wording to Table 3.9-1 to reference the COLR required refueling boron concentration does not reduce the margin of safety since the TS requirement on valve position will have a more restrictive condition than currently exists.

Therefore, the proposed changes do not involve a significant reduction in as margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: S. Singh Bajwa

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendment request: August 17, 1993

Description of amendment request: By Generic Letter (GL) 86-10, "Implementation of Fire Protection Requirements," dated April 24, 1986, the Nuclear Regulatory Commission (NRC or the staff) recommended that licensees remove the fire protection requirements, including the fire hazards analysis and major commitments that form the basis for the Fire Protection Program, from the facility technical specifications (TS) and incorporate them in their Final Safety Analysis Reports (FSAR). GL 88-12, "Removal of Fire Protection Requirements from Technical Specifications," dated August 2, 1988, provided guidance for a license amendment submittal to implement GL 86-10.

In accordance with the GL 86-10, the licensee proposed amendments to delete the limiting condition for operation and surveillance requirements associated with fire detection systems, fire suppression systems, fire rated assemblies, and the administrative controls that address fire brigade staffing from the TS for Turkey Point Units 3 and 4 and relocate them to the FSAR. In addition, License Conditions 3.G and 3.F of the FacilityOperating Licenses DPR-31 and DPR-41, respectively, relating to the fire protection program, would be revised. Specifically, T.S. 3.3.3.4, 4.3.3.4.1, 4.3.3.4.2, Table 3.3-6, 3/4.7.8, Tables 3.7-4 and 3.7-5, 3/4.7.9, 6.2.2.f and the

corresponding BASES section would be deleted. All operational conditions, remedial actions and test requirements presently in the Technical Specifications for these systems, as well as the fire brigade requirements, would be controlled through the Fire Protection Program and associated procedures. The FSAR would discuss how these relocated requirements will be controlled. T.S. 6.5.1.6 would be revised to provide administrative control for the Fire Protection Program. Other editorial changes would also be made to reflect the proposed amendments.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes being proposed are administrative in nature in that they revise the current fire protection license condition to conform to the standard fire protection license condition in GL 86-10, relocate Technical Specification requirements associated with fire detection systems, fire suppression systems, fire rated assemblies, and the administrative controls that address fire brigade staffing from the Technical Specifications to the Fire Protection Program and associated procedures without altering them, and gives additional responsibility for Fire Protection Program review to the Plant Nuclear Safety Committee. These changes are in accordance with the recommendations contained in Generic Letters 86-10 and 88-12. No change is being made to existing requirements or commitments. The proposed changes do not involve any change to the configuration or method of operation of any plant equipment that is used to mitigate the consequences of an accident, nor do they affect any assumptions or conditions in any of the accident analyses. Since the accident analyses remain bounding, their radiological consequences are not adversely affected.

Therefore, the probability or consequences of an accident previously evaluated are not affected.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes being proposed are administrative in nature in that they revise the current fire protection license condition to conform to the standard fire protection license condition in GL 86-10, relocate Technical Specification requirements associated with fire detection systems, fire suppression systems, fire rated assemblies, and the administrative controls that address fire brigade staffing from the Technical Specifications to the Fire Protection Program and associated procedures without altering them, and gives additional responsibility for Fire Protection Program review to the Plant Nuclear Safety Committee. These changes are in accordance with the recommendations contained in Generic Letters 86-10 and 88-12. No change is being made to existing requirements or commitments. The proposed changes do not involve any change to the configuration or method of operation of any plant equipment used to mitigate the consequences of an accident.

Therefore, the possibility of a new or different kind of accident from any accident previously evaluated would not be created.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The changes being proposed are administrative in nature in that they revise the current fire protection license condition to conform to the standard fire protection license condition in GL 86-10, relocate Technical Specification requirements associated with fire detection systems, fire suppression systems, fire rated assemblies, and the administrative controls that address fire brigade staffing from the Technical Specification to the Fire Protection Program and associated procedures without altering them, and give additional responsibility for Fire Protection Program review to the Plant Nuclear Safety Committee. These changes are in accordance with the recommendations contained in Generic Letters 86-10 and 88-12.

No change is being made to existing requirements or commitments.

Therefore, a significant reduction in a margin of safety would not be involved.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzer, P.C., 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Northeast Nuclear Energy Company (NNECO), Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of amendment request: September 1, 1993

Description of amendment request: The proposed amendment will revise the surveillance requirements for local leak rate testing which are included in Technical Specification Section 4.7 A, to remove the 5% L_{to} limit. Removing the limit will allow Millstone Unit 1 to address individual penetration leakage while maintaining the overall leakage rate for Type B and C tests below the Appendix J acceptance criterion of 0.60 L_a. In addition, the proposed amendment: (1) makes editorial changes and deletes the currently allowed exclusion of main steam isolation valves (MSIVs) from Section 4.7.A.3.e.(1), and (2) revises the applicable Bases section.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with 10CFR50.92, NNECO has reviewed the proposed changes and has concluded that they do not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not compromised. The proposed changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change only modifies the wording of 4.7.A.3.e.(1)(a) and deletes the individual penetration limit of 5% L_{to}. The proposed change does not modify the quantity of the release assumed in the existing accident analysis.

The wording changes to 4.7.A.3.e.(1)(a) align the Millstone Unit No. 1 Technical Specifications with 10CFR50 Appendix J. In addition to revised nomenclature, the exclusion of the MSIVs from the 0.60 L_a total leakage limit is removed. The wording change does not affect any of the procedures or practices currently in place at Millstone Unit No. 1. The leakage limit for MSIVs contained in 4.7.A.3.e.(1)(c) has not been modified.

The individual penetration leakage criterion of 5% L_{to} is functionally an "administrative limit" for monitoring penetration leakage and its deletion as a surveillance requirement will have no affect on the requirement governing the combined Type B and C leakage rates (0.60L_a) defined in 10CFR50 Appendix J. Therefore, the change does not affect the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes do not change the way the plant is operated, nor do they affect the release limits or leakage paths assumed in any accident analysis. There is no change to the function or design of any penetration. The proposed change does not create the possibility of an accident of a different type since the change only modifies the surveillance requirements to agree with 10CFR50 Appendix J.

3. Involve a significant reduction in a margin of safety.

The accident analyses do not consider any specific leakage path. Rather, they assume

maximum allowable leakage. The margin of safety demonstrated by the Millstone Unit 1 accident analyses is based upon this design leakage. The combined Type B and C leakage limit of less than 0.60 L_a defined in 10CFR50 Appendix J provides assurance that design leakage is not exceeded. The proposed changes do not affect either of these values. Therefore, the margin of safety is not reduced by the proposed change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: 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 (NNECO), Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of amendment request: September 10, 1993

Description of amendment request: The amendment request presents an alternate schedule for visual snubber inspections in accordance with Generic Letter 90-09, "Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions." The amendment request also revises the functional testing interval requirements for snubbers from 18 months to 24 months in accordance with Generic Letter 91-04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24-month Fuel Cycle."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO has reviewed the proposed changes in accordance with 10CFR50.92 and has concluded that the changes do not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not compromised. The proposed changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The snubber visual inspection cycle is being lengthened using the schedule provided in GL 90-09. The Staff developed this schedule to provide the same confidence level as the original schedule. The snubber functional testing program provides the desired level of confidence that the snubber population operates within specified acceptance limits. Historical snubber performance demonstrates that significant snubber degradation is not occurring for intervals less than five years. Improved maintenance and seal-life monitoring have reduced snubber failures. Historical data since 1987 demonstrates good snubber performance. Therefore, the extension of the visual inspection and functional test intervals will not have a detrimental effect on the snubber reliability.

Further, the small increase in the surveillance interval is expected to be offset by reducing the number of shutdowns and potential challenges to safety systems that would be required to conduct functional testing on an 18-month basis.

The actions required by the existing technical specifications as a result of finding snubbers inoperable remain the same. The proposed changes to the inspection and test intervals will not exceed the service life of the snubbers and will have no impact on their ability to perform their intended function. Therefore, the proposed change does not affect 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 revised testing interval will continue to demonstrate the ability of the snubbers to provide restraint of piping and components during and following a seismic event or other dynamic load for which they are designed.

The proposed changes to Technical Specification Section 4.6.I do not affect plant operations, nor do they change the snubber test acceptance criteria for determining operability. No new equipment is being added and the existing snubbers are not being altered or moved. The proposed changes will not affect the desired level of confidence that the snubbers will perform their intended function during normal or accident conditions. Therefore, the potential for an unanalyzed accident is not created, and no new failure modes are introduced.

3. Involve a significant reduction in the margin of safety.

The margins of safety designed in to the systems and components associated with the snubbers will be unaffected by the change in the inspection and test frequency. The margins of safety are achieved by assuring the operability of the snubbers. The level of confidence in snubber performance demonstrated by the testing and inspection programs with the extended interval provides the same level of confidence as the existing schedule. Service life monitoring ensures that snubbers are rebuilt or replaced prior to reaching their anticipated life. Since the level of confidence in snubber performance has not changed, the proposed change does not reduce the margins of safety of any systems or components which the installed snubbers protect.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: 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

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of amendment request: August 3, 1993

Description of amendment request: The amendment would remove certain remote shutdown system control valves and primary containment isolation valves from TS Tables 3.3.7.4-1 and 3.6.3-1, respectively, as a result of eliminating the steam condensing mode of the Residual Heat Removal (RHR) system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specifications (TS) changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

These proposed changes will result in abandoning in place certain remote shutdown system control valves and removing from service and abandoning in place certain Primary Containment Isolation Valves (PCIVs) associated with the Residual Heat Removal (RHR) system steam condensing mode, and will remove the interface between the High Pressure Coolant Injection (HPCI) and RHR systems, therefore changing the primary containment pressure boundary.

The RHR system steam condensing mode is a non-safety related function of the RHR system; however, the pressure and structural integrity of the associated piping and valves are safety-related. These proposed changes will not affect any components required to perform the safety-related function of the RHR or HPCI systems.

The ability of the RHR or HPCI systems to respond to an accident will not be degraded. Only valves specifically dedicated for use for the RHR system steam condensing mode will be abandoned in-place, or removed from the plant. The flanges and penetration caps that will become part of the primary containment boundary will be periodically tested for leakage as required by TS and 10CFR50,

Appendix J. All piping and components that will remain operable, will meet the original design requirements. The other modes of operation of the RHR system (e.g., Low Pressure Coolant

Injection (LPCI), Shutdown cooling (SDC)), will not be affected by these changes. Therefore, the proposed TS changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

No new failure modes of RHR or HPCI systems are created by the proposed TS changes. The proposed changes will have no impact on the existing High Energy Line Break (HELB) analysis for Limerick Generating Station (LGS). All valves or piping removed and/or abandoned in place, are dedicated specifically for the RHR system steam condensing mode, and will not affect the operation of any components or piping required for other modes of operation of the RHR or HPCI systems. Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The steam condensing mode is a non-safety related function of the RHR system and, therefore, is not addressed in the TS. This mode will be physically separated from the other modes of operation of RHR and HPCI systems, and consequently, will not preclude them from performing their safety-related functions. The remote shutdown system control valves to be abandoned in place are not being used presently, and the proposed changes will not impact the safe operation of LGS Unit 1. The primary containment penetration caps, safety-related pipe caps and the flanges replacing the removed PCIVs will be designed, fabricated and installed in accordance with the original design requirements, i.e., American Society of Mechanical Engineers (ASME) Boiler Pressure Vessel (B&PV) Code, Section III, 1971 Edition with Addenda through Winter 1971. The added penetration caps and flanges will be capable of maintaining the primary containment pressure boundary and isolation capabilities that were required of the PCIVs and will be tested for leakage periodically, as required by TS and 10CFR50, Appendix J. Additionally, all piping and components that will remain operable, will meet original design requirements. Therefore, the proposed TS changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Michael L. Boyle, Acting

Philadelphia Electric Company, Docket No. 50-353, Limerick Generating Station, Unit 2, Montgomery County, Pennsylvania

Date of amendment request: August 27, 1993

Description of amendment request: The amendment would extend the Allowed Outage Time (AOT), on a one-time basis, for the Unit 2 Residual Heat Removal Service Water (RHRSW) system as well as the Suppression Pool Spray and Suppression Pool Cooling modes of the Residual Heat Removal system from 72, 168 (i.e. 7 days), and 72 hours, respectively, to 288 hours (i.e. 12 days). These proposed extended AOTs will allow continued Unit 2 operation while maintenance isolation valves are installed on both loops of the RHRSW system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specifications (TS) changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed one-time Unit 2 TS changes do not increase the consequences of an accident from any previously evaluated. Extending the Allowed Outage Times (AOTs) for the [sic] either loop of Residual Heat Removal Service Water (RHRSW) system from 72 hours and the Suppression Pool Spray (SPS) and Suppression Pool Cooling (SPC) modes of the Residual Heat Removal (RHR) system from 168 and 72 hours, respectively, to 288 hours on two (2) separate occasions during the fifth Unit 1 refueling outage, does not cause an increase in the probability of an accident since the affected systems are not accident initiators as defined by the Updated Final Safety Analysis Report (UFSAR). Maintaining one loop of RHRSW as well as a loop of the SPC mode of the RHR system operable during the period the other loop of RHRSW is removed from service, will ensure that the consequences of the accidents previously evaluated will remain bounded by the UFSAR Safety Analysis. Therefore, there is no increase in the consequences of an accident. This conclusion is based on the following considerations.

a. Removal of the 'A' or 'B' RHRSW loop and its associated Unit 1 and Unit 2 RHR heat exchanger will not prevent any Emergency Core Cooling System (i.e., Low Pressure Coolant Injection (LPCI), Core Spray (CS), and High Pressure Coolant Injection (HPCI)) from injecting water into the reactor vessel. Short-term mitigation of an accident is unaffected since RHRSW is manually operated and is not required to be placed in service during the first 10 minutes of an accident.

b. For long-term accident response (i.e., greater than 10 minutes), accident analyses discussed in UFSAR Section 6.2 indicates that one loop of RHRSW and one associated RHR heat exchanger are capable of removing the decay heat from both units assuming a concurrent Loss Of Off-site Power (LOOP)/ Loss of Coolant Accident (LOCA) on one unit and safe shutdown on the other unit.

c. Unit 1 will be in a refueling outage. The heat load on the remaining RHRSW loop from Unit 1 will be minimal based on long time after shutdown when either the 'A' or 'B' loop of RHRSW will be removed from service, and the availability of alternate decay heat removal methods that do not reject heat to RHRSW.

d. The RHRSW and Emergency Service Water (ESW) systems are designed with sufficient capacity such that one loop of RHRSW (i.e., two (2) pumps in operation) and one loop of ESW (i.e., one pump in operation) using one spray pond return header and two (2) spray networks is the minimal alignment required to mitigate a LOCA with a concurrent LOOP on one unit and a safe shutdown on the other unit.

By design, the unit undergoing an accident would receive 100% of the required RHRSW flow to its RHR heat exchanger and the unit undergoing a normal shutdown would receive 67% to 100% of the required RHRSW flow to its RHR heat exchanger. Sixty-seven percent RHRSW flow to the unit undergoing a normal shutdown is sufficient to remove the heat load transferred through the RHR heat exchanger as discussed in UFSAR Section 9.2.3. However, since Unit 1 will already be in cold shutdown, the heat removal requirements and therefore the required RHRSW flow will be substantially less than 67%.

The probability for a single failure to occur and render the operable RHR heat exchanger or operable RHRSW loop inoperable during the proposed extended AOTs, has been evaluated and the conclusion is that there is no increase in the existing probability for a single failure as a result of these proposed TS changes.

Therefore, implementation of the proposed 288 hour AOTs will not result in an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Since the proposed TS changes will not result in any new plant configuration, new system alignment, or normal operational procedures, the possibility of a new or different kind of accident is not created. The systems affected are not accident initiators. The plant has been analyzed for one RHRSW loop out of service. Plant operation and accident mitigation utilizing one loop of RHRSW and one RHR heat exchanger is described in UFSAR Sections 5.4, 6.2, and 15.2. The operable systems that will be

affected during the implementation of these proposed one-time TS changes will be operated within their design capabilities under approved procedures. The removal of one RHRSW loop and its associated RHR heat exchanger from service is currently allowed by TS. These proposed one-time TS changes will only extend the Unit 2 subsystem AOTs for the RHRSW system as well as the SPS and SPC modes of operation of the RHR system from 72, 168, and 72 hours respectively, to 288 hours on two (2) separate occasions during the fifth Unit 1 refueling outage.

The proposed changes will not cause the components important to safety that have been discussed above to be challenged by a different type of malfunction, since no new type of malfunction will be created by any operation associated with this activity.

Therefore, these proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The RHRSW system and the RHR system are designed with sufficient redundancy such that the removal from service of a component and/or subsystem will not prevent the system from performing its required safety function. Since removal of either the 'A' or 'B' RHRSW loop from service with Unit 2 in operation and Unit 1 in a refueling outage is allowed by existing TS, the concern is the reduced margin of safety incurred by extending the application AOTs.

The RHRSW system is designed such that the AOT for operation with less than three (3) RHRSW pumps operable along with their associated operable Emergency Diesel Generators (EDGs) is limited to 72 hours to ensure adequate decay heat removal capability is available for the design basis accident scenario of a LOCA/LOOP on one unit and simultaneous safe shutdown of the other unit. The Reduction in the margin of safety due to increasing the applicable AOTs from 72 and 168 hours to 288 hours is considered minimal as discussed below, since this reduction only reflects the small increase in the probability that a LOCA/LOOP event would occur on Unit 2 within the proposed 288 hour AOT period as compared to the probability of a LOCA/LOOP on Unit 2 during the 72 hour AOT currently allowed by TS. In addition, as a compensatory measure a roving fire watch will be established for those areas that solely rely on the inoperable loop of the RHRSW system during the proposed extended AOT. Therefore, as a result of this compensatory measure, the proposed extended AOT does not adversely affect the level of protection against the effects of a fire.

A Probabilistic Risk Assessment (PRA) was performed for a RHRSW loop being out of service for 288 hours on an operating unit. The Core Damage Frequency (CDF) increase from the baseline CDF risk is approximately 5% when extending the AOT for TS Section 3.6.2.2, Action a, TS Section 3.6.2.3, Action a, and TS Section 3.7.1.1, Action a.3 to 288 hours. This increase in the Unit 2 CDF is judged to be minimal. In addition, the cumulative risk of the two (2) periods when the extended 288 hour AOTs will be exercised is judged to be minimal. The CDF associated with the proposed extended AOTs is equivalent to the CDF if the HPCI system were to be removed from service for 168 hours (i.e., seven days) during power operation. The existing TS AOT for an inoperable HPCI system is 336 hours (i.e., fourteen days).

In addition, the following equipment and/or systems will be required to be operable for the duration of the proposed extended AOTs, or the Actions of TS Sections 3.6.2.2.b, 3.6.2.3.b, 3.7.1.1.a.4 must be followed.

'A' RHRSW Loop Inoperable

- Unit 2 'B' RHR heat exchanger and associated equipment.
- 'B' RHRSW loop and associated equipment.
- HPCI (Unit 2).
- D12, D22, and D24 EDGs and associated equipment.
- D11 and D23 EDGs and associated equipment to ensure adéquate ESW and RHRSW flow. The EDGs are needed since flow verification assumed two (2) operable RHRSW pumps on a loop and all four (4) ESW pumps are operable.
- Any other system and/or equipment that, if removed, would place Unit 2 outside the bounds the analysis described in UFSAR Section 6.2 (i.e., the minimum number of Emergency Core Cooling Systems (ECCS), RHRSW loops, and ESW loops needed for accident mitigation).

'B' RHRSW Loop Inoperable

- Unit 2 'A' RHR heat exchanger and associated equipment.
- 'A' RHRSW loop and associated equipment.
- HPCI (Unit 2).
- D11, D21, and D23 EDGs and associated equipment.
- D12 and D24 EDGs and associated equipment to ensure adequate ESW and RHRSW flow. These EDGs are needed since flow verification assumed two (2) operable RHRSW pumps on a loop all four (4) ESW pumps are operable.
- Any other equipment that, if removed, would place Unit 2 outside the bounds of the analysis described in UFSAR Section 6.2 (i.e., the minimum number of ECCS, RHRSW loops, and ESW loops needed for accident mitigation).

One intended action is to maintain the Unit 2 suppression pool temperature as low as possible during the periods these proposed changes are implemented. This will increase the heat storage capacity of the suppression pool and further enhance the heat removal capacity of the operable RHRSW loop. Also, since Unit 1 will be in a refueling outage, the Unit 1 decay heat removal demand on the RHRSW system will be minimal. Therefore, implementation of the proposed one-time TS changes will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Michael L. Boyle, Acting

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: August 25, 1993

Description of amendment request: The amendment would revise Technical Specification (TS) Section 3.3.7.8.2 and associated Bases 3/4.3.7.8 regarding the Main Control Room (MCR) toxic gas detection system. This proposed TS change will reflect implementation of a modification designed to change the MCR high toxic chemical concentration alarms received by the MCR.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specifications (TS) changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes will reflect adding a third chemical analyzer to the toxic chemical detection system and changing the system's high toxic chemical concentration alarm logic. The system will continue to function as designed to preclude the effects of an offsite release of toxic chemicals from affecting the habitability of the Main Control Room (MCR) as described in Sections [sic] 6.4.3.2.3 of the Updated Final Safety Analysis Report (UFSAR). The toxic chemical detection system is a non-safety related system dedicated to monitoring and alarming only. Operator action is required to isolate the MCR Heating, Ventilation, and Air Conditioning (HVAC) and initiate the Control Room Emergency Fresh Air Supply (CREFAS) system following a high toxic chemical concentration alarm in the MCR.

The proposed changes will not affect the operation of other plant systems or equipment important [to] safety. The MCR HVAC and CREFAS systems will continue to operate as designed to ensure habitability of the MCR during normal operations and in the event of a toxic chemical release affecting the plant. The toxic chemical detection system does not perform any control function for other systems and none are being added. Therefore, a malfunction of the new chemical analyzer can not cause an accident and will not affect the operation of the other two (2) chemical analyzers currently installed, since

the operation of all the chemical analyzers are independent of each other. The proposed changes will eliminate MCR high toxic chemical concentration false alarms caused by a single chemical analyzer failure or malfunction.

Therefore, the proposed TS changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes will not affect the operation of other plant systems and equipment important to safety. Since it only detects and alarms, a malfunction of the toxic chemical detection system that includes a third analyzer or associated equipment could not cause an accident. The toxic chemical detection system will continue to function as designed to preclude the effects of an offsite release of toxic chemicals from affecting the habitability of the MCR. The system is a non-safety related system dedicated to monitoring and alarming. The system is designed to preclude the effects of an offsite release of toxic chemicals from affecting the habitability of the MCR. Operator action is required to isolate the MCR HVAC and initiate CREFAS following a high toxic chemical concentration alarm in the MCR. The MCR HVAC and CREFAS systems will continue to operate as designed to ensure habitability of the MCR during normal operations and in the event of a toxic chemical release affecting the plant. The toxic chemical detection system is independent of other plant systems and equipment and does not provide any automatic initiation function, nor will any be introduced. Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The proposed TS changes will not change the toxic chemical detection system alarm setpoints or response times. The modified toxic chemical detection system will continue to function as designed to monitor and alarm in the MCR when high toxic chemical concentrations are present. Operators will continue to take the necessary manual actions of isolating the normal MCR HVAC and initiating CREFAS and donning self-contained breathing apparatus (SCBA) in response to a high toxic chemical concentration alarm. The operation of the MCR HVAC and CREFAS systems is not affected by this proposed change, and these systems will continue to function as designed. This proposed TS change will reduce false MCR high toxic chemical concentration alarms and reduce the number of unnecessary challenges to the associated safety-related systems and equipment. Therefore, the proposed TS changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101.

NRC Project Director: Michael L. Boyle, Acting

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: August 25, 1993

Description of amendment request: The amendment would modify the Technical Specification (TS) Surveillance Requirement (SR) 4.7.1.3 to require that all spray pond spray network piping above the frost line be drained within 1 hour after being used only when the ambient temperature is below 40°F.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specifications (TS) change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to the TS Surveillance Requirement (SR) does not require any modifications to the plant or equipment, and does not impact any design or functional requirements of the spray pond, Emergency Service Water (ESW), or Residual Heat Removal Service Water (RHRSW) systems. No new failure modes are created by the proposed TS change. The operation of the spray pond as a source of cooling water for the ESW and RHRSW systems, and as the ultimate heat sink is not affected. The ESW and RHRSW systems will continue to function as designed to mitigate the consequences of an accident by providing cooling water to selected plant equipment. The spray pond spray networks for the ESW and RHRSW systems will continue to operate as designed. These spray networks will continue to be drained soon enough to preclude the effects of freezing and will be available during cold weather conditions. Plant procedures will continue to require draining of the spray networks after use to minimize corrosion. Therefore, the proposed TS change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to the TS SR does not require physical changes to the plant or equipment, and does not impact any design or functional requirements of the spray pond, ESW, or RHRSW systems. The proposed TS change only effects systems that are designed to mitigate the consequences of an accident and therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

The proposed change to the TS SR does not involve a change to the design or functional requirements of the spray pond, ESW, and RHRSW systems. These systems will continue to function as designed to mitigate the consequences of an accident. The spray pond spray networks will continue to be drained to prevent freezing and to ensure that the corrosion allowance of 250 mils is not exceeded over the licensed 40 year life of the plants. The current TS SR requires that the spray network piping be drained one (1) after use regardless of air temperature. The impact of this proposed change on system availability to drain the spray networks one (1) after use only when the ambient air temperature is below 40°F is negligible, since water freezes at 32°F and the intent of TS SR 4.7.1.3c is to prevent the spray networks and network supply piping from freezing, thereby ensuring the availability of the spray networks during cold weather conditions as discussed in Section 9.2.5 of NUREG-0991, "Safety Evaluation Report Related to the Operation of Limerick Generating Station, Units 1 and 2," dated August 1983. Plant procedures currently require that the spray network piping to [sic] [be] drained 24 hours after use to minimize corrosion. Therefore, the proposed TS change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Michael L. Boyle, Acting

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: August 25, 1993

Description of amendment request: The amendment would revise Technical

Specification Surveillance Requirement 4.5.1 to reduce the frequency for venting the Emergency Core Cooling System (ECCS) piping from once every 31 days to once every 6 months.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specifications (TS) changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the TS Surveillance Requirement (SR) do not involve any physical changes to plant systems or components, nor do they affect the ability of the Low Pressure Coolant Injection (LPCI), Core Spray (CS), and High Pressure Coolant Injection (HPCI) systems to respond to an accident. These systems do not initiate an accident since their design function is accident mitigation. The Safeguard Piping Fill system will continue to function as designed to maintain these ECCS pump discharge lines completely full. Operating experience has shown that only insignificant amounts of air have ever been vented from the high point vents for the LPCI, CS, and HPCI systems during performance of this TS SR. The proposed TS changes will require that these ECCS pump discharge lines be vented once every six (6) months rather than once every 31 days to remove any entrained air. The frequency of venting these ECCS pump discharge lines has no impact on the types of accidents that have been previously evaluated. Additionally, high point vent alarms annunciate in the Main Control Room (MCR) indicating that an ECCS pump discharge line is not completely full. Therefore, the proposed TS changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the TS SR do not require any physical changes to plant systems or components, nor do they affect the ability of the LPCI, CS, and HPCI systems to mitigate the consequences of an accident. These systems would not contribute to the initiation of an accident since their function is accident mitigation. Reducing the frequency of venting these ECCS pump discharge lines from once every 31 days to once every six (6) months has no impact on the types of accidents that could occur. The Safeguard Piping Fill system will continue to function as designed to maintain these ECCS pump discharge lines in a full condition. Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The proposed changes to the TS SR do not involve any physical changes to the design or functional requirements of the LPCI, CS, and HPCI systems. These systems will continue to function as designed to mitigate the consequences of an accident. The Safeguard Piping Fill system will continue to function as designed to maintain these ECCS pump discharge lines in a full condition. The high point vent alarms which annunciate in the MCR will continue to provide Operations personnel of indication that an ECCS pump discharge pipe is completely full. The operation of the Safeguard Piping Fill system in conjunction with the high point vent alarms will ensure that these ECCS pump discharge lines remain full. Therefore, the proposed TS changes to reduce the frequency of venting the ECCS pump discharge piping from once every 31 days to once every six (6) months do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Michael L. Boyle, Acting

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: February 25, 1993 as supplemented by letter dated September 1, 1993.

Description of amendment request: The licensee proposes to revise the Technical Specifications to make the Effluent Report an annual submittal in accordance with the revision to 10 CFR 50.36a that was published on August 31, 1992.

Basis for proposed no significant hazards consideration determination: As require d by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because they do not affect operation, equipment or a safety related activity and are hence administrative in nature. Thus, these administrative changes cannot affect the probability or consequences of any accident.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated because these changes are purely administrative and do not affect the plant. Therefore, these changes cannot create the possibility of any accident.

3. The proposed changes do not involve a significant reduction in a margin of safety because the changes do not affect any safety related activity or equipment. These changes are purely administrative in nature and do not affect the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Michael L. Boyle, Acting

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: August 30, 1993

Description of amendment request: This license change request would revise the composition of the Station Operations Review Committee (SORC) and increase the submittal interval of the Radiological Effluent Release Report from semiannually to annually.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment to eliminate the Radiation Protection/Chemistry Manager position and establish the Radiation Protection Manager and Chemistry Manager as Station Operations Review Committee (SORC) members, as well as the proposed change to the [Radiological Effluent Release Report] RERR submittal frequency from semiannually to annually are changes that are administrative in nature. Therefore, the

above changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment does not involve any physical changes to plant structures, systems or components, or change the manner in which the plant is operated. Therefore, the proposed changes will not increase the probability of accidents of a different type, nor will they create malfunctions of a different type than any previously evaluated in the [Safety Analysis Report] SAR.

3. Will not involve a significant reduction in a margin of safety.

The basis for this statement is outlined in Item 1 above:

[The proposed amendment to eliminate the Radiation Protection/Chemistry Manager position and establish the Radiation Protection Manager and Chemistry Manager as Station Operations Review Committee (SORC) members, as well as the proposed change to the RERR submittal frequency from semiannually to annually are changes that are administrative in nature. Therefore, the above changes do not involve a significant reduction in a margin of safety.]

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Michael L. Boyle, Acting

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: August 30, 1993

Description of amendment request: This license change would make the following changes:

1. Revise TS Table 3.8.4.1-1 to delete Breaker No. 52-263022 which was disconnected and converted to spare status by a plant design change.

2. Revise TS 3.11.2.7 to change radioactivity rate units to microcuries/sec instead of millicuries/sec, change the action statement reference to HOT STANDBY to read HOT SHUTDOWN, and change the reference to the Offgas Radioactivity Monitor (in Surveillance Requirement 4.11.2.7.2.b) to read Offgas Pretreatment Radiation Monitor.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to Table 3.8.4.1-1 would delete Breaker No. 52-263022. This change is administrative in nature and would in no way affect the initial conditions, assumptions, or conclusions of the Hope Creek accident analyses. Likewise, the proposed changes to Specification 3.11.2.7 which replace "millicuries" with "microcuries," "HOT STANDBY" with "HOT SHUTDOWN," and "Offgas Radioactivity Monitor" with "Offgas Pretreatment Radiation Monitor," are administrative in nature and do not affect the initial conditions, assumptions, or conclusions of the Hope Creek accident analyses. These changes do not affect the operation or performance of any equipment assumed in the accident analyses. Therefore, based on the above information, we conclude that the proposed changes would not significantly increase the probability or consequences of any accident previously evaluated.

2. Will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment does not involve any physical changes to plant structures, systems or components, or change the manner in which the plant is operated. Therefore, the proposed changes will not increase the probability of accidents of a different type, nor will they create malfunctions of a different type than any previously evaluated in the SAR.

3. Will not involve a significant reduction in a margin of safety.

The basis for this statement is outlined in Item 1 above. [The proposed change to Table 3.8.4.1-1 would delete Breaker No. 52-263022. This change is administrative in nature and would in no way affect the initial conditions, assumptions, or conclusions of the Hope Creek accident analyses. Likewise, the proposed changes to Specification 3.11.2.7 which replace "millicuries" with "microcuries," "HOT STANDBY" with "HOT SHUTDOWN," and "Offgas Radioactivity Monitor" with "Offgas Pretreatment Radiation Monitor," are administrative in nature and do not affect the initial conditions, assumptions, or conclusions of the Hope Creek accident analyses. These changes do not affect the operation or performance of any equipment assumed in the accident analyses. Therefore, based on the above information, we conclude that the proposed changes would not involve a significant reduction in a margin of safety.]

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Michael L. Boyle, Acting

Public Service Electric & Gas Company, Docket No. 50-311, Salem Nuclear Generating Station, Unit No. 2, Salem County, New Jersey

Date of amendment request: August 30, 1993

Description of amendment request: The proposed change would replace the main feedwater control (BF-19s) and control bypass (BF-40s) valves with the main feedwater stop check (BF-22s) valves for the containment isolation function in the Technical Specifications, Table 3.6-1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does not involve a significant increase in the probability or consequence of an accident previously evaluated.

The main feedwater stop check valves provide the same isolation function presently accomplished by the main feedwater control and control bypass valves, without reliance on an actuation signal. Positive closure is assured during all postulated accident scenarios, through remote-manual control in the main control room. These valves satisfy the requirements of GDC 57 for Containment Isolation.

Therefore, it may be concluded that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The main feedwater stop check valves were originally intended to perform the Containment Isolation function. The only changes to the original plant design were the addition of motor operators and the upgrading of controls to safety related. These changes bring the stop check valves into compliance with GDC 57 requirements, and ensure positive valve closure during all postulated accident scenarios.

Therefore, no new or different accidents from those previously evaluated will be created.

3. Do not involve a significant reduction in a margin of safety.

Check valves provide inherent isolation from reverse flow conditions. Stop check valves provided increased safety due to the

positive closure feature. Motor operators with remote-manual closure capability, allow positive closure from the main control room during all postulated accident scenarios. These features ensure an adequate margin of safety is maintained.

Additionally, Feedwater Isolation, utilizing the main feedwater control and control bypass valves, occurs through Reactor Trip and/or Engineered Safety Features actuation. This feature is redundant to the stop check valves for Containment Isolation Feature.

Therefore, it may be concluded that the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Michael L. Boyle, Acting

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of amendment requests: September 15, 1993

Description of amendment requests: The licensee proposes to revise Technical Specification (TS) Table 2.2-1 "Reactor Protective Instrumentation Trip Setpoint Limits," Table 3.3-1, "Reactor Protective Instrumentation," Table 3.3-3, "Engineered Safety Feature Actuation System Instrumentation," and Table 3.3-4, "Engineered Safety Feature Actuation System Instrumentation Trip Values," TSs 3/4.5.2, "ECCS Subsystems - Tavg Greater Than 350°F," and 3/4.5.3, "ECCS Subsystems - Tavg Less Than 350°F," and the associated Bases for the above TSs. The proposed revision to the tables changes the pressure at which the Low Pressurizer Pressure (LPP) trip may be manually bypassed to less than 472 psia and the pressure the bypass shall be automatically removed to greater than or equal to 472 psia. This new pressure is an allowable value which includes total loop uncertainties for the instruments used in the LPP trip circuit. The proposed revision to TSs 3/4.5.2 and 3/4.5.3 changes the pressurizer pressure limit from 400 psia to 472 psia for the operability in Mode 3 of the ECCS Subsystems in both TSs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The accidents that may be affected by the proposed change are the Steam Line Break (SLB) and a Loss of Coolant Accident (LOCA). The Reactor Protection System/Engineered Safety Feature Actuation System (RPS/ESFAS) bypass, if in effect, would not initiate a reactor trip and safety injection actuation on low pressurizer pressure to mitigate the consequences of a SLB or a LOCA occurring at these conditions. The consequences of an unmitigated accident will be the potential for return to criticality and subsequent approach to the specified acceptable fuel design limits and the potential for exceeding Emergency Core Cooling System (ECCS) acceptance criteria. The higher value (472 psia as opposed to 400 psia) at which automatic removal of Low Pressurizer Pressure (LPP) trip manual bypass becomes effective is justified based on the results of an evaluation of the limiting SLB and LOCA events occurring in Mode 3 at a pressurizer pressure of 500 psia and the revised setpoint calculations.

A main SLB outside containment initiated at 500 psia does not require an automatic Safety Injection Actuation Signal (SIAS) to mitigate the consequences of the event. At a Reactor Coolant System (RCS) pressure of 500 psia, the maximum RCS temperature would be less than 467°F (saturation temperature at 500 psia). In the event of an SLB from this condition, the total positive reactivity that would be added would be approximately 4.3% $\Delta\rho$ as compared to 3.9% $\Delta\rho$ that would be added if an SLB were to occur at 400 psia. This 4.3% $\Delta\rho$ reactivity is the sum of Doppler and moderator reactivity additions and includes uncertainties.

This reactivity addition represents an RCS cooldown from 467°F to 212°F, at which point the cooldown from the SLB has already stopped since the Steam Generator (SG) water temperature is below the boiling point. For this case, the shutdown marginrequired by the Technical Specification (TS) in Mode 3 is 5.15% $\Delta\rho$. Therefore, the shutdown margin is more than sufficient to offset the reactivity insertion due to an SLB at 500 psia and preclude a return to criticality. The allowable value of 472 psia includes instrument uncertainties and will continue to ensure the analytical limit of 500 psia is not exceeded.

A main SLB inside containment or a LOCA would result in automatic SIAS generated by the ESFAS high containment pressure signal. The high containment pressure actuation of SIAS is maintained during all modes of plant operation. The high containment pressure SIAS setpoint trip is 3.4 psig (3.7 psig allowable value). As indicated above, an SLB initiated at 500 psia does not require automatic SIAS to mitigate the consequences of the event. However, automatic SIAS on high containment pressure would occur for all but the smallest SLB to provide mitigation for the SLB inside containment.

The consequences of a LOCA are not sensitive to the initial RCS pressure assumed (either 400 psia, 472 psia, or 500 psia). At 3.4 psig containment pressure, SIAS would actuate the safety injection (SI) equipment that is required to be operable by the TSs to mitigate the event. Containment pressure following a LOCA, and hence the time the high containment pressure setpoint is reached is not sensitive to the initial pressure. Automatic SIAS on high containment pressure would be expected for all LOCAs except for very small break LOCAs at the small end of the break spectrum. Containment analysis of the smallest break (0.01 ft^2) in the Updated Final Safety Analysis Report (UFSAR) indicates that automatic SIAS actuation on high containment pressure would occur prior to core uncovery. For smaller break sizes, for which a containment high pressure signal may not be generated, the time available would be sufficient to credit manual SIAS initiation to mitigate the event.

The probability of occurrence of a LOCA in Mode 3 or Mode 4 is lower than that in Mode 1. Analysis of Mode 3 or Mode 4 LOCA is not performed as part of the UFSAR and is not required to comply with ECCS performance criteria. However, the TSs require RPS/ESFAS instrumentation and Engineered Safety Feature equipment to be operable in Modes 3 and 4 to mitigate the event should it occur. The requirement for automatic SIAS initiated by two diverse signals (low pressurizer pressure and high containment pressure) over a wide range of plant operating modes ensures the capability to automatically actuate the SIAS if required during plant startup and shutdown. The consequences of a credible size LOCA in Modes 3 or 4, with the safety injection equipment required by the TSs operable and with automatic SIAS on high containment pressure or manual SIAS for very small LOCAs, has been evaluated to be acceptable based on Nuclear Steam Supply System vendor study. Therefore, there is no significant increase in probability or consequences associated with an increase in the LPP trip bypass automatic removal from 400 psia to 472 psia.

The proposed change revises the footnote on mode applicability in TSs 3/4.5.2 and TS 3/4.5.3 to be consistent with the change in pressure for the automatic removal of the LPP trip bypass. Proposed TS 3/4.5.2 specifies the ECCS subsystems required to be operable in Modes 1, 2, and 3 (with pressurizer pressure greater than or equal to 472 psia). Proposed TS 3/4.5.3 specifies the ECCS subsystems required to be operable in Mode 3 (with pressurizer pressure less than 472 psia), and in Mode 4. The ECCS subsystems which are required to be operable when the LPP reactor trip and SIAS are in bypass are those specified in TS 3/4.5.3. The ECCS subsystems required to be operable in Mode 3 up to 400 psia under the existing TS 3/4.5.3 when the bypass is in effect are the same as

those required to be operable under the proposed TS 3/4.5.3. Therefore, there is no difference in the SI equipment actuated if the LOCA is initiated at 400 psia or 472 psia.

Therefore, operation of the facility in accordance with this proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

There is no possibility of a new or different accident occurring as a result of this proposed change because the operator is still required to manually enable and manually remove the LPP bypass in the event the automatic removal function fails. The automatic removal of the LPP trip bypass provides additional safeguard when the pressurizer pressure exceeds 472 psia. Therefore, operation of the facility in accordance with this proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No

This proposed change does not significantly change the margin of safety since the same operator action to ensure operability of the LPP trip bypass function is still required. The feature of automatic removal of the LPP trip manual bypass will maintain the existing margin of safety because the evaluation of potentially affected accidents indicates that the acceptance criteria for the events continue to be met at the increased value (472 psia) of the LPP trip bypass automatic removal. The new allowable value, based on the explicit determination of instrument uncertainties in the revised LPP setpoint calculations, will continue to ensure the 500 psia analytical limit for automatic removal of the LPP trip bypass will not be exceeded.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713

Attorney for licensee: James A. Beoletto, Esquire, Southern California Edison Company, P. O. Box 800, Rosemead, California 91770

NRC Project Director: Theodore R. Quay

Tennessee Valley Authority, Docket No. 50-328, Sequoyah Nuclear Plant, Unit 2, Hamilton County, Tennessee

Date of amendment request: September 8, 1993

Description of amendment request: The proposed change would add Operating License Condition 2.C.(17) to temporarily extend the surveillance interval for certain specified instruments from the normal 18-month interval to a maximum of 25 months in order to prevent exceeding the allowable testing frequency prior to the refueling outage that is scheduled to start in January 1994.

Basis for proposed no significant hazards consideration determination: Asrequired by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

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 is temporary and allows a one-time extension of specific 18-month surveillance requirements (SRs) for Cycle 6 to allow surveillance testing to coincide with the sixth refueling outage. The proposed surveillance interval extension is short and will not cause a significant reduction in system reliability nor affect the ability of the systems to perform their design function. Current monitoring of plant conditions and continuation of the surveillance testing required during normal plant operation will continue to be performed to ensure conformance with TS operability requirements. Therefore, this change does not 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 previously analyzed.

Extending the surveillance interval for the performance of specific testing will not create the possibility of any new or different kind of accidents. No change is required to any system configurations, plant equipment, or analyses. Therefore, this change will 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.

Surveillance interval extensions will not impact any plant safety analyses since the assumptions used will remain unchanged. The safety limits assumed in the accident analyses and the design function of the equipment required to mitigate the consequences of any postulated accidents will not be changed since only the 18-month surveillance test interval is being extended. Extending the surveillance test interval for the performance of these specific tests could slightly reduce the margin of safety derived from required surveillances. However, historical performance generally indicates a high degree of reliability, and surveillance testing performed during normal plant operation will continue to be performed to verify proper performance. Therefore, the plant will be maintained within the analyzed limits, and the proposed extension will not significantly reduce the margin of safety.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Previously Published Notices of Consideration of Issuance of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Duquesne Light Company, et al., Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: November 2, 1992, as supplemented February 23, June 28, July 9, and two additional supplements dated August 16, 1993.

Description of amendment request: The proposed amendment would modify the Technical Specifications to increase the storage capacity of the spent fuel pool at the Beaver Valley Power Station, Unit No. 1.

Date of publication of individual notice in **Federal Register:** September 8, 1993 (58 FR 47303)

Expiration date of individual notice: October 8, 1993

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: April 7, 1993, as superseded September 2, 1993

Brief description of amendment: The proposed amendment would revise Technical Specification Section 3/4.1.3.5, "Control Rod Scram Accumulators." Surveillance Requirement 4.1.3.5.b.2, which requires control rod drive scram accumulator testing once per 18 months and specifies test acceptance criteria, would be deleted. In addition, the required actions for inoperable control rod scram accumulators in OPERATIONAL CONDITIONS 1 and 2, contained in Actions a.1 and a.2 of Limiting Condition for Operation 3.1.3.5, would be modified. This notice supersedes the notice published on April 28, 1993 (58 FR 25858) in its entirety.

Date of publication of individual notice in **Federal Register:** September 10, 1993 (58 FR 47771)

Expiration date of individual notice: October 12, 1993

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: August 26, 1993

Description of amendment request: The proposed amendment would revise a requirement with respect to a surveillance requirement relating to the Refueling Water Storage Tank (RWST) narrow range level transmitters. Specifically, the proposed amendment would revise Technical Specification 4.3.2.1, Table 4.3-2, Functional Unit 8.b by deleting the requirement to perform a CHANNEL CHECK at least once per 12 hours and by adding a new requirement to perform a TRIP ACTUATING DEVICE OPERATIONAL TEST (TADOT) at least once per 92 days. A note would be added to clarify that setpoint verification would not be applicable to the TADOT.

Date of publication of individual notice in **Federal Register:** September 10, 1993 (58 FR 47773).

Expiration date of individual notice: October 12, 1993.

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document rooms for the particular facilities involved.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: December 31, 1992, as revised by letter dated July 20, 1993, and supplemented August 9, and August 27, 1993.

Brief description of amendments: The amendments change the Technical Specifications to (1) revise the number of nuclear service water pumps (NSWP) required to be operable from two NSWP per unit to three NSWP serving the site whenever either unit is in operational condition 1, 2, or 3; (2) revise the action statements associated with certain service water system pump configurations in all operational conditions, (3) incorporate the surveillance requirements of TS 4.7.1.2.c into the action statement of b.4 of TS 3.7.1.2, and add a quarterly surveillance of the pressure switch logic and valve actuation capability associated with the service water to the diesel generators supply to the emergency diesel generators as TS 4.7.1.2.c.

Date of issuance: September 14, 1993

Effective date: September 14, 1993

Amendment Nos.: 164 and 195

Facility Operating License Nos. DPR-71 and DPR-62: Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** March 31, 1993 (58 FR 16853) The July 20, August 9, and August 27, 1993, letters provided changes and additional information that were not outside the scope of the initial determination of no significant hazards consideration as published in the FEDERAL REGISTER.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 14, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: March 2, 1993

Brief description of amendments: The amendments change the Snubber Visual Inspection Intervals and Corrective Actions in Technical Specification (TS)

surveillance requirements 4.7.9.b and 4.7.9.c to the alternative requirements provided in Generic Letter 90-09, "Alternative Visual Inspection Intervals and Corrective Actions." The associated TS Bases were also modified to reflect the TS change. Additionally, minor changes were made to TS 4.7.9.e to remove a reference to the first refueling outage and a footnote referencing Cycle 2.

Date of issuance: September 1, 1993

Effective date: September 1, 1993

Amendment Nos.: 91 and 75

Facility Operating License Nos. NPF-11 and NPF-18. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 7, 1993 (58 FR 36431).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 1, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: June 12, 1992, as supplemented October 7, 1992, and July 8, 1993.

Brief description of amendment: This amendment revises the Palisades Technical Specifications 3.19 and 4.2 to delete the requirements relating to the Iodine Removal System Hydrazine Storage Tank, T-102, and to rearrange the remaining requirements in an updated format.

Date of issuance: September 9, 1993

Effective date: September 9, 1993

Amendment No.: 158

Facility Operating License No. DPR-20. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 16, 1992 (57 FR 42775). The licensee's October 7, 1992, and July 8, 1993 submittals provided clarifying information at the request of the NRC staff. These submittals did not change the initial application or the no significant hazards determination as originally noticed. Therefore, renoticing was not warranted.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 9, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: November 14, 1990

Brief description of amendment: The amendment removes completed license conditions from the Fermi-2 Facility Operating License. A portion of the amendment request was denied. A separate Notice of Denial of Amendment has been sent to the **Federal Register** for publication.

Date of issuance: September 7, 1993

Effective date: The date of issuance with full implementation within 30 days of issuance.

Amendment No.: 92

Facility Operating License No. NPF-43. Amendment revises the Facility Operating License.

Date of initial notice in **Federal Register:** September 18, 1991 (56 FR 47233)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 7, 1993.

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: February 25, 1993, as supplemented May 20 and August 11, 1993

Brief description of amendments: The amendments revise the Technical Specification by changing the frequency of reporting releases of radionuclides in liquid and gaseous effluents, and releases of solid waste, from a semiannual to an annual basis.

Date of issuance: September 16, 1993

Effective date: September 16, 1993

Amendment Nos.: 109 and 103

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 4, 1993 (58 FR 41502) The August 11, 1993, letter provided clarifying information that did not change the scope of the NRC's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 16, 1993.

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. 50-269, 50-270, and 50-287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: February 23, 1993, as supplemented May 4, 1993

Brief description of amendments: The amendments delete Table 4.4-1, List of Penetrations with 10 CFR Part 50, Appendix J Test Requirements, from the Technical Specifications. The list of penetrations would then be relocated to the Selected Licensee Commitments Manual.

Date of issuance: September 16, 1993

Effective date: September 16, 1993

Amendment Nos.: 201, 201, and 198

Facility Operating License Nos. DPR-38, DPR-47, and DPR-55: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34074)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 16, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: March 19, 1993

Brief description of amendment: The amendment allowed the reconstitution of fuel assemblies by using a limited number of stainless steel rods in place of damaged fuel rods.

Date of issuance: September 7, 1993

Effective date: September 7, 1993

Amendment No.: 168

Facility Operating License No. DPR-51. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 26, 1993 (58 FR 30193)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 7, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: June 7, 1993

Brief description of amendment: The amendment revises the plant TS to reflect the inclusion of gadolinia-urania in the fuel rod design description, to revise the borated water storage tank boron concentration limits, and to clarify the bases section of the TS. The amendment also places a reference in the TS to Babcock & Wilcox Topical Report BAW-10179P, "Safety Criteria and Methodology for Acceptable Cycle Reload Analyses."

Date of issuance: September 10, 1993

Effective date: September 10, 1993

Amendment No.: 178

Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 9, 1993 (58 FR 42352) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated September 10, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

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 17 and April 16, 1993

Brief description of amendment: The amendment makes changes to the Clinton Power Station (CPS) Operating License and Technical Specification (TS) 3/4.6.1.2, "Primary Containment Leakage," and its associated Bases to reflect the partial exemptions to the requirements of 10 CFR Part 50, Appendix J, Sections III.D.1.(a), III.B.1.(b), III.B.3, and III.D.2 that were granted by the NRC on September 7, 1993. These exemptions: (1) remove the requirement that the third Type A test of each 10-year service period be conducted when the plant is shutdown for the 10-year plant inservice inspection; and (2) remove the requirement to perform a Type B test of inclined fuel transfer system penetration 1MC-4 until the fifth refueling outage. Additionally, CPS TS 3/4.6.1.2 is being revised to delete references to a previously approved and unrelated one-time exemption that is no longer applicable. The NRC is deferring action on additional changes requested in the February 17, 1993, amendment application.

Date of issuance: September 8, 1993

Effective date: September 8, 1993

Amendment No.: 83

Facility Operating License No. NPF-62. The amendment revised the Operating License and Technical Specifications.

Date of initial notice in **Federal Register:** March 31, 1993 (58 FR 16864) and May 26, 1993 (58 FR 30197).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 8, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: April 30, 1993

Brief description of amendment: The amendment revises Action Statement a.2. of Technical Specification (TS) 3.6.5.3. This Action Statement is applicable in OPERATIONAL CONDITION * when one standby gas treatment system (SGTS) subsystem is inoperable. This revision to Action Statement a.2. of TS 3.6.5.3 permits handling of irradiated fuel in the reactor building, CORE ALTERATIONS, and operations with a potential for draining the reactor vessel to continue in OPERATIONAL CONDITION * provided the OPERABLE SGTS subsystem is in operation. This revision also permits entry into OPERATIONAL CONDITION * with one SGTS subsystem inoperable, provided the OPERABLE SGTS subsystem is in operation.

Date of issuance: September 7, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 47

Facility Operating License No. NPF-69: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** June 9, 1993 (58 FR 32385)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 7, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of application for amendments: June 11, 1993, as revised June 30, 1993.

Brief description of amendments: The amendments revise the Technical Specifications (TS) to increase fuel enrichment from 4.25 weight percent to 5.0 weight percent. This includes a revision to the TS to allow 5.0 weight percent U-235 fuel to be stored in the new fuel vault and the spent fuel pool and used in the core. In addition, TS are being revised to increase the minimum RWST boron concentration and incorporate references to natural uranium and ZIRLO clad material into the reactor core design description. Bases for TS 3.8.E.1 and 3.8.E.2 are being incorporated into the fuel handling specification bases.

Date of issuance: September 3, 1993

Effective date: September 3, 1993

Amendment Nos.: 108 and 101

Facility Operating License Nos. DPR-42 and DPR-60. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 21, 1993 (58 FR 39054).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 3, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Philadelphia Electric Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket No. 50-278, Peach Bottom Atomic Power Station, Unit 3, York County, Pennsylvania

Date of application for amendment: April 1, 1993, as supplemented by letters dated April 7, July 16, and August 20, 1993.

Brief description of amendment: This amendment implements an expanded power-to-flow operating domain for Unit 3 supported by the Average Power Range Monitor, Rod Block Monitor, Technical Specifications Improvement/ Maximum Extended Load Line Limit Analysis (ARTS/MELLLA) (NEDC-32162P, Revision 1, February 1993) submitted in the licensee's April 1,

1993, application. In addition, the NRC staff has also reviewed the SAFER/GESTR loss-of-coolant-accident analysis submitted by the licensee's letter dated April 7, 1993.

Date of issuance: September 14, 1993

Effective date: Following startup from Refueling Outage 3RO9

Amendment No.: 184

Facility Operating License No. DPR-56: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 21, 1993 (58 FR 39058).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 14, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: June 30, 1993

Brief description of amendment: The amendment makes four changes to the Technical Specifications (TSs). The first change revises TS 3.7.A. and associated Bases to specify minimum and maximum water levels in the torus in terms of elevation above the bottom of the torus rather than in terms of depth of vent submergence. The second change revises TS 4.7.A. and associated Bases to require torus inspections during each operating cycle rather than during each refueling outage. This change permits torus inspections to be conducted during mid-cycle outages as well as during refueling outages. The third change also revises TS 4.7.A. and associated Bases to clarify the responsibility of the operator to observe suppression pool temperature and to require operator logging of suppression pool temperature when continuous recording is not available. The fourth change corrects editorial errors and clarifies terminology in TSs 3.7.A., 4.7.A., and associated Bases.

Date of issuance: September 9, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 197

Facility Operating License No. DPR-59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 4, 1993 (58 FR 41512)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 9, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: May 1, 1992

Brief description of amendment: This amendment allows usage of the containment atmosphere gaseous radioactivity monitoring system as an alternate method of determining the presence of reactor coolant system leakage, and clarifies the applicability of Technical Specification (TS) 4.0.4 exceptions to the TS for reactor coolant system operational leakage.

Date of issuance: September 9, 1993

Effective date: September 9, 1993

Amendment No. 180

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 2, 1992 (57 FR 40222)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 9, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: September 3, 1992, as supplemented by letter dated March 17, 1993.

Brief description of amendment: The amendments revised the Comanche Peak Steam Electric Station (CPSES), Units 1 and 2 Technical Specifications to replace the analysis of record for CPSES Unit 1 for small break loss-of-coolant accidents (SBLOCA). The proposed change replaces the 1975 SBLOCA evaluation model using the WFLASH computer code with the 1985 CBLOCA evaluation model using the NOTRUMP computer code.

Date of issuance: September 9, 1993

Effective date: September 9, 1993, to be implemented within 30 days of issuance.

Amendment Nos: Unit 1 - Amendment No. 18; Unit 2 -Amendment No. 4

Facility Operating License Nos. NPF-87 and NPF-89: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 14, 1993 (58 FR 19488)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 9, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P. O. Box 19497, Arlington, Texas 76019

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: June 25, 1993

Brief description of amendment: The amendment revises Technical Specification 1.0.B to clarify the definition of "core alteration" to include only those components which affect core reactivity.

Date of issuance: September 3, 1993

Effective date: September 3, 1993

Amendment No.: 137

Facility Operating License No. DPR-28. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 4, 1993 (58 FR 41517)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 3, 1993

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: July 2, 1993

Brief description of amendments: The amendments revise the NA-1&2 TS 3/4.6.1.2 by removing the schedular requirements for Type A tests to be performed specifically at 40 plus or minus 10 month intervals and instead reference Type A testing in accordance with Appendix J to 10 CFR Part 50. The

proposed changes also include several editorial/administrative changes.

Date of issuance: September 7, 1993

Effective date: September 7, 1993

Amendment Nos.: 173, 154

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 4, 1993 (58 FR 41517)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 7, 1993.

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.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: May 24, 1993

Brief description of amendments: These amendments increase the allowable as-found main steam safety valve setpoint tolerance from 1% to 3%.

Date of issuance: September 7, 1993

Effective date: September 7, 1993

Amendment Nos.: 174, 155

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 7, 1993 (58 FR 36448)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 7, 1993.

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.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of application for amendments: July 16, 1993

Brief description of amendments: The amendments (1) allow operation with a three degree Fahrenheit increase in the service water temperature limit for containment air partial pressures of 9.1, 9.2, and 9.35 psia and (2) correct typographical errors associated with the reactor coolant system temperature and pressure values which were transposed in Amendment Nos. 172 and 171, dated January 22, 1993. The licensee proposed the changes since the temperature limits are approached during periods of extended hot weather, minimal rainfall, and low tide.

Date of issuance: September 7, 1993

Effective date: September 7, 1993

Amendment Nos. 183, 183

Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 4, 1993 (58 FR 41519)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 7, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: June 2, 1993

Brief description of amendment: The amendment modifies the administrative section of the Technical Specifications to make the Corporate Nuclear Safety Review Board (CNSRB) responsible to the Assistant Managing Director for Operations (AMDO), who is the utility's designated manager having responsibility for overall plant nuclear safety.

Date of issuance: September 8, 1993

Effective date: September 23, 1993

Amendment No.: 118

Facility Operating License No. NPF-21: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 4, 1993 (58 FR 41520)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 8, 1993.Public comments on proposed no significant hazards consideration comments received: No.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: March 30, 1990

Brief description of amendments: The amendments changed Section 15.4.5, "Emergency Core Cooling System and Containment Cooling System," to allow testing of the safety injection system while motor breakers are racked in and operable. Section 15.4.6, "Emergency Power System Periodic Tests," was revised to relocate requirements for performing tests of emergency lighting, to eliminate the requirement that emergency lighting be tested during the test of the automatic start of the diesel generators and to delete notations that are no longer applicable as an administrative improvement. Section 15.6.12, "Environmental Qualification," was deleted.

Date of issuance: September 7, 1993

Effective date: September 7, 1993

Amendment Nos.: 141 and 145

Facility Operating License Nos. DPR-24 and DPR-27. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 4, 1991 (56 FR 43819)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 7, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241.

Dated at Rockville, Maryland, this 22nd day of September 1993.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects - I/II, Office of Nuclear Reactor Regulation

[FR Doc. 93-23732 Filed 9-28-93; 8:45 am]

BILLING CODE 7590-01-F

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee (TPSC); Generalized System of Preferences (GSP); Notice of Amendment of Deadline for Public Comments Submitted in Connection With Special Expedited Review of Cyprus' Eligibility as a Beneficiary Developing Country Under the GSP

AGENCY: Office of the United States Trade Representative.

ACTION: Amendment of deadline for public comments submitted in connection with the special expedited review of Cyprus' eligibility as a beneficiary developing country under the Generalized System of Preferences (GSP).

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW., room 517, Washington, DC

20506. The telephone number is (202) 395–6971. Public versions of all documents relating to this review will be available for review by appointment with the USTR public reading room shortly following the filing deadline. Appointments may be made from 10 a.m. to noon and 1 p.m. to 4 p.m. by calling (202) 395–6186.

SUPPLEMENTARY INFORMATION: On September 21, 1993, the TPSC announces the commencement of an expedited review of Cyprus' eligibility as a beneficiary developing country under the GSP and a deadline for the submission of public comments in connection therewith. Notice is hereby given of a change in the deadline for the submission of public comments. Comments must be received no later than 5 p.m., October 21, 1993. The numerical and content requirements set forth in the original notice are unchanged.

All communications with regard to this review should be addressed to: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW., room 517, Washington, DC 20506. The telephone number is (202) 395–6971. Questions may be directed to any member of the staff of the GSP Information Center.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 93–23875 Filed 9–28–93; 8:45 am]

BILLING CODE 3901–01–M

PRESIDENT'S COMMISSION ON WHITE HOUSE FELLOWSHIPS

Mid-Year Meeting of Commissioners

AGENCY: President's Commission on White House Fellowships.

ACTION: Notice of mid-year meeting of the President's Commission on White House Fellowships. Closed to the public.

SUMMARY: Notice is hereby given that the mid-year meeting of the President's Commission on White House Fellowships will be held in the Old Executive Office Building, Washington, DC, on October 6, 1993, beginning at 9:30 a.m.

The mid-year meeting is convened for one day to review the overall operation of the program, including budgetary, recruitment and publicity issues, and to provide the Commissioners an opportunity to discuss new initiatives that will further improve the program.

It has been determined by the Director of the Office of Personnel Management that because of the confidential nature of the meeting, where criteria for the selection of future candidates is discussed, as well as the progress of members of the current class of White House Fellows, which, if revealed to the public would constitute a clear invasion of the individuals professional privacy, the content of this meeting falls within the provisions of section 552b(c) of title 5 of the United States Code. Accordingly, this meeting is closed to the public.

DATES: The date of the mid-year meeting of the President's Commission on White House Fellowships, which is closed to the public, is October 6, 1993.

FOR FURTHER INFORMATION CONTACT: Janet Kelliher, Administrative Officer, President's Commission on White House Fellowships, 712 Jackson Place, NW., Washington, DC 20503, (202) 395–4522.

Dated: September 13, 1993.

Brooke L. Shearer,

Director, President's Commission on White House Fellowships.

[FR Doc. 93–23774 Filed 9–28–93; 8:45 am]

BILLING CODE 6325–01–M

POSTAL SERVICE

International Money Orders

AGENCY: Postal Service.

ACTION: Change in international money order fee.

SUMMARY: Pursuant to its authority under 39 U.S.C. 407, the Postal Service is implementing a fee change for international money orders to certain countries. Currently, the international money order fee is $3.00, and that fee applies both to direct international money orders and to international money orders that require an Authorization to Issue an International Money Order, Effective on Monday, September 27, 1993, the fee for international money orders that require an Authorization to Issue an International Money Order will be $7.50. The fee for direct international money orders will remain $3.00. Change in international money order fees is unrelated to and does not affect in any way the fees and service associated with domestic money order service.

DATES: Effective 12:01 a.m. Monday, September 27, 1993.

FOR FURTHER INFORMATION CONTACT: John F. Alepa, (202) 268–2650. (Tom Sharkey, (202) 268–2644.)

ADDRESSES: Manager, Pricing, Marketing Systems, U.S. Postal Service, Washington, DC 20260–2406. Copies of all written responses will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in room 1140, 475 L'Enfant Plaza West, SW., Washington, DC.

SUPPLEMENTARY INFORMATION: International money order service is a service that is available to transfer funds to individuals or firms in countries that have entered into international money order agreements with the United States Postal Service.

There are two types of international money order service depending on the agreement with the foreign country. Direct Service (MP1) allows for the purchase of an international money order that can be forwarded by the purchaser directly to the foreign beneficiary. The forwarding may be accomplished by the purchaser using letter class mail or Express Mail International Service (EMS). The other service requires use of an Authorization to Issue an International Money Order. In this service the customer completes an application for the issuance of an international money order. The customer sends the application to the St. Louis Accounting Service Center, where it is processed and a "list of payments" is prepared. The list is then forwarded to the designated foreign postal administration for further processing, currency conversion, and distribution of a money order to the beneficiary. This additional processing makes money orders that require the use of an Authorization to Issue an International Money Order considerably more expensive to issue than direct money orders. The Postal Service has decided that in view of the differences between the two types of money order services, they should be treated differently for rate and fee purposes.

Although 39 U.S.C. 407 does not require an opportunity for submission of comments, and the Postal Service is exempted by 39 U.S.C. 410(a) from advance notice requirements of the Administrative Procedures Act regarding rulemaking, if any interested person wishes to submit written opinions concerning this notice, they may do so.

Authority: 39 U.S.C. 407, 410.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 93–23873 Filed 9–24–93; 8:45 am]

BILLING CODE 7710–12–M

Privacy Act of 1974; Computer Matching Program

AGENCY: Postal Service (USPS).

ACTION: Notice of computer matching program between the United States

Postal Service and the Bureau of the Public Debt, Department of the Treasury.

SUMMARY: Subsection (e)(12) of the Privacy Act, as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), requires agencies to publish advance notice of computer matching programs as a means of informing benefit recipients/employees of plans to conduct computer matches. This publishes notice that the USPS proposes to conduct a computer matching program with the Bureau of the Public Debt, Department of the Treasury. The matching program will compare USPS payroll and Public Debt debtor records to identify postal employees delinquently indebted to the federal government under the United States Savings-type Securities programs, Other Than Savings-type Securities programs and Treasury Payroll System programs administered by Public Debt. When voluntary payment is not forthcoming, Public Debt will request offset of those debts under the salary offset provisions of the Debt Collection Act of 1982 (Pub. L. 97–365).

DATES: Comments must be received on or before October 29, 1993. Unless comments are received that result in a contrary determination, the matching program covered by this notice will begin no sooner than 40 days after this published notice has been sent to the Congress and the Office of Management and Budget, and a copy of the matching agreement has been sent to Congress.

ADDRESSES: Comments may be mailed to the Records Officer, U.S. Postal Service, 475 L'Enfant Plaza, SW, Washington, DC 20260–5240 or delivered to Room 8831 at the above address between 8:15 a.m. and 4:45 p.m. Comments received may also be inspected during the above hours in Room 8831.

FOR FURTHER INFORMATION CONTACT: Sheila Allen, Records Office, (202) 268–4869.

SUPPLEMENTARY INFORMATION: In 1988, Public Debt referred 1,212 debtor records to the USPS for computer matching; 41 (or 3%) of those records were matched to records in the USPS payroll file. The proposed 1993 match will compare approximately 3,500 debtor records, representing approximately $833,780 in outstanding debt, and is expected to show a similar number of matches (3%). Public Debt estimates the collection of approximately $8,338 over the next 3 years subsequent to this match. Set forth below is a description of the computer matching program proposed by this notice in compliance with OMB Bulletin No. 89–22, "Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public."

Report of Computer Matching Program—United States Postal Service and the Bureau of Public Debt, Department of the Treasury (Comparing USPS Payroll and Public Debt Debtor Records)

A. *Participating Agencies.* The United States Postal Service (USPS) is the recipient agency and will perform the computer match with debtor records provided by the Bureau of Public Debt, the source agency in this matching program.

B. *Purpose of the Matching Program.* This matching program will compare USPS payroll and Public Debt delinquent debtor files to identify postal employees who may owe delinquent debts to the federal government under programs administered by Public Debt. The pay of an employee identified and verified as a delinquent debtor may be offset under the provisions of the Debt Collection Act of 1982 when voluntary payment is not made.

C. *Legal authorities authorizing operation of the match.* This matching program will be undertaken under the authority of the Debt Collection Act of 1982 (Pub. L. 97–365); 31 U.S.C. Chapter 37, Subchapter I (General) and Subchapter II (Claims of the United States Government), 3711 Collection and Compromise, 3716 Administrative Offset; 5 U.S.C. 5514 Installment Deduction for Indebtedness (Salary Offset); 4 CFR ch. II, Federal Claims Collection Standards (General Accounting Office—Department of Justice), 550.1101–550.1108 Collection by Offset from Indebted Government Employees (OPM); 31 CFR part 5, subparts B and D (Department of the Treasury) which authorize federal agencies to offset a federal employee's salary as a means of satisfying delinquent debts owed to the United States.

D. *Categories of individuals matched and identification of records used.* The systems of records maintained by the participant agencies under the Privacy Act of 1974, as amended, from which records will be disclosed for this matching program are:

1. USPS will use records from its system "Finance Records—Payroll System, USPS 050.020" containing payroll records for approximately 700,000 current employees. Disclosure will be made pursuant to routine use No. 24 of USPS 050.020, which last appeared at 57 FR 57515, dated December 4, 1992.

2. Public Debt will provide extracts from three Privacy Act systems of records containing records about approximately 3,500 debtors, full descriptions of which were last published in the **Federal Register** on April 17, 1992. Disclosures will be made from: (1) "United States Savings Type Securities—Treasury/BPD .002" (57 FR 14123), routine use No. 14; (2) "United States Securities (Other Than Savings Type Securities—Treasury/BPD .003" (57 FR 14125), routine use No. 14; and (3) "Treasury Integrated Management Information System (TIMIS)—Treasury/DO .002" (57 FR 13903), routine use No. 15.

E. *Description of the Matching Program.* The Bureau of Public Debt will provide to USPS a magnetic computer tape containing the names and social security numbers (SSN) of its debtors. By computer, the USPS will compare that information with its payroll file, establishing matched individuals (i.e., "hits") on the basis of like SSNs. For each matched individual, the USPS will provide to Public Debt the name, SSN, home address, date of birth, work location, and employee type (permanent or temporary). The identify and debtor status of an individual will be verified by Public Debt by manually comparing the "hit" file with Public Debt's debtor files; conducting independent inquiries when necessary to resolve questionable identities; and reviewing records of the suspected debtor's account to confirm that the debt is still in a non-pay status without resolution.

Due process procedures will be provided by Public Debt to matched individuals consisting of: (1) Verification of the debt; (2) 30-day written notice to the debtor explaining the debtor's rights; (3) provision for the debtor to examine and copy Public Debt's documentation of the debt; (4) provision for the debtor to seek Public Debt's review of the debt; (5) opportunity for a hearing before an individual who is not under the supervision or control of Public Debt; and (6) opportunity for the debtor to enter into a written agreement satisfactory to Public Debt for repayment. Only After Public Debt has afforded the debtor these opportunities and certified over the signature of an authorized agency official that all due process procedures have been followed will steps be taken to effect involuntary salary offset.

F. *Beginning and ending dates of the Matching Program.* The matching program is expected to begin in October, 1993 and to continue in effect for a

period not to exceed 18 months. The agreement may be extended for one additional year beyond that period if, within 3 months prior to the actual expiration date of the matching agreement, the Data Integrity Boards of both the USPS and the Treasury Department find that the computer matching program can be conducted without change and each party certifies that the matching program has been conducted in compliance with the matching agreement.

Stanley F. Mires,

Chief Counsel, Legislative Division.

[FR Doc. 93-23846 Filed 9-28-93; 8:45 am]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-32946; File No. S7-27-93]

Consolidated Tape Association; Notice of Filing of Sixteenth Substantive Amendment to the Restated Consolidated Tape Association Plan and Twentieth Substantive Amendment to the Consolidated Quotation Plan

September 22, 1993.

Pursuant to Rule 11Aa3-1 of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on September 14, 1993, the Consolidated Tape Association ("CTA") and the Consolidated Quotation ("CQ") Plan Participants filed with the Securities and Exchange Commission ("Commission" or "SEC") the amendments to the Restated CTA Plan and the CQ Plan to establish criteria to aid in the determination of the fee payable by a new entrant into either or both plans, to change references to the Midwest Stock Exchange ("MSE") in the plans to the Chicago Stock Exchange ("CHX"), and to update the addresses of the Participants.

CTA/CQ has designated the amendments as proposed Substantive Amendments to the respective Plans. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Description and Purpose of the Amendments

The purpose of the amendments is to introduce into the Plans criteria to aid in the determination of the fee payable by a new entrant into either or both Plans. The entry fee is designed to allow the new entrant to reimburse the other Participants for an appropriate portion of the development costs that have been expended in crating the CTA and CQ facilities. By introducing the criteria, the Participants hope to eliminate previous uncertainty surrounding the determination of the Plan-entry fee.

Since the CTA Plan was first approved by the Commission on May 10, 1974,[1] three additional national securities exchanges (Boston Stock Exchange ("BSE"), Cincinnati Stock Exchange ("CSE"), and Chicago Board Options Exchange ("CBOE")) have joined as participants in the Restated CTA Plan. Similarly, two national securities exchanges (CSE and CBOE) and one national securities association (National Association of Securities Dealers ("NASD")) have joined the CQ plan subsequent to its inception.[2] While the new entrants followed the entry procedures prescribed in the Plans, the Participants determined the manner in which each new entrant should reimburse the other Participants for development costs on a case-by-case basis.[3]

In addition, the amendments change references to the Midwest Stock Exchange ("MSE") in the Plans to the Chicago Stock Exchange ("CHX") in order to comport with that Participant's recent name change. It also updates the addresses of the Participants.

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 submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CTA/CQ. All submissions should refer to the file number in the caption above and should be submitted by October 20, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-23787 Filed 9-28-93; 8:45 am]

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[1] Securities Exchange Act Release No. 10787 (May 10, 1974), 39 FR 17799.

[2] The CQ Plan was approved by the Commission on January 22, 1980. Securities Exchange Act Release No. 16518 (January 22, 1980), 45 FR 6528.

[3] The CBOE was the most recent Participant to join the Plans. In establishing an appropriate entry fee, the Participants retained an outside consultant to assess the value to CBOE of the grant of access to the CTA and CQ facilities and negotiated the entry fee based in large part on that valuation.

[4] 17 CFR 200.30-3(a)(27) (1989).

[Release No. 34-32943; File No. SR-CBOE-91-38]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc., Order Approving Proposed Rule Change Relating to the Administration of the Floor Member Qualification Examination

September 22, 1993.

On November 12, 1991,[1] the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act")[2] and Rule 19b-4 thereunder,[3] a proposed rule change to allow the Commission to review the contents and administration of the Exchange's Floor Member Qualification Examination ("Floor Exam").[4]

The proposed rule change was published for comment on December 17, 1991.[5] No comments have been received on the proposed rule change. This order approves the proposal.

The CBOE's Floor Exam was created by the Exchange as a regulatory initiative designed to codify, clarify and give specificity to compliance obligations of members and member organizations. The Floor Exam is a qualification examination which is intended to ensure that CBOE floor members have the requisite knowledge, skill and ability necessary to carry out their job responsibilities.

The CBOE administers only one qualification examination, i.e., the Floor

[1] The CBOE on November 25, 1991 filed a minor revision to this proposal to provide that the full notice and comment period apply pursuant to section 19(b)(2) of the Act rather than summary effectiveness under Section 19(b)(3)(A) of the Act.

[2] 15 U.S.C. 78s(b)(1) (1982).

[3] 17 CFR 240.19b-4 (1993).

[4] The Commission requires that all self-regulatory organizations file for review and approval of all practices imposing qualification standards on their members. See Securities Exchange Act Release No. 17258 (October 30, 1980), 45 FR 73906. In a letter dated April 8, 1991, the Commission specifically requested that the CBOE submit as a proposed rule change all qualification examinations administered by the Exchange.

[5] See Securities Exchange Act Release No. 30057 (December 10, 1991), 56 FR 65526.

Exam. Pursuant to CBOE Rule 3.9(c)(2), all applicants for Exchange membership who are "seeking trading privileges" are required to take the Floor Exam, which includes individual members and the nominees of member organizations.[6] The same examination is given regardless of whether the applicant is seeking to act in the capacity of a floor broker or a market-maker.[7] Moreover, in addition to new membership applicants and nominees, if a member has been off a seat or on inactive nominee status for more than one year, the Exchange requires such person to retake the Floor Exam.

The Floor Exam is administered by the Options Institute, which is the educational arm of the CBOE, and is offered approximately once per month. Each test consists of 100 questions, with a score of 75% or better required to pass. According to CBOE Rule 3.4(b), membership will be denied by the Membership Committee where the applicant has failed the Exam. In addition, the applicant must wait 30 days before taking the Floor Exam a second time, 60 days if a second attempt is failed, and 120 days if a third or subsequent attempt is failed.[8]

The CBOE asserts that the Floor Exam is specifically designed for CBOE membership applicants in order to test the applicants' knowledge in a variety of areas, including general options trading principles and procedures, requirements under the Act, and specific CBOE rules and policies. In addition, the Exchange believes that the proposed rule change is designed to examine the training, experience, and competence of applicants for CBOE membership and verify such qualifications for membership. Accordingly, the CBOE believes that the proposal is consistent with section 6(b) of the Act, and furthers the objectives of sections 6(b)(5), 6(c)(3)(A) and 6(c)(3)(B), in particular.

After careful review, the Commission has determined that the proposed rule change relating to the CBOE's Floor Exam is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6.[9] In particular, the Commission believes that the proposed rule change is consistent with sections 6(c)(3)(A) and (B) which provide that a national securities exchange may prescribe standards of training, experience and competence for members or persons associated with its members.[10]

The Commission believes that the Floor Exam will help to ensure that only those candidates with a comprehensive knowledge of the Act and the rules thereunder, the specific rules of the Exchange, and an understanding of relevant options trading principles and procedures will be eligible for CBOE membership. By ensuring this requisite level of knowledge, the Exchange can remain confident that its floor members have demonstrated an acceptable level of options trading knowledge.

The Commission also believes, as noted above, that the proposal is consistent with section 6(c)(3)(A) and (B) of the Act, which sets forth the basis upon which a national securities exchange may deny membership to, or condition the membership of, a registered broker-dealer, or may bar a natural person from becoming a member or associated with a member, or condition the membership of a natural person or association of a natural person with a member of an exchange. By tailoring the Floor Exam with the purpose of evaluating the applicant's knowledge of specific Exchange rules and policies, the Exchange is confirming that such applicants have the minimum requisite knowledge, training, experience, and competence to be granted membership.

In this regard, the Commission has carefully reviewed the format and substantive areas tested on the Floor Exam. In reviewing the Floor Exam, the Commission focused on the level of difficulty and comprehensiveness of the specific Floor Exam questions. After assessing the depth of knowledge required to pass the Floor Exam, the Commission concludes that the Floor Exam should sufficiently reflect the requisite minimum knowledge an applicant must possess to comply with CBOE rules as well as with the pertinent rules and regulations of the Act.

In addition, the Commission believes that the proposed rule change is consistent with section 15(b)(7)[11] of the Act which requires that prior to effecting any transaction in, or inducing the purchase or sale of, any security, a registered broker-dealer must meet certain standards of operational capability, and that such broker-dealer (and all natural persons associated with such broker-dealer) must meet certain standards of training, experience, competence, and other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors. The Commission believes that the CBOE's Exam should satisfy the requirements of section 15(b)(7) by requiring Floor Members to demonstrate requisite knowledge, training, and competence to satisfactorily discharge their individual duties on the CBOE floor.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (SR–CBOE–91–38), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–23856 Filed 9–28–93; 8:45 am]

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[6] See CBOE Rules 6.71 and 8.2.

[7] A floor broker is an individual (either a member or a nominee of a member organization) who is registered with the Exchange for the purpose, while on the Exchange floor, of accepting and executing orders received by members. A market-maker is an individual (either a member or nominee of a member organization) who is registered with the Exchange for the purpose of making transactions as dealer-specialist on the floor of the Exchange in accordance with Exchange rules.

[8] See CBOE Rule 3.4(b).

[9] 15 U.S.C. 78f (1988).

[10] Section 6(c)(3)(A) of the Act provides that a national securities exchange may deny membership to, or condition the membership of, a registered broker-dealer if such broker-dealer does not meet such standards of training, experience, and competence as are prescribed by the rules of the exchange. Section 6(c)(3)(B) of the Act provides that a national securities exchange may bar a natural person from becoming a member or associated with a member, or condition the membership of a natural person or association of a natural person with a member, if such natural person does not meet standards of training, experience, and competence as prescribed by the rules of the exchange. Accordingly, a national securities exchange may examine and verify the qualifications of an applicant to become a person associated with a member in accordance with procedures established by the rules of the exchange and require any person associated with a member, or any class of such persons, to be registered with the exchange in accordance with procedures so established.

[11] 15 U.S.C. 78o(b)(7) (1989).

[12] 15 U.S.C. 78s(b)(2) (1982).

[13] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–32950; File No. SR–NYSE–93–32]

Self-Regulatory Organizations; Order Granting Accelerated Approval to Proposed Rule Change by New York Stock Exchange, Inc. Relating to the Listing and Trading of a Hybrid Security Exchangeable for Common Stock

September 23, 1993.

I. Introduction

On August 20, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act

of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade Debt Exchangeable for Common Stock ("DECS")[3] issued by American Express Company ("American Express" or "issuer"), hybrid instruments whose value will be linked to the performance of a highly capitalized, actively traded common stock, First Data Corporation ("FDC"). Notice of the proposal appeared in the **Federal Register** on August 26, 1993.[4] One comment letter was received.[5] this order approves the Exchange's proposal.

II. Description of Proposal

A. Exchange Listing Requirements

Under Section 703.19 of the NYSE's Listed Company Manual, the Exchange may approve for listing securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, and warrants.[6] The NYSE is now proposing under Section 703.19 of the Listed Company Manual to list for trading DECS issued by American Express and based on the common stock of FDC. The DECS will conform to the listing guidelines under Section 703.19 of the Listed Company Manual, which provide that at a minimum issues must (1) have a public distribution of one million securities; (2) have 400 shareholders; (3) have a duration of one year; (4) have a $4 million market value; and (5) otherwise comply with the NYSE's initial listing criteria.[7] In addition, the Exchange will monitor the DECS to verify that it complies with the Exchange's continued listing criteria.[8]

B. The Security

DECS are hybrid securities that will be offered and sold at a price equal to the closing price of FDC common stock on a specified day prior to issuance.[9] DECS will pay quarterly interest payments at a fixed rate of interest and will allow holders to participate in a portion of the possible appreciation in the value of FDC common stock.[10] At maturity, holders of each DECS will receive in exchange for the principal amount thereof up to one share of FDC common stock or, at the option of American Express, an equivalent amount in cash,[11] which will be based upon the "Maturity Price" of FDC common stock.[12] There is no guarantee, however, that holders of DECS will receive upon maturity the full amount of their investment in DECS.

If the Maturity Price is greater than or equal to a set "Threshold Price," the holder of a DECS will receive a predetermined fraction of one share of FDC common stock (or, at American Express' option, an equivalent amount in cash) for each DECS held.[13] If the Maturity Price is less than the Threshold Price but greater than the initial price of the DECS, the holder will receive a fractional share of FDC common stock or cash so that the value received (based on the Maturity Price) is equal to the initial price of the DECS. Finally, if the Maturity Price is less than or equal to the initial price of the DECS, the holder will receive one share of FDC common stock (or an equivalent amount in cash) for each DECS held.[14]

DECS may not be redeemed prior to maturity and are not callable. Holders of DECS will be able to cash-out of their investment by selling the security on the NYSE. The Exchange anticipates that the trading value of the security in this secondary trading market will depend in large part on the value of FDC common stock and also on such other factors as the level of interest rates, the volatility of the value of FDC common stock, dividends on the shares of FDC common stock, and the creditworthiness of the issuer.

In the event of a merger, liquidation or other event which results in shares of FDC common stock no longer being traded on the NYSE ("Reorganization Event"), holders of DECS will receive an amount based on the value received by FDC stockholders as a result of the Reorganization Event ("Transaction Amount"). If the Transaction Amount equals or exceeds the Threshold Price, holders of DECS shall receive a percentage of the Transaction Amount based on the premium as discussed earlier.[15] If the Transaction Amount is between the initial price and the Threshold Price, holders of DECS will receive an amount equal to the initial price. Finally, if the Transaction Amount is less than the initial price, holders of DECS will receive the Transaction Amount.

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] "DECS" and "Debt Exchangeable for Common Stock" are service marks of Salomon Brothers Inc.

[4] See Securities Exchange Act Release No. 32786 (August 23, 1993), 58 FR 45140.

[5] The Commodity Futures Trading Commission ("CFTC") noted that the American Express DECS "appear to be consistent with [the CFTC's] 1990 Statutory Interpretation [55 FR 13582 (April 11, 1990)] on hybrid instruments." Letter from Sheila C. Bair, Acting Chairman, CFTC, to Arthur Levitt, Chairman, Commission, dated September 22, 1993.

[6] See Securities Exchange Act Release Nos. 29229 (May 23, 1991), 56 FR 24852, and 28217 (July 18, 1990), 55 FR 30056 ("Hybrid Approval Orders").

[7] The hybrid listing standards in Section 703.19 of the Exchange's Listed Company Manual are intended to accommodate listed companies in good standing, their subsidiaries and affiliates, and non-listed equities which meet the Exchange's original listing standards. Domestic issuers also must meet the earnings and net tangible assets criteria set forth in Sections 102.01 and 102.02 of the NYSE's Listed Company Manual. Specifically, the minimum original listing criteria requires that issuers have: (1) 2,000 holders of 100 shares or more or have 2,200 holders with an average monthly trading volume of 100,000 shares; (2) a public float of 1.1 million shares; (3) an aggregate public market value of $18 million or total net tangible assets of $18 million; and (4) earnings before taxes of $2.5 million in the latest fiscal year and earnings before taxes of $2 million in each of the preceding two fiscal years, or earnings before taxes of $6.5 million in the aggregate for the last three fiscal years with a $4.5 million minimum in the most recent fiscal year (all three years are required to be profitable).

[8] See Section 802 of the NYSE's Listed Company Manual. The continued listing criteria for capital or common stock requires at a minimum: (1) 1,200 holders of 100 shares or more; (2) 600,000 publicly-held shares; (3) an aggregate market value of publicly-held shares of $5 million; (4) an aggregate market value of shares outstanding (excluding treasury stock) of $8 million and average net income after taxes for the past three years of $600,000; and (5) net tangible assets available to common stock of $8 million and average net income after taxes for the past three years of $600,000. In addition, the continued listing standards for bonds require that outstanding publicly-held bonds have an aggregate market value or principal amount of at least $1 million.

[9] *Cf.* Securities Exchange Act Release No. 32343 (May 20, 1993), 58 FR 30833 ("Exchange Act Release No. 32343") (approval order for trading on the American Stock Exchange, Inc. ("AMEX") of equity linked term notes or "ELNs").

[10] The percentage of possible appreciation of First Data common stock will be determined based on a premium that will be set during the pricing of the DECS immediately prior to issuance. For example, if the premium is set at 20%, holders of DECS will be able to participate in 83.33% of the possible appreciation of First Data common stock.

[11] American Express will notify holders at least seven business days prior to maturity whether redemptions at maturity will be satisfied with shares of FDC common stock or with cash. See Letter from Douglas Daniels, Counsel, American Express, to Richard Zack, Branch Chief, Division of Market Regulation, Commission, dated September 14, 1993.

[12] Maturity Price is defined as the average closing price per share of FDC common stock during the 20 trading days immediately prior to maturity of the DECS.

[13] The Threshold Price will be determined at issuance by adding the "premium" to the initial price. For example, if the initial price of the DECS (i.e., the closing price of FDC common stock immediately prior to issuance of the DECS) is $40 and the premium is set at 20%, the Threshold Price will be $48. See *supra* note 10.

[14] For example, assume the initial price of DECS is $40, the premium is 20%, and at maturity, American Express elects to exchange the outstanding DECS for shares of First Data common stock (as opposed to cash). At maturity: (1) If the Maturity Price is greater than or equal to $48, holders of DECS will receive .833 shares of First Data common stock for each DECS, which at a minimum will have a value of $40; (2) if the Maturity Price is between $40 and $48, holders of DECS will receive a fraction of a share of First Data common stock determined by dividing the initial price by the Maturity Price (i.e., the fractional share will have a value of $40); and (3) if the Maturity Price is less than or equal to $40, holders of DECS will receive one share of First Data common stock for each DECS, which at a maximum will have a value of $40.

[15] See *supra* note 10.

C. The Issuer and the Linked Security

Both American Express and FDC are NYSE listed companies in good standing (i.e., they satisfy the original and continued listing standards set forth in the Exchange's Listed Company Manual) and both are subject to the continuous reporting obligations of the Act. Specifically, (1) the issuer has in excess of 2,200 stockholders; (2) a monthly trading volume in excess of 10 million shares for the year ending August 31, 1993; (3) market capitalization in excess of $16 billion as of September 15, 1993; and (4) earnings in excess of $300 million in each of the last two fiscal years.

While DECS vary somewhat from ELNs, DECS satisfy the majority of the heightened listing standards set forth in the Commission's ELNs approval order (ELNs Approval Order").[16] The issuer has assets in excess of $100 million. Additionally, the market capitalization of FDC as of September 15, 1993, was approximately $4 billion and the trading volume of FDC common stock for the year ending August 31, 1993 was over 50 million shares.

The only heightened listing standard applicable to ELNs which is not satisfied by DECS is the limitation that an issuance of ELNs cannot exceed 5% of the total outstanding shares of the linked stock. The issuer currently owns approximately 21.5% of the outstanding shares of FDC common stock. It is anticipated that the offering of DECS will, depending on certain factors including the Maturity Price of FDC common stock and whether the underwriters' over-allotment option is exercised in full, represent approximately 21.5% of the outstanding FDC common stock.

The Exchange believes that the fact that the issuer currently owns shares of FDC common stock equal in number to the maximum number of shares underlying the issue of DECS distinguishes this situation from that presented in the ELNs Approval Order. As a result, the Exchange concludes that the limitation in the ELNs Approval Order restricting an issuance of ELNs to no more than 5% of the outstanding shares of the linked stock should not apply to DECS.

The NYSE notes, for example, that because the issuer presently owns all of the shares of FDC common stock it would need to satisfy its obligations under the DECS at maturity,[17] it is presently hedged with respect to its obligations on the DECS at maturity. In addition, the Exchange believes that the issuer has no need or incentive to sell the shares of FDC common stock prior to or at maturity (although nothing will restrict the issuer's ability to do so). Therefore, the Exchange has not included the limitation restricting an issuance to no more than 5% of the outstanding shares of the linked stock that was contained in the ELNs Approval Order.[18]

D. Exchange Trading of DECS

Because DECS are linked to an equity security, DECS will trade on the Exchange's stock floor and will be subject to stock trading and equity margin rules. First, pursuant to NYSE Rule 405, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading DECS.[19] Second, consistent with NYSE Rule 405, the Exchange will require that a member or member firm specifically approve a customer's account for trading DECS prior to, or promptly after, the completion of the transaction. Finally, prior to trading DECS, the Exchange will distribute a circular to its members and member organizations alerting them to the special attributes and risks of DECS and providing guidance regarding their compliance responsibilities (including suitability recommendations).

III. Discussion

The Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6(b)(5).[20] As described above, the proposal will authorize the NYSE to list DECS, a hybrid securities issue. DECS have debt-like characteristics in that it pays a rate of return on a quarterly basis throughout the life of the product. Although DECS are not leveraged instruments, their price still will be derived and based upon the linked stock. The Commission believes that DECS are hybrid securities which will allow investors to participate at maturity in a percentage of the upside appreciation, if any, of FDC common stock, with no limit on their downside exposure if the shares of FDC common stock should decline in value. Accordingly, the level of risk involved in the purchase or sale of a DECS is somewhat similar to the risk involved in the purchase or sale of traditional common stock, except for the limitation on participation in the total upside appreciation. As discussed below, the Commission is satisfied that the NYSE has addressed adequately several specific concerns regarding the trading of these securities on the NYSE.

The Commission notes that the Exchange's rules and procedures that address the special concerns attendant to the trading of hybrid securities will be applicable to DECS. In particular, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Exchange has addressed adequately the potential public investor concerns and credit risk factors that could arise from the hybrid nature of DECS. Moreover, the Exchange will distribute a circular to its membership calling attention to the specific risks associated with DECS. Additionally, the issuer is a substantial company capable of meeting its obligations, FDC is a highly capitalized company whose shares are actively traded on the NYSE, and the issuer currently owns sufficient shares of FDC common stock to satisfy all of its obligations under the DECS (although the Commission recognizes that at maturity this may not be the case). In any event, financial information regarding American Express and FDC are and will be publicly available.

Significant changes in the issuer's holdings of FDC common stock could lead to increased position exposure in FDC common stock. The Commission does not expect that the listing and trading of DECS will have material adverse effects on the market for the underlying linked stock or that future hedging activity by the issuer (if necessary) will have a adverse effect on the market for FDC common stock for the following reasons. First, as described above, FDC common stock currently has a market capitalization of approximately $4 billion, and, during the year ended June 30, 1993, had a

[16] These heightened listing standards provide that: (1) Each issuer have a minimum tangible net worth of $150 million; (2) each underlying linked stock must have a minimum market capitalization of $3 billion; (3) the trading volume of the linked stock (in all markets in which the underlying security is traded) must have been at least 2.5 million shares in the 12-month period preceding the listing; and (4) the issuance relating to an underlying linked stock may not exceed 5% of the total outstanding shares of such stock. See Exchange Act Release No. 32343, *supra* note 9.

[17] The issuer, however, is not obligated to place these shares into escrow or to refrain from trading in shares of First Data common stock prior to maturity of the DECS. It is possible therefore that the issuer will not own shares of First Data common stock sufficient to satisfy its obligations at maturity in which case the issuer would either have to purchase additional shares in the market or satisfy its obligations to holders of DECS with cash.

[18] See Exchange Act Release No. 32343, *supra* note 9.

[19] NYSE Rule 405 requires that every member, member firm or member corporation use due diligence to learn the essential facts relative to every customer and to every order or account accepted.

[20] 15 U.S.C. section 78f(b)(5) (1988).

trading volume in excess of 50 million shares. Second, although DECS are linked to the price of FDC common stock and the issuer has the option of satisfying its obligations at maturity with shares of FDC common stock, the issuer currently has sufficient shares to satisfy these obligations. Furthermore, the issuer and its majority-owned subsidiaries have agreed to refrain from trading in the shares of FDC in all proprietary accounts during the 20-day pricing period prior to maturity of the DECS.[21] The Commission is satisfied that these requirements adequately should ensure liquidity in the market for DECS, while not reducing the liquidity of the common stock of FDC.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The proposal was published for the full 21-day comment period and no comments opposing the proposal were received by the Commission. Based on the above, the Commission believes it is consistent with sections 6(b)(5) and 19(b)(2) of the Act to approve the proposed rule change on an accelerated basis.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposal relating to the trading of DECS on the NYSE is consistent with the Act, and in particular, section 6 of the Act.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act[22] that the proposed rule change (SR–NYSE–93–32) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

[FR Doc. 93–23854 Filed 9–28–93; 8:45 am]

BILLING CODE 8010–01–M

[21] See Letter from Douglas Daniels, Counsel, American Express, to Richard Zack, Branch Chief, Office of Options, Division of Market Regulation, Commission, dated September 14, 1993.

[22] 15 U.S.C. 78s(b)(2) (1988).

[23] 17 CFR 200.30–3(a)(12) (1992).

[Investment Company Act Release No. 19731; 812–8276]

GE Funds, et al.; Notice of Application

September 22, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: GE Funds (the "Trust"), GE Investment Management Incorporated ("GEIM" or the "Adviser"), Kidder, Peabody & Co. Inc. ("Kidder"), GE Investment Services Inc. ("GE Investment Services" and, with Kidder, the "Distributor").

RELEVANT ACT SECTIONS: Conditional order requested under section 6(c) of the Act for exemptions from sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c), and 22(d) of the Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek a conditional order under section 6(c) that would permit each series whose shares are offered by the Trust (individually, a "Fund," and collectively, the "Funds") to issue multiple classes of shares representing interests in the same portfolio of securities, and to assess, and under certain circumstances waive, a contingent deferred sales charge ("CDSC") on certain redemptions of shares.

FILING DATE: The application was filed on February 17, 1993, and an amendment thereto was filed on June 16, 1993. In a letter dated September 17, 1993, applicants' counsel stated that an additional amendment will be filed, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issues 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 18, 1993, 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 who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. The Trust, GEIM, and GE Investment Services, 3003 Summer Street, Stamford, Connecticut 06905. Kidder, 10 Hanover Square, New York 10005–3592.

FOR FURTHER INFORMATION CONTACT: Joseph G. Mari, Senior Special Counsel, (202) 272–3030, or Barry D. Miller, Senior Special Counsel, (202) 272–3018 (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.

Applicants' Representations

1. The Trust is an open-end management investment company registered under the Act, and was organized under the laws of the Commonwealth of Massachusetts on August 10, 1992. GEIM, a Delaware corporation, is the investment adviser and administrator of each Fund. GEIM is a wholly-owned subsidiary of General Electric Company ("GE") and is a registered investment adviser under the Investment Advisers Act of 1940.

2. Kidder is the Distributor of the Funds' shares. General Electric Capital Services, Inc., a wholly-owned subsidiary of GE, owns all the outstanding stock of Kidder, Peabody Group Inc., the parent company of Kidder. GE Investment Services, a Delaware corporation, is in the process of registering as a broker-dealer under applicable federal and state laws. It is anticipated that upon effectiveness of its registration as a broker-dealer and upon the consideration and approval of the Trust's board of trustees, GE Investment Services will replace Kidder as Distributor of the shares of the Funds. GEIM owns all the outstanding stock of GE Investment Services.

3. Applicants seek the relief requested on behalf of the Funds, any other fund whose shares may be offered by the Trust in the future, and any other open-end investment company that may in the future become a member of the same "group of investment companies" as the Trust, as defined in rule 11a–3 under the Act, whose investment adviser is GEIM, or any person directly or indirectly controlling, controlled by or under common control with GEIM.[1]

4. The Trust currently offers six diversified investment funds: GE U.S. Equity Fund; GE Tax-Exempt Fund; GE Global Equity Fund; GE Strategic Investment Fund; and GE Money Market Fund (the "Money Market Fund").[2] Shares of each of the Funds currently are offered at net asset value, and redemptions of shares of each Fund are

[1] In the event that GE Investment Company ("GEIC"), a wholly-owned subsidiary of GE and a registered investment adviser under the Investment Advisers Act of 1940, as amended, should succeed to the business of GEIM, future funds also will be deemed to include those funds for which GEIC serves as investment adviser.

[2] The Money Market Fund series of the Trust presently does not intend to rely on any order granted as a result of this application. The Money Market Fund may, however, rely on such order in the future if the Trust determines to cause classes of the Money Market Fund's shares to be issued in accordance with the representations and conditions in this application.

not subject to any charge by the Trust. The Trust has adopted a plan pursuant to rule 12b–1 under the Act for each Fund, except for the Money Market Fund. Under that plan, the Trust pays GEIM an annual fee of .25% of the value of the average daily net assets of the Fund.

A. The Multiple Distribution System

1. The trustees of the Trust, including a majority of the trustees who are not "interested persons" of the Trust, as that term is defined in section 2(a)(19) of the Act ("the Independent Directors/Trustees"), have approved the establishment of a multiple distribution plan (the "Multiple Distribution System"). Under the Multiple Distribution System, each Fund, other than the Money Market Fund, could offer four classes of shares.

2. Class A shares would be subject to a conventional front-end sales load, and distribution and service fees pursuant to a plan under rule 12b–1 (the "Front-End Load Option"). Under the Front-End Load Option, the sales load would be reduced for larger purchases and would be waived entirely for (a) purchases of $1 million or more of Class A shares by any investor, (b) all purchases of Class A shares by employer-sponsored individual retirement plans qualified under section 401(k) of the Internal Revenue Code of 1986, as amended (the "Code") ("401(k) Plans"), and (c) purchases by an individual retirement account ("IRA") of an investor that (i) is not a holder of Existing Shares (as defined below) or (ii) is not an employee, retiree, officer or director of GE or an affiliate of GE or a family member of those employees, retirees, officers or directors. Each of the distribution fee and service fee is anticipated to be payable at an annual rate of .25% of each Fund's net assets. Class A shares, generally will not be subject to any charges upon redemption, except that to discourage short-term investments, the Trust will impose a CDSC equal to 1% of the net asset value of Class A shares redeemed within one year of their purchase if the shares being redeemed were subject to no front-end sales charge upon purchase by virtue of being part of a purchase of $1 million or more.

3. Class B shares would be subject to a CDSC, and to a service fee that is not expected to exceed .25%, and a distribution fee that would not exceed .75% of the Fund's net assets attributable to the class (the "Deferred Option"). Under the Deferred Option, investors would purchase Class B shares at the net asset value per share without the imposition of a sales load at the time of purchase. Class B shares automatically would convert to Class A shares after a period of time, expected to be approximately six years, thereby becoming subject to the lower distribution fee applicable to the Class A shares.

4. Class C will consist of certain shares of each Fund that are issued and outstanding on the date the Multiple Distribution System is implemented, and Class C shares will have the attributes of the shares of the Fund currently offered (the "Existing Shares Class").[3] The Existing Shares Class would receive shareholder services and, as a result, Class C shares would bear the cost of a service fee paid at the annual rate of .25% of net assets. The Existing Shares Class could be purchased only by (a) investors who are shareholders of the Fund upon implementation of the Multiple Distribution System and their family members of IRAs of holders of Existing Shares who are not eligible to be holders of Class D shares, and (b) employees, retirees, officers or directors of GE or an affiliate of GE or any family member of any of those employees, retirees, officers or directors.

5. Class D shares would be available only to certain institutional investors for which the costs of distributing shares of the Fund typically would be lower than those associated with other investors and which investors typically would have little or no need for shareholder services (the "Institutional Investor Class"). Class D shares would be subject to no front-end sales load or CDSC, distribution fee or service fee. Investors eligible to purchase Institutional Investor Class shares would include 401(k) Plans that do not choose to invest in Class A shares or to receive the services provided under a rule 12b–1 plan. Compensation for selling Class D shares and servicing the accounts of Class D shareholders, other than customary transfer agency fees, will be paid solely from the resources of GEIM and/or the Distributor.

6. From time to time, a Fund may create an additional class of shares of beneficial interest, the terms of which class may differ from the classes described in this application only insofar as each new class of shares: (a) might have a different designation; (b) might be affected by the impact of the disproportionate payments made under a rule 12b–1 plan; (c) would hold any voting rights as to matters exclusively affecting that class (for example, the adoption, amendment, or termination of a plan adopted in accordance with rule 12b–1), except as provided in Condition No. 14 below; (d) would bear the Class Expenses, as defined in Condition No. 1 below, specifically attributable to the particular class; (e) may have different exchange privileges; and (f) may have a conversion feature. Applicants also may charge different sales loads.

7. Under the Multiple Distribution System, all expenses incurred by the Fund will be allocated among the Fund's classes of shares based on the net assets of the Fund attributable to each class, except that the net asset value and expenses of each class (other than Class D) will reflect the expenses associated with the rule 12b–1 plan, and any Class Expenses, as defined in Condition No. 1 below, attributable to the class. Class Expenses will be allocated to the particular class to which they are attributable. Certain expenses may be allocated differently if their method of imposition changes; thus if a Class Expense of a Fund no longer can be attributed to a class will be allocated to the Fund as a whole. Expenses of a Fund allocated to a particular class of shares of the Fund will be borne on a disproportionate basis by each outstanding share of that class.

8. If the requested relief is granted, it is contemplated that shareholders of a Fund, other than 401(k) Plans, will be able to exchange shares they hold only for the same class of the other Funds; 401(k) Plans will have the ability to exchange between Class A and Class D shares. The exchange privileges applicable to each class of shares will comply with rule 11a–3 under the Act.

9. A holder of Existing Shares (other than an Institutional Investor or a 401(k) Plan) of the Money Market Fund who wishes to exchange those Money Market Fund shares for shares of another Fund will receive Class C shares of the other Fund upon the completion of the exchange. An Institutional Investor (other than a 401(k) Plan) holding shares of the Money Market Fund that wishes to exchange those Money Market Fund

[3] Existing Shares that are not designated Class C shares will be designated automatically as Class D shares if the holder of those shares falls within the definition of institutional investors eligible to purchase Class D shares, and other Existing Shares may be redesignated as Class A shares if the holder of those shares is a 401(k) Plan that desires shareholder services. Shareholder services encompass all forms of shareholder liaison services, including providing shareholders of a Fund with (a) information about their investments; (b) general information regarding investing in mutual funds; (c) periodic newsletters containing materials relating to the Funds or to investments in general in mutal funds; (d) periodic financial seminars designed to assist in the education of shareholders regarding mutual funds generally and the Funds specifically; (9) access to a telephone inquiry center relating to the Funds staffed by representatives of GEIM and/or the Distributor; and (f) other similar services not otherwise required to be provided by the Trust' custodian or transfer agent.

shares for shares of another Fund will receive Class D shares of the other Fund upon the completion of the exchange. A 401(k) Plan holding shares of the Money Market Fund that wishes to exchange those Money Market Fund shares for shares of another Fund will receive Class A or Class D shares, as selected by the 401(k) Plan. All other Money Market Fund shareholders wishing to exchange their Money Market Fund shares for shares of another Fund will be given the choice of receiving either Class A or Class B shares of the other Fund upon the completion of an exchange.

10. If a 401(k) Plan initially determined that it wanted to receive shareholder services, but after the passage of time decided it no longer required those services, the optional exchange feature would allow the 401(k) Plan to exchange its Class A shares for Class D shares and thus relieve the 401(k) Plan of the shareholder servicing and distribution costs borne by the Class A shareholders. A 401(k) Plan that initially invested in Class D shares but in the future determined that receipt of the shareholder services would be beneficial, could exchange its Class D shares for Class A shares.

11. After a period of time, expected to be approximately six years, Class B shares will be converted automatically to Class A shares without the imposition of any sales load and, upon the conversion will be subject to the lower distribution fee applicable to Class A shares. This conversion feature, which will be described in the prospectus or prospectuses describing the Funds, is designed to relieve the holders of Class B shares that have been outstanding for a period of time sufficient for the Distributor to have been compensated for distribution expenses related to those shares from the higher distribution fee to which Class B shares are otherwise subject. In the future, applicants may create new classes of shares that would convert to another class.

12. Shares purchased through the reinvestment of dividends and other distributions paid regarding Class B shares will be designated as Class B shares. For purposes of conversion to Class A, all Class B shares in a shareholder's Fund account that were purchased through the reinvestment of dividends and other distributions paid regarding Class B shares ("Dividend/Distribution shares") will be deemed to be held in a separate sub-account on behalf of the shareholder. Each time any Class B shares in the shareholder's Fund account (that are not Dividend/Distribution shares) are converted to Class A shares, a proportionate portion of the Dividend/Distribution shares then in the sub-account also will be converted to Class A shares. The portion of the Dividend/Distribution shares to be converted will be determined by the ratio that the shareholder's Class B shares converting to Class A shares bears to the shareholder's total Class B shares that are not Dividend/Distribution shares.

13. The conversion of Class B shares to Class A shares is subject to the continuing availability of a ruling of the Internal Revenue Service that payment of different dividends on Class A and Class B shares would not result in the Funds' dividends or distributions constituting "preferential dividends" under the Code, and the continuing availability of an opinion of counsel to the effect that the conversion of shares does not constitute a taxable event under the Code. The conversion of Class B shares to Class A shares may be suspended if that opinion no longer is available. If conversions of Class B shares do not occur as described above, Class B shares would continue to be subject to the distribution fee applicable regarding the Deferred Option for an indefinite period.

B. The CDSC

1. The proceeds from a redemption of Class A and Class B shares may be subject to a CDSC that is paid to the Distributor. The CDSC will not be imposed on redemptions of shares that were purchased more than a fixed number of years prior to the redemptions (the "CDSC Period"), as set forth in each Fund's prospectus, or on shares derived from reinvestment and distributions. No CDSC will be imposed on an amount that represents an increase in the value of the shareholder's account resulting from capital appreciation. As a result, the amount of the CDSC will be calculated as the lesser of the amount that represents a specified percentage of the net asset value of the shares at the time of the purchase, or the amount that represents the percentage of the net asset value of the shares at the time of redemption. Class B shares may be subject to a CDSC if they are redeemed within a specified period from the date of purchase. For Class B shares, it is expected that the percentage generally will vary from 5% for redemptions made during the first year from initial purchase to 0% for redemptions made in the sixth year from purchase. The CDSC on Class A shares will be payable on the same terms and conditions as would be applicable to Class B shares, except that the CDSC would be at a lower rate and for a shorter period (not anticipated to exceed 1% for redemptions only during the first year after purchase) than that proposed to be imposed on Class B shares and except that Class A shares would have no automatic conversion feature. Each CDSC schedule used by a Fund will comply with the requirements of Section 26(d) of the Rules of Fair Practice of the NASD, as amended from time to time. No CDSC will be imposed on shares issued prior to the effective date of the requested order.

2. In determining the applicability and rate of any CDSC to a redemption of shares of a Fund, the Distributor will assume that a redemption is made first of shares representing reinvestment of dividends and capital gain distributions and then of other shares held by the shareholder for the longest period of time. This assumption will result in the CDSC, if any, being imposed at the lowest possible rate.

3. The Trust would waive or reduce the CDSC on redemptions of shares of the Funds in the following instances: (a) Upon the death or disability, as defined in section 72(m)(7) of the Code, or successor provision, of a shareholder if the redemption is made within one year of death or disability of a shareholder, and (b) in connection with certain distributions from an IRA or other qualified retirement plan as described below. If the Trust waives or reduces the CDSC, the waiver or reduction will be uniformly applied to all offerees in the class specified.

4. The CDSC would be waived for any redemption in connection with a lump-sum or other distribution following retirement or, in the case of an IRA or Keogh Plan, after attaining age 59. The charge also may be waived on any redemption that results from a tax-free return of an excess contribution pursuant to section 408(d) (4) or (5) of the Code or from the death or disability of the employee. Thus, the CDSC may be waived on redemptions of shares that constitute retirement plan distributions that are permitted to be made without penalty pursuant to the Code, other than tax-free rollovers or transfers of assets.

5. If the trustees of the Trust determine not to waive or reduce the CDSC as described above regarding shares of a Fund, the disclosure in the Fund's prospectus will be revised appropriately. Additionally, any shares of the Fund purchased prior to the termination of the waiver or reduction would be eligible for waiver or reduction as provided in a Fund's prospectus at the time of the purchase of the shares.

Applicants' Legal Analysis

1. Applicants request an exemptive order pursuant to section 6(c) of the Act to the extent the proposed issuance and sale of multiple classes of shares representing interests in the Funds contemplated by the Multiple Distribution System might be deemed: (a) to result in the issuance of a "senior security" within the meaning of section 18(g) of the Act and thus be prohibited by section 18(f) of the Act, and (b) to violate the equal voting provisions of section 18(i) of the Act.

2. The Trust submits that the proposed Multiple Distribution System does not raise any of the legislative concerns that section 18 of the Act was designed to ameliorate. Under the Multiple Distribution System, mutuality of risk will be preserved regarding each class of shares of a Fund. Since each class of shares of a Fund will be redeemable at all times (subject to the same limitations set forth in the prospectus and statement of additional information describing the Fund); since no class of shares will have any distribution or liquidation preference regarding particular assets and no class will be protected by any reserve or other account; and since the similarities and differences of the classes of shares of the Fund will be disclosed in the prospectuses and statements of additional information describing the Fund, investors will not be given misleading impressions regarding the safety or risk of any class of shares, and the nature of each class of shares will not be rendered speculative.

3. Applicants submit that the requested exemption to permit the Funds to implement the proposed Class A and Class B CDSC arrangement is appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act. The proposed CDSC arrangement will permit shareholders to have the advantage of greater investment dollars working for them from the time of their purchase than if a sales load were imposed at the time of purchase. The proposed CDSC is fair to holders of Class A and Class B shares because it applies only to amounts representing purchase payments and does not apply to amounts representing increases in the value of an investor's account through capital appreciation, or to amounts representing reinvestment of distributions. Additionally, the proposed CDSC is consistent in all respects with proposed rule 6c–10.

Applicants' Conditions

Applicants agree that the order of the Commission granting the requested relief shall be subject to the following conditions:

A. Multiple Distribution System

1. Each class of shares of a Fund will represent interests in the same portfolio of investments of the Fund and will be identical in all respects, except as set forth below. The only differences among the classes of shares of the same Fund will relate solely to: (a) the designation of each class of shares of the Fund; (b) the impact of the disproportionate payments made under a rule 12b–1 plant; (c) different Class Expenses for each class of shares, which are limited to: (i) transfer agency fees as identified by the Trust's transfer agent as being attributable to a specific class; (ii) blue sky registration fees incurred regarding a class of shares; (iii) SEC registration fees incurred regarding a class of shares; (iv) the expenses of administrative personnel and services as required to provide services to shareholders of a specific class; (v) litigation or other legal expenses relating solely to one class of shares; (vi) trustees; fees incurred as a result of issues relating to one class of shares; and (vii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxies to current shareholders; (d) the voting rights as to matters exclusively affecting one class of shares (that is, the adoption, amendment or termination of a rule 12b–1 Plan) in accordance with the procedures set forth in rule 12b–1, except as provided in Condition No. 14 below; (e) different exchange privileges; and (f) certain classes may have a conversion feature. Any additional incremental expenses not specifically identified above that are subsequently identified and determined to be properly allocated to one class of shares will not be so allocated until approved by the SEC pursuant to an amended order.

2. The trustees of the Trust, including a majority of the Independent Trustees, will have approved the Multiple Distribution System prior to its implementation. The minutes of the meetings of the trustees of the Trust regarding the deliberations of the trustees with respect to the approvals necessary to implement the Multiple Distribution System will reflect, in detail, the reasons for determining that the Multiple Distribution System is in the best interests of the Funds and their respective shareholders.

3. The initial determination of the Class Expenses that will be allocated to a particular class and any subsequent changes to the allocation of Class Expenses will be reviewed and approved by a vote of the trustees of the Trust, including a majority of the Independent Trustees. Any person authorized to direct the allocation and disposition of monies paid or payable by a Fund to meet Class Expenses will provide to the trustees, and the trustees will review, at least quarterly, a written report of the amounts so expended and the purposes for which the expenditures were made.

4. On an ongoing basis, the trustees of the Trust, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each fund for the existence of any material conflicts among the interests of the Fund's classes of shares. The trustees, including a majority of the Independent Trustees, will take such action as is reasonably necessary to eliminate any conflicts that may develop. The Adviser and the Distributor will be responsible for reporting any potential or existing conflicts to the trustees. If a conflict arises, the Adviser and the Distributor, at their own costs, will remedy the conflict, up to and including establishing a new registered management investment company.

5. The trustees of the Trust will receive quarterly and annual reports concerning distribution and shareholder servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the reports, only distribution or servicing expenditures properly attributable to the sale or servicing of a class of shares will be used to support any distribution or servicing fee charged to shareholders of that class of shares. Expenditures not related to the sale or servicing of a specified class of shares will not be presented to the trustees to support any fees charged to shareholders of that class of shares. The reports, including the allocations upon which they are based, will be subject to review and approval by the Independent Trustees in the exercise of their fiduciary duties.

6. Dividends paid by a Fund regarding each class of shares of the Fund, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day and must be in the same amount, except that Class Expenses and costs associated with a rule 12b–1 Plan relating to a particular class will be borne exclusively by the respective class.

7. The methodology and procedures for calculating the net asset value and

dividends/distributions of the various classes have been reviewed by the Independent Examiner. The Independent Examiner has rendered a report to the Trust that has been provided to the staff of the SEC, stating that the methodology and procedures are adequate to ensure that the calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Independent Examiner, or an appropriate substitute Independent Examiner, will monitor the manner in which the calculations and allocations are being made and, based upon this review, will render at least annually a report to the Trust that the calculations and allocations are being made properly. The reports of the Independent Examiner will be filed as part of the periodic reports filed by the Trust with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Independent Examiner with respect to these reports, following a request by the Trust that the Trust agrees to make, will be available for inspection by the SEC's staff upon the written request for these work papers by a senior member of the SEC's Division of Investment Management or of a Regional Office of the SEC, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Independent Examiner is a "report on policies and procedures placed in operation" and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in Statement of Auditing Standards No. 70 of the American Institute of Certified Public Accountants (the "AICPA"), as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

8. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends/distributions among the various classes of shares and the proper allocation of income and expenses among the classes of shares, and this representation has been concurred with by the Independent Examiner in the initial reports referred to in Condition No. 7 above and will be concurred with by the Independent Examiner, or an appropriate substitute Independent Examiner, on an ongoing basis at least annually in the ongoing reports referred to in Condition No. 7 above. Applicants agree to take immediate corrective action if the Independent Examiner, or appropriate substitute Independent Examiner, does not so concur in the ongoing reports.

9. The prospectus or prospectuses describing the Funds will contain a statement to the effect that any person entitled to receive compensation for selling or servicing Fund shares may receive different compensation with respect to one particular class of shares over another in the Fund.

10. The Distributor will adopt compliance standards as to when shares of a particular class may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Funds to agree to conform to these standards.

11. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the trustees of the Trust with respect to the Multiple Distribution System will be furnished to the trustees as part of the materials setting forth the duties and responsibilities of the trustees.

12. The Trust will disclose in each prospectus describing a Fund the respective expenses, performance data, distribution arrangements, services, fees, initial sales loads, CDSCs and exchange privileges applicable to each class of shares of the Fund, regardless of whether all classes of shares are offered through each prospectus. The shareholder reports of each Fund will disclose the respective expenses and performance data applicable to each class of shares of the Fund in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to the classes of shares of the Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares of a Fund, it will disclose the respective expenses and/or performance data applicable to all classes of shares of the Fund. The information provided by the applicants for publication in any newspaper, or similar listing of the Funds' net asset values and public offering prices, will separately present each class of shares.

13. Any class of shares with a conversion feature ("Purchase Class") will convert into another class ("Target Class") of shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in Article III, section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

14. If the Trust implements any amendment to a rule 12b–1 plan that would increase materially the amount that may be borne by the Target Class shares under the plan, existing Purchase Class shares will cease converting into Target Class shares, unless the Purchase Class shareholders, voting separately as a class, approve the amendment. The trustees will take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares ("New Target Class shares"), identical in all material respects to the Target Class as it existed prior to implementation of the proposal, no later than those Purchase Class shares previously were scheduled to convert into Target Class shares. If deemed advisable by the trustees to implement the foregoing, their actions may include the exchange of all existing Purchase Class shares for a new class of shares ("New Purchase Class shares"), identical to existing Purchase Class shares in all material respects except that New Purchase Class shares will convert into New Target Class shares. New Target Class or New Purchase Class shares may be formed without further exemptive relief. Exchanges or conversions described in this condition will be effected in any manner that the trustees reasonably believe will not be subject to federal taxation. In accordance with Condition No. 4 above, any additional cost associated with the creation, exchange, or conversion of New Target Class or New Purchase Class shares will be borne solely by GEIM and the Distributor. Purchase Class shares sold after the implementation of the proposal may convert into Target Class shares subject to the higher maximum payment, provided that the material features of the rule 12b–1 plan and the relationship of the plan to the Purchase Class shares are disclosed in an effective registration statement.

15. Applicants acknowledge that the granting by the Commission of the exemptive order requested by this application will not imply SEC approval, authorization or acquiescence in any particular level of payments that the Funds may make pursuant to a rule 12b–1 plan in reliance on the exemptive order.

B. The CDSC

If the requested exemptive relief is granted, applicants agree to comply with the provisions of proposed rule 6c–10 under the Act, Release No. 16619 (Nov. 2, 1988), as the rule is currently proposed and as it may be reproposed, adopted or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–23788 Filed 9–28–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC-19732; 812-8462]

Security Equity Fund, et al.; Application for Exemption

September 23, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Security Equity Fund, Security Growth and Income Fund (formerly Security Investment Fund), Security Ultra Fund, Security Income Fund, Security Tax-Exempt Fund (the "Non-Money Market Funds") and Security Cash Fund (the "Money Market Fund" and together with the Non-Money Market Funds, the "Funds"), Security Management Company (the "Adviser"), and Security Distributors, Inc. (the "Distributor").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from sections 2(a)(32), 2(a)(35), 18(f)(1), 18(g), 18(i), 22(c), and 22(d) of the Act and rule 22c-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order that would permit the Funds and their series, if any, to (a) issue multiple classes of shares representing interests in the same portfolio of securities and (b) assess and, under certain circumstances, waive a contingent deferred sales charge ("CDSC") on redemptions of shares.

FILING DATE: The application was filed on June 21, 1993, and amended on August 27, 1993. Applicants have agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

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 18, 1993, and should be accompanied by proof of service on the 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 Fifth Street, NW., Washington, DC 20549. Applicants, Security Management Company, 700 Harrison, Topeka, Kansas 66636. Attention: Amy J. Lee, Secretary.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272–3026, or Robert A. Robertson, Branch Chief, at (202) 272–3030 (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.

Applicants' Representations

1. Each of the Funds is an open-end management investment company registered under the Act. Several of the Funds consist of, or have the authority to establish, multiple series. The Adviser is the investment adviser to each Fund, and the Distributor, a wholly-owned subsidiary of the Adviser, is the distributor for each Fund's shares, except Security Cash Fund.

2. Applicants request that relief be extended to any investment company (a) for which the Adviser (or any entity controlling, controlled by, or under common control with the Adviser) may serve as investment adviser or sub-investment adviser or (b) for which the Distributor (or any entity controlling, controlled by, or under common control with the Distributor) may serve as distributor that offers shares on a basis which is identical in all material respects to that described below.

A. The Multiple Class Distribution System

1. Applicants propose to establish a multiple distribution arrangement to enable each of the Funds, or series thereof, to offer shares in conjunction with: A distribution plan pursuant to rule 12b–1 under the Act, a non-rule 12b–1 shareholder services plan, no such plan at all, or combinations of one or more of these arrangements. Under an existing 12b–1 plan, Security Income Fund has authorized the Distributor to enter into agreements with certain financial institutions (which may include banks), securities dealers and other industry professionals (collectively, "Service Agents") providing for the performance of certain services. Pursuant to the proposed arrangement, a Fund or the Distributor may enter into agreements with Service Agents for services in accordance with the terms of a rule 12b–1 plan ("12b–1 Plan Agreements") or pursuant to a shareholder services plan. Payments under the agreements may be made by the Fund only from assets of the applicable class with the 12b–1 or shareholder service plans (such payments herein referred to as "Plan Payments").

2. Applicants also propose that each Fund, and series thereof, have the ability to offer investors the option of purchasing classes of shares that would be subject to a front-end sales load ("Front-End Option") or subject to a CDSC ("Deferred Option"), a combination of front-end sales load and CDSC, or not subject to any such sales charge. The shares offered pursuant to any of these options could be subject to a 12b–1 plan and/or shareholder services plan. The sum of any front-end load, asset based sales charge, and CDSC will comply with article III, section 26 of the Rules of Fair Practice of the National Association of Securities Dealers ("NASD") as it relates to the maximum amount of asset-based sales charges that may be imposed by an investment company.

3. Each class of shares of a Fund will be identical, except that: (a) Each class would have a different designation; (b) each class would bear Plan Payments related to such class; (c) each class would bear certain Class Expenses (as defined below); (d) only shareholders of the affected classes would be entitled to vote on matters pertaining to the 12b–1 plan and the 12b–1 Plan Agreements relating to such class; (e) each class would have different exchange privileges; and (f) each class of shares may have different conversion features.

4. The net asset value of all outstanding shares representing interests in a Fund, or series thereof, would be computed on the same days and at the same times. A Fund's or series' thereof, gross income would be allocated to each class on the basis of the net assets of each class. In addition to expenses incurred under a rule 12b–1 plan or shareholder services plan, each class of shares will bear certain expenses specifically attributable to the class ("Class Expenses"). Expenses incurred (a) by a Fund not attributable to a particular series of the Fund or to

a particular class of shares, i.e., Fund expenses, and (b) by a particular series of a Fund but not attributable to any particular class of such series, i.e., series expenses, would be subtracted from the gross income of each class on the basis of net assets.

5. Except as provided below, each class of shares may be exchanged only for shares of the same class in another Fund. Funds that have not issued multiple classes and have not adopted a CDSC generally are deemed to be the same class as any Fund or class that is not sold with a CDSC. Deferred Option shares may, however, be exchanged for shares of the Money Market Fund. In all events, the exchange privileges will be in accordance with rule 11a–3 under the Act.

6. Fund shares of the Deferred Option class, other than those purchased through the reinvestment of dividends and distributions, will convert automatically to Front-End Option shares with respect to that Fund at net asset value on a stated anniversary of the purchase of the shares offered under the Deferred Option. All shares in a shareholder's account that were purchased through the reinvestment of dividends and other distributions paid in respect of Deferred Option shares will be considered to be held in a separate sub-account. Each time any Deferred Option shares in the shareholder's account convert to Front-end Option shares, a pro rata portion of the Deferred Option shares then in the sub-account also will convert to Front-End Option shares.

B. The CDSC

1. Applicants also request an exemption to allow the Funds to impose a CDSC on redemptions of shares of the Funds, and to waive the CDSC under certain circumstances. The CDSC will not be imposed on redemptions of shares purchased more than 5 years prior to such redemptions or on shares acquired from the reinvestment of dividends or distributions. Furthermore, no CDSC will be imposed on an amount that represents an increase in the shareholder's account resulting from capital appreciation.

2. In determining the rate and applicability of CDSC, it will be assumed that a redemption is made first of shares representing reinvestment of dividends and capital gain distributions; then of amounts representing the increase of net asset value above the total amount of payments for the purchase of Deferred Option shares currently held by the shareholder; then of amounts representing the cost of Deferred Option shares purchased five years or more prior to the redemption; and finally, of other shares held by the shareholder for the longest period of time.

3. Applicants seek the ability to waive the CDSC on redemptions (a) following the death or disability, as defined in section 72(m) (7) of the Internal Revenue Code of 1986 (the "Code"), of a shareholder if redemption is made within one year after death or disability, (b) otherwise payable by employees participating in qualified or non-qualified employee benefit plans or other programs where (i) the employers or affiliated employers maintaining such plans or programs have a minimum of 250 employees eligible for participation in such plans or programs, or (ii) such plan's or program's aggregate initial investment in the Security family of funds or other products made available through the Distributor exceeds one million dollars, and (c) in connection with a distribution following retirement under a tax-deferred retirement plan or attaining age 70½ in the case of an IRA or Keogh plan or custodial account pursuant to section 403(b) of the Code.

Applicants' Legal Analysis

1. Applicants seek relief from sections 18(f)(1), 18(g), and 18(i) of the Act to issue multiple classes of shares representing interests in the same portfolio of securities. Applicants believe that by implementing the multiple class distribution system, the Funds would be able to facilitate the distribution of their shares and provide a broad array of services without assuming excessive accounting and bookkeeping costs. Applicants also believe that the proposed allocation of expenses and voting rights in the manner described above is equitable and would not discriminate against any group of shareholders.

2. The proposed arrangement does not involve borrowings, and does not affect the Funds' existing assets or reserves. Nor will the proposed arrangement increase the speculative character of the shares of a Fund, since all such shares will participate in the Fund's appreciation, income, and expenses in the manner described above.

3. Applicants also seek relief from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c–1 thereunder to assess and, under certain circumstances, waive a CDSC on redemptions of shares. Applicants believe that their request to permit the CDSC arrangement would place the purchaser in a better position than if a sales load were imposed at the time of sale, since the shareholder may have to pay only a reduced sales charge or no sales charge at all.

Applicant's Conditions

A. The Multiple Class Distribution System

If the requested order is granted, applicants agree to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of a Fund (or series thereof), and be identical in all respects, except for certain differences set forth below. The only differences among the classes of a Fund (or series thereof) will relate solely to: (a) The impact of financing certain Class Expenses, which are limited to: (i) Transfer agent fees identified by the transfer agent as being attributable to a specific class; (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxies to current shareholders of a specific class; (iii) blue sky registration fees incurred by a class of shares; (iv) SEC registration fees incurred by a class of shares; (v) the expense of administrative personnel and services as required to support the shareholders of a specific class; (vi) litigation or other legal expenses relating solely to one class of shares; and (vii) directors' fees incurred as a result of issues relating to one class of shares; (b) expenses assessed to a class pursuant to a 12b–1 plan or shareholder services plan; (c) the related voting rights as to matters exclusively affecting one class of shares and as required by condition 15; (d) a class may have a conversion feature; (e) exchange privileges; and (f) class designation differences. Any additional incremental expense not specifically identified above which are subsequently identified and determined to be properly allocable to one class of shares shall not be so allocated until approved by the Commission pursuant to an amended order.

2. The directors of a Fund, including a majority of the non-interested directors, will approve the offering of different classes of shares of the Fund ("Distribution System"), prior to the implementation of the Distribution System by a particular Fund. The minutes of the meetings of the directors of a Fund regarding the deliberations of the directors with respect to the approvals necessary to implement the Distribution System will reflect in detail the reasons for the directors' determination that the proposed Distribution System is in the best

interests of both a Fund and its shareholders.

3. On an ongoing basis, the directors of a Fund, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor the Fund for the existence of any material conflicts among the interests of the classes of shares. The directors, including a majority of the non-interested directors, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The investment adviser, sub-adviser (if any), administrator (if separate), and distributor of the Fund will be responsible for reporting any potential or existing conflicts to the directors. If a conflict arises, such entities at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

4. The initial determination of the Class Expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the relevant Fund's directors, including a majority of the non-interested directors. Any person authorized to direct the allocation and disposition of monies paid or payable by a Fund to meet Class Expenses shall provide to such Fund's directors, and the directors shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

5. Each Fund's distributor will adopt compliance standards as to when each class of shares may be sold to particular investors. Applicants will require all persons selling Fund shares to agree to conform to such standards.

6. Any shareholder services plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1(b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders will not enjoy the voting rights specified in rule 12b–1.

7. Each Fund's directors will receive quarterly and annual statements concerning 12b–1 plan and shareholder servicing plan expenditures complying with rule 12b–1(b)(3)(ii), as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the directors to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the non-interested directors in the exercise of their fiduciary duties.

8. Dividends paid by a Fund with respect to a class of shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and in the same amount, except that Class Expenses and payments made pursuant to a 12b–1 plan or shareholder services plan will be borne exclusively by the affected class.

9. The methodology and procedures for calculating the net asset value and dividend distributions of the various classes and the proper allocation of expenses among the classes have been reviewed by an expert (the "Expert") who has rendered a report to applicants, which has been provided to the staff of the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to each Fund that the calculations and allocations are being made properly. The Expert's reports shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The Expert's work papers with respect to such reports, following request by any Fund (which each such Fund agrees to provide), will be available for inspection by the SEC staff upon the written request to the Fund for such work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "special purpose" report on "policies and procedures placed in operation" as defined and described in SAS No. 70 of the AICPA, and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

10. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividend/distributions of the various classes of shares and the proper allocation of expenses among the classes and this representation has been concurred with by the Expert in the initial report referred to in condition (9) above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in that condition. Applicants will take immediate corrective measures if this representation is not concurred in by the Expert, or appropriate substitute Expert.

11. Each prospectus will contain a statement to the effect that any person entitled to receive any compensation for selling or servicing Fund shares may receive different levels of compensation with respect to one particular class of shares over another in the Fund.

12. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the directors of each Fund with respect to the multi-class distribution system will be set forth in guidelines which will be furnished to each Fund's directors.

13. Each Fund will disclose in each of its prospectuses the respective expenses, performance data, distribution arrangements, services, fees, sales loads, CDSCs, and exchange privileges applicable to each class of shares regardless of whether all such classes of shares are offered through such prospectus. Each Fund will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report pertaining to such Fund. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares of a Fund, it will also disclose the respective expenses and/or performance data applicable to all classes of shares of such Fund. The information provided by applicants for publication in any newspaper or similar listing of a Fund's net asset value and public offering price will present each class of shares separately.

14. Any class of shares with a conversion feature will convert into another class of shares on the basis of the relative net asset values of the two classes without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are

defined in article III, section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

15. If a Fund implements any amendment to its rule 12b–1 plan (or, if presented to shareholders, adopts or implements any amendment of a shareholder services plan) that would increase materially the amount that may be borne by the class of shares ("Target Class") into which the class of shares with a conversion feature ("Purchase Class") will convert under the plan, existing Purchase Class shares will stop converting into Target Class shares unless the Purchase Class shareholders, voting separately as a class, approve the proposal. The directors shall take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares ("New Target Class"), identical in all material respects to Target Class as it existed prior to implementation of the proposal, no later than the date such shares previously were scheduled to convert into Target Class shares. If deemed advisable by the directors to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class ("New Purchase Class"), identical to existing Purchase Class shares in all material respects except that New Purchase Class shares will convert into New Target Class shares. A New Target Class or New Purchase Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the directors reasonably believe will not be subject to federal taxation. In accordance with condition 3, any additional cost associated with the creation, exchange, or conversion of New Target Class shares or New Purchase Class shares shall be borne solely by the Adviser and the Distributor. Purchase Class shares sold after the implementation of the proposal may convert into Target Class shares subject to the higher maximum payment, provided that the material features of the Target Class plan and the relationship of such plan to the Purchase Class shares are disclosed in an effective registration statement.

16. Applicants acknowledge that the grant of the exemptive order requested by the application will not imply Commission approval, authorization, or acquiescence in any particular level of payments that the Fund may make pursuant to its rule 12b–1 plans or shareholder services plans in reliance on the exemptive order.

B. The CDSC

1. Applicants will comply with the provisions of proposed rule 6c–10 under the Act (See Investment Company Release No. 16619 (November 2, 1988)), as such rule is currently proposed and as it may be reproposed, adopted or amended.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–23855 Filed 9–28–93; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 05/05–0219]

The Capital Fund, Inc.; Issuance of a Small Business Investment Company License

On December 15, 1992, a notice was published in the **Federal Register** (57 FR 59375) stating that an application had been filed by the Capital Fund, Inc., 6412 Centurion Drive, Lansing, Michigan, 48917, with the Small Business Administration (SBA) pursuant to section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1992)) for a license to operate as a small business investment company. Interested parties were given until close of business January 14, 1993 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 05/05–0219 on September 8, 1993, to the Capital Fund, Inc. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 21, 1993.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 93–23831 Filed 9–28–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Oconto and Marinette Counties, WI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway Improvement project in Oconto and Marinette Counties, Wisconsin.

FOR FURTHER INFORMATION CONTACT: James Zavoral, Federal Highway Administration, 4502 Vernon Boulevard, Madison, Wisconsin 53705–4905; telephone (608) 264–5944. Additional information can be obtained through Ms. Carol Cutshall, Director, Office of Environmental Analysis, Wisconsin Department of Transportation, 4802 Sheboygan Avenue, Madison, Wisconsin 53707, Telephone: (608) 266–9626.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wisconsin Department of Transportation (WisDOT), will prepare an Environmental Impact Statement (EIS) on a proposal to construct a four-lane facility for USH 141. The Project is located between State Trunk Highway 22 in Oconto County and State Trunk Highway 64 in Marinette County, a distance of 16 miles.

Improvements to the corridor are considered necessary to provide for the compatibility with the regional function of USH 141, and to provide for the existing and projected traffic demand, to reduce congestion and improve safety. Alternatives under consideration include (1) taking no action; (2) improvements on existing location; and (3) construction on new alignment. Incorporated into and studied with the build alternative will be design variations of grade and alignment location.

Letters describing the proposed action and soliciting comments will be sent to the appropriate Federal, State and Local agencies, and to private organizations and citizen groups who have previously expressed or are known to have an interest in this proposal. A series of public meetings will be held in the project vicinity and a public hearing will be held. Public notice will be given of the time and place of the meetings and hearings. The draft EIS will be available for public and agency review and comment prior to the public hearing. The scoping process will continue throughout the duration of the project.

To ensure that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed

action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. This document is being prepared in conformance with 40 CFR part 1500 and the FHWA regulations. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal Programs and activities apply to this program.)

Issued on September 29, 1993.

James R. Zavoral,

Urban Projects Engineer, Madison, Wisconsin.

[FR Doc. 93-23772 Filed 9-28-93; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

September 23, 1993.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 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: New.

Form Number: IRS Form 8848.

Type of Review: New collection.

Title: Consent to Extend the Time to Assess Tax Under Regulations Sections 1.884-2T (a) and (c).

Description: Form 8848 will be used by foreign corporations that have (a) completely terminated all of their U.S. trade or business within the meaning of Regulations section 1.884-2T(a) during the tax year or (b) transferred their U.S. assets to a domestic corporation in a transaction described in section 381(a), if the foreign corporation was engaged in a U.S. trade or business at that time.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents/Recordkeepers: 5,000.

Estimated Burden Hours Per Respondent/Recordkeeper

Recordkeeping—3 hours, 7 minutes.
Learning about the law or the form—42 minutes.
Preparing and sending the form to the IRS—47 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 22,950 hours.

Clearance Officer: Garrick Shear (202) 622-3869, 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.

Dale A. Morgan,

Departmental Reports Officer.

[FR Doc. 93-23839 Filed 9-28-93; 8:45 am]

BILLING CODE 4830-01-P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 17, 1985 (40 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "The Art of Medieval Spain: A.D. 500-1200" (see list,[1]) imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art, New York, New York, from on or about November 15, 1993 to on or about March 13, 1994, is in the national interest. Public Notice of this determination is ordered to be published in the **Federal Register.**

Dated: September 23, 1993.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 93-23844 Filed 9-28-93; 8:45 am]

BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Mr. Paul W. Manning of the Office of the General Counsel of USIA. The telephone number is 202/619-6827, and the address if room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 58, No. 187
Wednesday, September 29, 1993

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).

FEDERAL HOUSING FINANCE BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 48711, September 17, 1993.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:00 a.m., Wednesday, September 22, 1993.

CHANGES IN THE MEETING: The following topic was deleted from the closed portion of the meeting:

FHLBank Presidents' Compensation Plan—1994

The Board determined that agency business required its consideration of this matter on less than seven days notice to the public and that no earlier notice of this change in the subject matter of the meeting was practicable.

The item was eligible for consideration in the closed session of the meeting pursuant to exemption (6) in section 552b(c) of title 5 of the United States Code.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Philip L. Conover,
Managing Director.

[FR Doc. 93–23985 Filed 9–27–93; 10:38 am]

BILLING CODE 6725–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11 a.m., Monday, October 4, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 27, 1993.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 93–24023 Filed 9–27–93; 1:09 pm]

BILLING CODE 6210–01–P

NATIONAL COUNCIL ON DISABILITY

Quarterly Meeting

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming quarterly meeting of the National Council on Disability. Notice of this meeting is required under Section 522b of the Government in the Sunshine Act, (Pub. L. 94–409).

DATES: November 2–3, 1993, 8:45 a.m. to 5 p.m.

LOCATION: Hyatt Regency Washington, DC, 400 New Jersey Avenue, NW., Washington, DC 20001, (202) 737–1234.

FOR INFORMATION CONTACT: Mark S. Quigley, Public Affairs Specialist, National Council on Disability, 1331 F Street, NW., Suite 1001, Washington, DC 20004, (202) 267–3846, (202) 267–3232 (TT)

The National Council on Disability is an independent federal agency composed of 15 members appointed by the President of the United States and confirmed by the U.S. Senate. It was established in 1978 as an advisory board within the Department of Education. The Rehabilitation Act Amendments of 1984 transformed the Council into an independent agency. The mission of the National Council on Disability is to provide leadership in the identification of emerging issues affecting people with disabilities and in the development and recommendation of disability policy to the President and the Congress.

The quarterly meeting of the National Council shall be open to the public. The proposed agenda includes:

Report from the Chairperson and the Executive Director
Committee Meetings and Committee Reports
Unfinished Business
New Business
Announcements
Adjournment

Records shall be kept of all National Council proceedings and shall be available after the meeting for public inspection at the National Council on Disability.

Signed in Washington, DC, on September 29, 1993.

Edward P. Burke,
Acting Executive Director.

[FR Doc. 93–24096 Filed 9–27–93; 3:32 pm]

BILLING CODE 6820–BS–M

federal register

Wednesday
September 29, 1993

Part II

Federal Emergency Management Agency

Changes to the Hotel and Motel Fire Safety Act National Master List; Notice

FEDERAL EMERGENCY MANAGEMENT AGENCY

Changes to the Hotel and Motel Fire Safety Act National Master List

AGENCY: United States Fire Administration, FEMA.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA or Agency) gives notice of additions and corrections/changes to, and deletions from, the national master list of places of public accommodation which meet the fire prevention and control guidelines under the Hotel and Motel Fire Safety Act.

EFFECTIVE DATE: October 29, 1993.

ADDRESSES: Comments on the master list are invited and may be addressed to the Rules Docket Clerk, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (fax) (202) 646–4536. To be added to the National Master List, or to make any other change to the list, see **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: Larry Maruskin, Office of Fire Prevention and Arson Control, United States Fire Administration, Federal Emergency Management Agency, National Emergency Training Center, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1141.

SUPPLEMENTARY INFORMATION: Acting under the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. 2201 note, the United States Fire Administration has worked with each State to compile a national master list of all of the places of public accommodation affecting commerce located in each State that meet the requirements of the guidelines under the Act. FEMA published the national master list in the **Federal Register** on Tuesday, November 24, 1992, 57 FR 55314, and published changes approximately monthly since then.

Parties wishing to be added to the National Master List, or to make any other change, should contact the State office or official responsible for compiling listings of properties which comply with the Hotel and Motel Fire Safety Act. A list of State contacts was published in 58 FR 17020 on March 31, 1993. If the published list is unavailable to you, the State Fire Marshal's office can direct you to the appropriate office. Periodically FEMA will update and redistribute the national master list to incorporate additions and corrections/changes to the list, and deletions from the list, that are received from the State offices.

Each update contains or may contain three categories: "Additions;" "Corrections/Changes;" and "Deletions." For the purposes of the updates, the three categories mean and include the following:

"Additions" are either names of properties submitted by a State but inadvertently omitted from the initial master list or names of properties submitted by a State after publication of the initial master list;

"Corrections/Changes" are corrections to property names, addresses or telephone numbers previously published or changes to previously published information directed by the State, such as changes of address or telephone numbers, or spelling corrections; and

"Deletions" are entries previously submitted by a State and published in the national master list or an update to the national master list, but subsequently removed from the list at the direction of the State.

Copies of the national master list and its updates may be obtained by writing to the Government Printing Office, Superintendent of Documents, Washington, DC 20402–9325. When requesting copies please refer to stock number 069–001–00049–1.

The update to the national master list follows below.

Dated: September 21, 1993.

John P. Carey,

General Counsel.

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST SEPTEMBER 17, 1993 UPDATE

Property name	PO box/rt no.	Street address	City and state/ZIP	Telephone
ADDITIONS				
California				
Days Inn Hotel		3450 Rosedale Hwy	Bakersfield, CA 93308–	805–326–1111
Red Lion Hotel Bakersfield		3100 Camino Del Rio Ct	Bakersfield, CA 93308–	805–323–7111
Red Lion Inn Los Angeles Airport		6161 Centinela Ave	Culver City, CA 90231–3200	310–649–1776
Radisson Inn—San Francisco		275 S. Airport Blvd	S. San Francisco, CA 94080–	415–873–3550
Beverly Garland Hotel		1780 Tribute Rd	Sacramento, CA 95815–	916–929–7900
Summerfield Suites Hotel		1350 Huntington Ave	San Bruno, CA 94066–	415–588–0770
Flamingo Resort Hotel Fitness Center.		2777 Fourth St	Santa Rosa, CA 95403–	800–848–8300
Hyatt Westlake Plaza		880 S. Westlake Blvd	Westlake Village, CA 91361–	805–497–9991
Colorado				
Red Lion Hotel Denver		3203 Quebec Street	Denver, CO 80207–	303–321–3333
Idaho				
Rodeway Inn of Boise		1115 N. Curtis Rd	Boise, ID 83706–	208–376–2700
Best Western Burley Inn		800 N. Overland Ave	Burley, ID 83318–	208–678–3501
Stardust Motor Lodge		700 Lindsay Blvd	Idaho Falls, ID 83402–	208–522–2910
Budget Motel		240 N. 4th St.	Montpelier, ID 83254–	208–847–1273
Flamingo Lodge Motel		406 E. 8th St	Rupert, ID 83350–	208–436–4321
Motel Deluxe		112 S. Church St	Salmon, ID 83467–	208–756–2231
Country Inn		7360 Hwy. 95 S	Sandpoint, ID 83864–	208–263–3333
Weston Plaza Hotel & Convention Center.		1350 Blue Lakes Blvd. N	Twin Falls, ID 83301–	208–733–0650
Maine				
Susse Chalet Motor Lodge Augusta.		Whitten Rd	Augusta, ME 04330–	207–622–3776
Comfort Inn Bangor		750 Hogan Rd	Bangor, ME 04401–	207–942–7899

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST SEPTEMBER 17, 1993 UPDATE—Continued

Property name	PO box/rt no.	Street address	City and state/ZIP	Telephone
Bangor Airport Marriot		308 Godfrey Blvd	Bangor, ME 04401–	207–947–6721
Econo Lodge		482 Odlin Rd	Bangor, ME 04401–	207–942–6301
Quality Inn Phenix		20 Broad St	Bangor, ME 04401–	207–947–3850
Econo Lodge		Rt. 1 & I–95	Brunswick, ME 04011–	207–729–9991
Comfort Inn		199 Pleasant St	Brunswick, ME 04011–	207–729–1129
Harraseeket Inn		162 Main St	Freeport, ME 04032–	207–865–9377
Econo Lodge of Kennebunk		55 York St	Kennebunk, ME 04043–	207–985–6100
Susse Chalet		340 Park Ave	Portland, ME 04102–	207–871–0611
Comfort Inn		90 Maine Mall Rd	S. Portland, ME 04106–	207–775–0409
York Commons Inn	PO Box 427	12 Brick Yard Ln	York, ME 03909–	207–363–8903
Texas				
Clarion Hotel		1241 W. Mockingbird Ln	Dallas, TX 75247–	214–630–7000
Hampton Inn Dallas North		11069 Composite Dr	Dallas, TX 75229–	214–484–6557
Sheraton Grand Hotel		2525 West Loop S	Houston, TX 77027–	713–961–3000
Wyndham Las Colinas		110 W. Carpenter Frwy	Irving, TX 75039–	214–650—1600
Embassy Suites McAllen		1800 S. 2nd	McAllen, TX 78503–	210–686–3000
Wyndham San Antonio		9821 Colonnade Blvd	San Antonio, TX 78230–	210–691–8888
Hampton Inn Airport		8818 Jones Maltsberger	San Antonio, TX 78216–	210–366–1800
Washington				
Val-U Inn		9 14th NW	Auburn, WA 98001–	206–735–9600
Val-U Inn		22420 84th Ave. S	Kent, WA 98032–	206–872–5525
CORRECTIONS/CHANGES				
California				
Hotel Sainte Claire		302 S. Market St	San Jose, CA 95113–	408–295–2000
Colorado				
Iron Horse Resort Retreat Buildings C and D.	PO Box 1286	257 Winter Park Dr	Winter Park, CO 80482–	303–726–8851
Minnesota				
Sheraton Minneapolis Metrodome		1330 Industrial Ave	Minneapolis, MN 55413–	612–331–1900
Missouri				
Red Roof Inn		3470 Hollenberg Dr	Bridgeton, MO 63044–	314–291–3350
Double Tree Hotel Conf Ctr		16625 Swingley Ridge	St. Louis, MO 63017–	314–532–5000
Nevada				
Sheffield Inn		3970 Paradise Rd	Las Vegas, NV 89109–	702–796–9000
Texas				
Houston West Hilton Inn		12401 Katy Frwy	Houston, TX 77079–1401	713–496–9090
Clarion Inn		500 N. Sam Houston Pkwy	Houston, TX 77060–	713–931–0101
Best Western Irish Inn		301 I–40 E	Shamrock, TX 79079–	806–256–2106
DELETIONS				
California				
Pacifica Hotel and Conference Center.		6161 Centinela Ave	Culver City, CA 90231–	310–649–1776
Colorado				
The Broadmoor Hotel		1 Lake Ave	Colorado Springs, CO 80906–	719–634–7711

[FR Doc. 93–23766 Filed 9–28–93; 8:45 am]
BILLING CODE 6718–26–U

federal register

Wednesday
September 29, 1993

Part III

The President

Executive Order 12865—Prohibiting Certain Transactions Involving UNITA

Federal Register
Vol. 58, No. 187
Wednesday, September 29, 1993

Presidential Documents

Title 3—

The President

Executive Order 12865 of September 26, 1993

Prohibiting Certain Transactions Involving UNITA

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), section 5 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287c), and section 301 of title 3, United States Code, and in view of United Nations Security Council Resolution No. 864 of September 15, 1993,

I, WILLIAM J. CLINTON, President of the United States of America, take note of the United Nations Security Council's determination that, as a result of UNITA's military actions, the situation in Angola constitutes a threat to international peace and security, and find that the actions and policies of UNITA, in continuing military actions, repeated attempts to seize additional territory and failure to withdraw its troops from locations that it has occupied since the resumption of hostilities, in repeatedly attacking United Nations personnel working to provide humanitarian assistance, in holding foreign nationals against their will, in refusing to accept the results of the democratic elections held in Angola in 1992, and in failing to abide by the "Acordos de Paz," constitute an unusual and extraordinary threat to the foreign policy of the United States, and hereby declare a national emergency to deal with that threat.

I hereby order:

Section 1. The following are prohibited, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or contract entered into or any license or permit granted before the effective date of this order, except to the extent provided in regulations, orders, directives, or licenses which may hereafter be issued pursuant to this order:

(a) The sale or supply by United States persons or from the United States, or using U.S.-registered vessels or aircraft, of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment and spare parts for the aforementioned, as well as petroleum and petroleum products, regardless of origin:

(1) to UNITA;

(2) to the territory of Angola, other than through points of entry to be designated by the Secretary of the Treasury, or any activity by United States persons or in the United States which promotes or is calculated to promote such sale or supply.

(b) Any transaction by any United States person that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this order.

Sec. 2. For purposes of this order:

(a) The term "United States person" means any United States citizen, permanent resident alien, juridical person organized under the laws of the United States (including foreign branches), or person in the United States;

(b) The term "UNITA" includes:

(1) the Uniao Nacional para a Independencia Total de Angola (UNITA), known in English as the "National Union for the Total Independence of Angola;"

(2) the Forcas Armadas para a Liberacao de Angola (FALA), known in English as the "Armed Forces for the Liberation of Angola;" and

(3) any person acting or purporting to act for or on behalf of any of the foregoing, including the Free Angola Information Service, Inc.

Sec. 3. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by the International Emergency Economic Powers Act and the United Nations Participation Act as may be necessary to carry out the purpose of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government.

Sec. 4. Nothing contained in the order shall be construed to supersede the requirements established under the Arms Export Control Act (22 U.S.C. 2751 *et seq.*) and the Export Administration Act (50 U.S.C. App. 2401 *et seq.*) to obtain licenses for the exportation from the United States or from a third country of any goods, data, or services subject to the export jurisdiction of the Department of State or the Department of Commerce.

Sec. 5. All Federal agencies are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order, including suspension or termination of licenses or other authorizations in effect as of the date of this order.

Sec. 6. Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 7. (a) This order shall take effect immediately.

(b) This order shall be transmitted to the Congress and published in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
September 26, 1993.

[FR Doc. 93-24117
Filed 9-27-93; 4:54 pm]
Billing code 3195-01-P

Editorial note: For the President's message to the Congress on these sanctions, see issue 39 of the *Weekly Compilation of Presidential Documents.*

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